



Doc#: 1431633051 Fee: \$54.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 11/12/2014 11:52 AM Pg: 1 of 9

This instrument prepared by, and after recording, please return to:

Harrison & Held, LLP
333 West Wacker Drive
Suite 1700
Chicago, Illinois 60606
Attention: Robert G. Davidson, Esq.

Property Index Numbers:

14-18-423-001-0000

13-36-114-019-0000

1949 W. Cuyler, Chicago, Illinois
Loan No. 2173512100

2118 N. Whipple, Chicago, Illinois
Loan No. 2173512118

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MORTGAGE MODIFICATION AGREEMENT
(1949 W. Cuyler and 2118 N. Whipple)

THIS MORTGAGE MODIFICATION AGREEMENT is dated as of October 27, 2014 (this "**Agreement**"), by and among **1949 CUYLER LLC**, an Illinois limited liability company ("**Cuyler**"), **OAK LEAF PROPERTIES, L.L.C.**, an Illinois limited liability company ("**Oak**") (Cuyler and Oak are individually and collectively referred to herein as the "**Mortgagor**") and **ASSOCIATED BANK, NATIONAL ASSOCIATION**, a national banking association, its successors and assigns (the "**Mortgagee**").

RECITALS:

A. Mortgagee has heretofore made a loan to Cuyler (the "**Cuyler Loan**") in the original aggregate principal amount of One Million Two Hundred Fifty-Two Thousand and No/100 Dollars (\$1,252,000.00) pursuant to that certain Loan Agreement dated as of December 29, 2011, by and among Mortgagor, other affiliated borrowers of other loans, and Mortgagee, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein (said Loan Agreement and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "**Loan Agreement**"). The Cuyler Loan is evidenced by that certain Promissory Note dated as of December 29, 2011, from Cuyler to Mortgagee in the original principal amount of \$1,252,000.00 (as amended, restated, modified or supplemented and in effect from time to time, the "**Cuyler Note**"). The Cuyler Loan and the Cuyler Note are being increased to the principal amount of \$1,300,000 pursuant to a certain Amendment to Loan Agreement of even date herewith (the "**2014 Loan Agreement Amendment**"). The Cuyler Loan is due and payable in full on December 28, 2016 (the "**Cuyler Maturity Date**"), except as such date may be accelerated pursuant to the terms of the Cuyler Note or of any other Loan Document (as hereinafter defined).

B. Mortgagee has heretofore made a loan to Oak (the "**Oak Loan**") in the original aggregate principal amount of Eight Hundred Thousand and No/100 Dollars (\$800,000.00) pursuant to the Loan Agreement. The Oak Loan is evidenced by that certain Promissory Note dated as of December 29, 2011 from Oak to Mortgagee in the original principal amount of

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\$800,000.00 (as amended, restated, modified or supplemented and in effect from time to time, the "**Oak Note**"). The Oak Loan and the Oak Note are being increased to the principal amount of \$850,000 pursuant to the 2014 Loan Agreement Amendment. The Oak Loan is due and payable in full on December 28, 2016 (the "**Oak Maturity Date**"), except as such date may be accelerated pursuant to the terms of the Oak Note or of any other Loan Document.

C. All of the provisions of the Loan Agreement are hereby incorporated into this Agreement. Any terms not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

D. The Cuyler Loan and the Oak Loan are secured by a Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of December 29, 2011, from Cuyler and Oak to Mortgagee, recorded with the Recorder of Deeds in Cook County, Illinois (the "**Recorder's Office**") on January 9, 2012, as Document No. 1200904099 ("**Mortgage**"), which Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A** hereto ("**Property**"), (ii) that certain Assignment of Rents and Leases dated December 29, 2011, from Cuyler to Mortgagee and recorded in the Recorder's Office on January 9, 2012, as Document No. 1200904100 and that certain Assignment of Leases and Rents dated as of December 29, 2011, from Oak to Mortgagee and recorded in the Recorder's Office on January 9, 2012, as Document No. 1200904101 (collectively, the "**Assignment of Leases**"); (iii) those certain Environmental Indemnity Agreements, each dated January 9, 2012 from each of Cuyler and Oak and Mark Fishman, individually ("**Guarantor**") to Mortgagee (collectively, the "**Indemnity Agreement**"); and (iv) certain other loan documents (the Cuyler Note, the Oak Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "**Loan Documents**").

E. The Cuyler Loan and the Oak Loan are further secured by certain Guarantees of Payment, each dated December 29, 2011 from Guarantor to Mortgagee (individually and collectively, the "**Guaranty**").

F. Mortgagor and Mortgagee desire to modify the terms of the Mortgage to reflect the modification of the amounts, maturity dates and interest rates of certain of the Loans (as hereinafter defined).

AGREEMENTS:

NOW, THEREFORE, in consideration of: (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Mortgagee to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals; Definition.** The Recitals are hereby incorporated into and shall be a part of this Agreement. As used herein, the "**Loans**" shall mean the Cuyler Loan, and the Oak Loan.

2. **Reaffirmation of the Spread of Mortgage.** The lien of the Mortgage is spread over the whole of the premises described at **Exhibit A**, attached, and same constitutes a valid first Mortgage thereon securing the principal sum of with interest to be paid in accordance with the

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Cuyler Note and the Oak Note. The Mortgagor and the Mortgagee hereby certify that this instrument secures no further or her indebtedness or obligation

3. **Reaffirmation of Mortgagors.** Each Mortgagor ratifies and affirms the Mortgage, agrees to be bound by the terms and conditions of the Mortgage, and agrees that the Mortgage is and remains in full force and effect following the execution and delivery of this Agreement.

4. **Modification of the Maturity Date.** The Cuyler Maturity Date and the Oak Maturity Date are hereby extended, and from and after the date hereof each such Maturity Date shall be November 1, 2019.

5. **Modification of the Interest Rate.** Effective on the first Adjustment Date after the date hereof, Interest on each advance under the Cuyler Note and the Oak Note shall accrue at the rate of interest that equals the sum of (i) the Index, as defined below, adjusted on the first day of each month thereafter (each being an "**Applicable Date**"), and (ii) 2.00% (200 basis points) (the "**Applicable Margin**"). As used herein, the "**Index**" means the per annum rate rounded upwards, if necessary, to the next 1/100th of one percent (1%) and adjusted for reserves if Mortgage is required to maintain reserves with respect to relevant advances, reported in the Money Rates column or Section of *Bloomberg Financial Markets* as the London Interbank Offered Rates (LIBOR) for Loans of one month ("**LIBOR Loans**") as of two (2) Business Days prior to the applicable Adjustment Date.

6. **Representations, Warranties and Covenants of Mortgagors.** Mortgagors (and each of them) hereby represents, covenants and warrants to Mortgagee as follows:

- (a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct in all material respects as of the date hereof.
- (b) There is currently no Event of Default (as defined in the Mortgage) under the Cuyler Note or the Oak Note, the Mortgage or the other Loan Documents and Mortgagor does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under any such Note, the Mortgage or the other Loan Documents.
- (c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of the respective Mortgagor enforceable in accordance with their respective terms subject to limitations imposed by general principles of equity.
- (d) There has been no material adverse change in the financial condition of any Mortgagor, Guarantor or any other party whose financial statement has been delivered to Mortgagee in connection with the Loan from the date of the most recent financial statement received by Mortgagee.
- (e) As of the date hereof, Mortgagor has no claims, counterclaims, defenses, or set-offs with respect to the Loan, Mortgage or the Loan Documents as modified herein.
- (f) Each Mortgagor is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified

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herein have been duly authorized by all requisite action by or on behalf of Mortgagor. This Agreement has been duly executed and delivered on behalf of Mortgagor.

(g) Each Mortgagor acknowledges and agrees that (i) Mortgagee is not in breach or default under the Loan Agreement, Mortgage or other Loan Document or in respect to the Loans, and (ii) it has no claims whatsoever against Mortgagee as of the date hereof.

7. **Title Policy.** As a condition precedent to the agreements contained herein, Mortgagor shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Mortgagee's Title Insurance Policy No. 1401-008866959-D2 (the "**Title Policy**"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Mortgagee.

8. **Expenses.** As a condition precedent to the agreements contained herein, Mortgagor shall pay all out-of-pocket costs and expenses incurred by Mortgagee in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and reasonable attorneys' fees and expenses.

9. **Maximum Indebtedness.** Section 36(c) of the Mortgage is hereby deleted in its entirety and replaced with the following.

Notwithstanding anything contained herein to the contrary, in no event shall the Debt exceed an amount equal to \$4,300,000.00; provided, however, in no event shall the Mortgagee be obligated to advance funds in excess of the face amount of the Note.

10. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Mortgagee than against Mortgagor merely by virtue of the fact that the same has been prepared by counsel for Mortgagee, it being recognized that Mortgagor and Mortgagee have contributed substantially and materially to the preparation of this Agreement, and Mortgagor and Mortgagee each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Mortgagee, the same shall not be deemed to constitute Mortgagee a venturer or partner of or in any way associated with Mortgagor or Guarantor nor shall privity of contract be presumed to have been established with any third party.

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(d) Mortgagor and Mortgagee each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Mortgagor and Mortgagee; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Mortgagor's obligations under this Agreement.


11. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Mortgagee hereby notifies Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "**Act**"), and Mortgagee's policies and practices, Mortgagee is required to obtain, verify and record certain information and documentation that identifies Mortgagor, which information includes the name and address of Mortgagor and such other information that will allow Mortgagee to identify Mortgagor in accordance with the Act. In addition, Mortgagor shall (a) ensure that no person who owns a controlling interest in or otherwise controls Mortgagor or any subsidiary of Mortgagor is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the OFAC, the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

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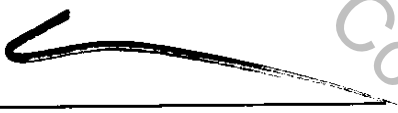
IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

MORTGAGOR:

1949 CUYLER, LLC, an Illinois limited liability company
By: M. Fishman & Company, an Illinois limited liability company

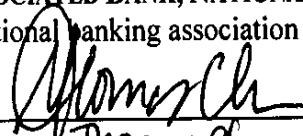
By: 
Name: Mark Fishman
Title: President

OAK LEAF PROPERTIES, L.L.C., an Illinois limited liability company

By: 
Name: Mark Fishman
Title: Manager

MORTGAGEE:

ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association

By: 
Name: Thomas Chen
Its: SVP

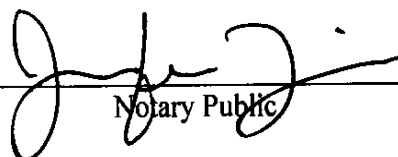
PROPERTY OF COOK COUNTY CLERK'S OFFICE

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Mark Fishman, the President of M. Fishman & company, an Illinois corporation, being the Manager of 1949 Cuyler LLC, an Illinois limited liability company, and Oak Leaf Properties, L.L.C., an Illinois limited liability company, who is 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 company, for the uses and purposes therein set forth.

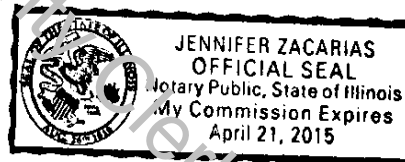
GIVEN under my hand and notarial seal this 17th day of October, 2014.



Notary Public

My Commission Expires:

April 21, 2015



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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

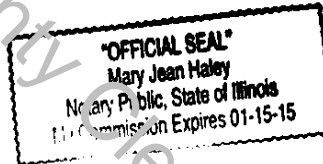
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that THOMAS CHAN, the SENIOR VICE President of Associated Bank, National Association, a nationally banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her 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 this 27th day of October, 2014.

Mary Jean Haley
Notary Public

My Commission Expires:

1-15-15



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EXHIBIT A

LEGAL DESCRIPTION

1949 CUYLER PARCEL AND 2118 N. WHIPPEL PARCEL

1949 W. Cuyler Parcel:

LOTS 19 AND 20 IN BLOCK 5 IN CUYLER ADDITION TO RAVENSWOOD A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 (EXCEPT RAILROAD) OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 1949 W. Cuyler, Chicago, Illinois

Permanent Index Number: 14-18-423-001-0000

2118 N. Whipple Parcel:

LOT 25 IN BLOCK 2 IN CLARKSON'S SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 2118 N. Whipple, Chicago, Illinois

Permanent Index Number: 13-36-114-019-0000