

UNOFFICIAL COPY

This instrument prepared by
and please return to:

Polsinelli Shughart PC
161 North Clark Street, Suite 4200
Chicago, Illinois 60601-3316
Attention: Kimberly K. Enders, Esq.
Loan #112026347



Doc#: 1027945038 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/06/2010 11:39 AM Pg: 1 of 13

Parcel No. 1:

P.I.N.: 14-07-208-031-0000
COMMONLY KNOWN AS: 5424 N. Paulina/1705-07 W. Rascher Ave., Chicago, IL
60640

Parcel No. 2:

P.I.N.: 4-18-107-009-0000
COMMONLY KNOWN AS: 4715-20 N. Hamilton Avenue, Chicago, IL 60625

Parcel No. 3:

P.I.N.: 17-04-404-026-1001
COMMONLY KNOWN AS: 163 W. Division / 1147 N. Wells, Chicago, IL 60610

Parcel No. 4:

P.I.N.: 17-06-434-006-0000
COMMONLY KNOWN AS: 847 N. Winchester Avenue, Chicago, IL 60622

LOAN MODIFICATION AND ASSUMPTION AGREEMENT

This instrument is a Loan Modification and Assumption Agreement ("**Modification**") among First Chicago Bank & Trust, an Illinois state chartered bank ("**Lender**"), Lincolnwood DuPage LLC, an Illinois limited liability company and Charles T. Mudd (collectively, "**Original Borrowers**") and FC-1 LLC, Series 163 W. Division G-A, an Illinois series limited liability company ("**Assuming Borrower**").

RECITALS:

UNOFFICIAL COPY

A. Lincolnwood DuPage LLC holds fee simple title to the real estate commonly known as 5424 N. Paulina/1705-07 W. Rascher Ave., Chicago, IL 60640 (“**Parcel No. 1**”), 4718-20 N. Hamilton Avenue, Chicago, IL 60625 (“**Parcel No. 2**”) and 847 N. Winchester Avenue, Chicago, IL 606202-4918 (“**Parcel No. 4**”), which parcels are legally described on **Exhibit A** attached hereto.

B. Charles T. Mudd held fee simple title to the real estate commonly known as 163 W. Division (1147 N. Wells, Chicago, IL 60610 (“**Parcel No. 3**”), which is legally described on **Exhibit A** attached hereto. Parcel No. 1, Parcel No. 2, Parcel No. 3 and Parcel No. 4 are referred to collectively herein as the “**Real Estate**.”

C. On June 19, 2009, Lender granted a loan to Original Borrowers in the amount of \$1,133,678.00 (“**Loan**”), which Loan is evidenced by a Promissory Note in the principal amount of \$1,133,678.00 (“**Note**”). The purpose of the Loan was to refinance debt secured by the Real Estate. Concurrently therewith, Original Borrowers executed and delivered to Lender the following documents (collectively “**Security Documents**”):

1. a Junior Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing, which was recorded with the Cook County Recorder of Deeds on July 14, 2009 as Document No. 0919529029 and recorded again on July 16, 2009 as Document No. 0919747080 (“**Mortgage**”);

2. a UCC Financing Statement authorized by Lincolnwood DuPage LLC and filed with the Secretary of State of Illinois;

3. an Environmental, ADA and ERISA Indemnification Agreement executed by Original Borrowers;

UNOFFICIAL COPY

4. a Management Services Subordination Agreement for each parcel executed by Kass Management Services, Inc.;

5. an Error and Omissions/Compliance Agreement executed by Original Borrowers;

6. a Borrowing Resolution executed by Lincolnwood DuPage LLC; and

7. a Loan Settlement Statement executed by Original Borrowers.

D. Without Lender's consent, on November 30, 2009, Charles T. Mudd executed a deed conveying Parcel No. 3 to Assuming Borrower ("**Deed**"). The Deed was recorded with the Cook County, Illinois Recorder of Deeds on December 16, 2009 as Document No. 0935016025. Charles T. Mudd is the sole member and manager of Assuming Borrower.

E. The Loan matured on July 1, 2010. Original Borrowers and Assuming Borrower have now requested Lender to: (a) extend the maturity date of the Loan from July 1, 2010 to January 5, 2011, and (b) agree to the conveyance of Parcel No. 3 to Assuming Borrower. Lender is agreeable to these requests subject to the covenants, conditions and restrictions contained herein.

NOW, THEREFORE, in consideration of good and valuable consideration, the parties agree as follows:

1. The Note is hereby modified and amended to add Assuming Borrower as a co-borrower under the Note, and Original Borrowers and Assuming Borrower are hereby jointly and severally liable for all amounts due under the Note.

2. The Maturity Date set forth in subparagraph (b) of the Note is hereby modified and amended from July 1, 2010 to January 5, 2011. Interest payments must be made on

UNOFFICIAL COPY

the fifth day of each month until the Loan is paid in full. All interest charged on and all payments made on the Note previously are unchanged.

3. The Security Documents are hereby modified and amended to reflect the change in ownership of Parcel No. 3 to the Assuming Borrower, and Assuming Borrower shall be added as a party to each of the Security Documents as if it originally was a party to such documents. Original Borrowers and Assuming Borrower are hereby jointly and severally liable for all amounts due under the Security Documents, and all other Loan Documents (as hereinafter defined) executed in connection therewith.

4. The Security Documents are hereby modified and amended to secure the Note as hereby modified and all references to the Note in the Security Documents are modified and amended to refer to the Note as hereby modified. All interest charged on and all payments made on the Note previously are unchanged.

5. This Modification shall be effective upon Lender's receipt of this Modification executed by the parties hereto and the following documents and items:

- (a) a UCC Financing Statement authorized by Assuming Borrower;
- (b) an Organizational Resolution of Lincolnwood DuPage LLC;
- (c) copies of all amendments to Lincolnwood DuPage LLC's Articles of Organization and Operating Agreement or a Certification of No Change to the Organizational Documents;
- (d) a Certificate of Good Standing or an LLC File Detail Report of Lincolnwood DuPage LLC from Secretary of State of Illinois Website;
- (e) organizational documents of Assuming Borrower as follows:
 - (i) Organizational Resolution;

UNOFFICIAL COPY

- (ii) Articles of Organization;
 - (iii) Operating Agreement;
 - (iv) Certificate of Good Standing; and
 - (v) FEIN;
- (f) a date down endorsement to Lender's loan title insurance policy;
- (g) evidence from each senior lien holder that the payments are current and the amount of the principal balance of the loan; and
- (h) payment of the costs set forth in Section 9 hereof.

6. This Modification shall constitute an amendment of the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Note ("Loan Documents") reference is made to the Loan Documents aforesaid, such reference shall be deemed a reference to such Loan Documents as hereby modified and amended. All other provisions of the Loan Documents remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Mortgage as revised by this Modification, or the covenants, conditions and agreements therein contained or contained in the Note.

7. In the event of conflict between any of the provisions of the Loan Documents and this instrument, the provisions of this instrument shall override and control.

8. Original Borrowers and Assuming Borrower hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

9. Original Borrowers and Assuming Borrower hereby agree to pay all of Lender's expenses arising out of and in connection with this Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees. Original Borrowers and

UNOFFICIAL COPY

Assuming Borrower hereby agree to pay Lender's fee in the amount of \$11,336.00, which will be collected when the Loan is paid in full, as stated in paragraph (c) of the Note.

10. Original Borrowers and Assuming Borrower hereby acknowledge that the Loan is in default because (i) Original Borrowers have failed to make payment on the Loan when due, and (ii) the Real Estate has been conveyed to the Assuming Borrower without Lender's consent. As an inducement to Lender to enter into this Modification, Original Borrowers and Assuming Borrower each acknowledge and agree that:

(a) Lender has fully performed all of its obligations under the Loan Documents recited herein and otherwise between the parties hereto;

(b) each of the Original Borrowers and Assuming Borrower waives and affirmatively agrees not to allege, assert or otherwise pursue any claim, defense, affirmative defense, counterclaim, cause of action, setoff or other right which any of them may have, or claim to have, as of the date hereof, against Lender, whether known or unknown, including, but not limited to, any contest of:

(i) the existence and materiality of the defaults stated herein;

(ii) the enforceability, applicability or validity of any provision of any of the Loan Documents, except as modified by this Modification, or the enforcement or validity of the terms and provisions of this Modification;

(iii) the right of Lender to demand immediate payment and performance of the obligations of the Original Borrowers or Assuming Borrower pursuant to any of the Loan Documents or this Modification;

(iv) the existence, validity, enforceability or perfection of security interests granted to Lender in any of the collateral securing any of the obligations under

UNOFFICIAL COPY

the Loan Documents or this Modification, whether real or personal property, tangible or intangible, or any right or other interest, now or hereafter arising;

(v) the conduct of the Lender in administering the financial arrangements between Lender and Original Borrowers and Assuming Borrower under any of the Loan Documents or this Modification; and

(vi) any legal fees and expenses incurred by Lender and charged to Original Borrowers and Assuming Borrower pursuant to any of the Loan Documents; and

(vii) Charles T. Mudd is the sole member and manager of Assuming Borrower.

11. ORIGINAL BORROWERS AND ASSUMING BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTES, THIS MODIFICATION, THE MORTGAGE, THE SECURITY DOCUMENTS, OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER, BORROWER AND/OR GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER OR GUARANTORS, OR ANY OF THEM.

12. ORIGINAL BORROWERS AND ASSUMING BORROWER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE

UNOFFICIAL COPY

COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND ORIGINAL BORROWERS AND ASSUMING BORROWER HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. ORIGINAL BORROWERS AND ASSUMING BORROWER HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. ORIGINAL BORROWERS AND ASSUMING BORROWER IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO ORIGINAL BORROWERS AND ASSUMING BORROWER AT THEIR ADDRESSES AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF LENDER. ORIGINAL BORROWERS AND ASSUMING BORROWER AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING, AFTER ALL APPEAL RIGHTS ARE EXHAUSTED, SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

ORIGINAL BORROWERS AND ASSUMING BORROWER AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN

UNOFFICIAL COPY

THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST ORIGINAL BORROWERS AND ASSUMING BORROWER OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS; PROVIDED, HOWEVER, UNLESS LENDER IS REQUIRED BY LAW TO INSTITUTE PROCEEDINGS IN ANY OTHER JURISDICTION, LENDER SHALL FIRST INSTITUTE PROCEEDINGS IN A STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS.

13. Original Borrowers and Assuming Borrower warrant to Lender that none of Original Borrowers or Assuming Borrower nor any affiliate is identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the “**Blocked Persons Lists**”) including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Original Borrowers and Assuming Borrower covenant to Lender that if they become aware that they or any affiliate are identified on any Blocked Persons List, Original Borrowers and Assuming Borrower shall immediately notify Lender in writing of such information. Original Borrowers and Assuming Borrower further agree that in the event they or any affiliate are at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign

UNOFFICIAL COPY

Assets Control and any other government agency Lender deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person (“**Person**”) identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person’s inclusion in a Blocked Persons List, and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person’s obligations under or with respect to any Loan Documents.

Signature page follows

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Modification on _____

September 22, 2010, to take effect as of July 1, 2010.

LENDER:

First Chicago Bank & Trust, an Illinois state chartered bank

By: [Signature]
Its VP

ORIGINAL BORROWERS:

Lincolnwood DuPage LLC, an Illinois limited liability company

By: [Signature]
Charles T. Mudd, Manager

[Signature]
Charles T. Mudd

ASSUMING BORROWER:

FC-1 LLC, Series 163 W. Division G-A, an Illinois series limited liability company

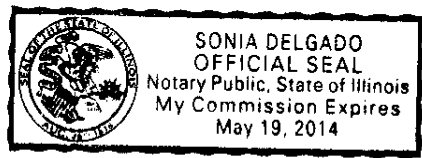
By: [Signature]
Charles T. Mudd, Manager

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Dan Robinson, _____ Vice President of First Chicago Bank & Trust, an Illinois state chartered bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal September 22, 2010.

[Signature]
Notary Public



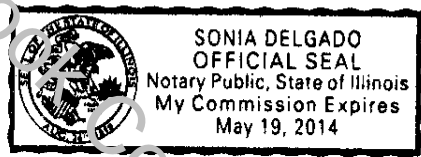
UNOFFICIAL COPY

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Charles T. Mudd, individually and as Manager of Lincolnwood DuPage LLC, an Illinois limited liability company, and as Manager of FC-1 LLC, Series 163 W. Division G-A, an Illinois series limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary acts of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal September 22, 2010.

 Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION:

PARCEL NO. 1:

LOT 1 IN BLOCK 3 IN SUMMERDALE PARK, BEING A SUBDIVISION OF THE SOUTH ½ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NO. 1504587, IN COOK COUNTY, ILLINOIS.

P.I.N.: 14-07-208-031-0000
COMMONLY KNOWN AS: 5424 N. Paulina/1705-07 W. Rascher Ave., Chicago, IL 60640

PARCEL NO. 2:

LOT 11 IN BLOCK 3 IN THOMAS LYMAN'S SUBDIVISION OF BLOCKS 1, 2, 3, 4, 5 AND 6 IN COUNTY CLERK'S DIVISION OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 14-18-187-009-0000
COMMONLY KNOWN AS: 4718-20 N. Hamilton Avenue, Chicago, IL 60625

PARCEL NO. 3:

UNIT G-A TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN DIVISION COURT CONDOMINIUM AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NO. 26220772, IN THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 17-04-404-026-1001
COMMONLY KNOWN AS: 163 W. Division /1147 N. Wells, Chicago, IL 60610

PARCEL NO. 4:

THE NORTH 6-15/100 FEET OF LOT 18 AND ALL OF LOT 19 IN WEBB'S SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 7 IN THE SUPERIOR COURT PARTITION, BEING A SUBDIVISION OF LOTS 2, 4, 7 AND THE EAST 1/2 OF BLOCK 3 AND THE SOUTH 1/2 OF BLOCK 8 IN COCHRAN AND OTHER'S SUBDIVISION OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 17-06-434-006-0000
COMMONLY KNOWN AS: 847 N. Winchester Avenue, Chicago, IL 60622