

THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO.

Harold S. Dembo
Much Shelist
191 North Wacker Drive, Suite 1800
Chicago, Illinois 60606

Property Address:
2727 Higgins Road
Elk Grove Village, Illinois 60007

File No. 0006710.0022

24403A

(1)

Doc#: 1511208260 fee: \$66.00
Date: 04/22/2015 01:00 PM Pg: 1 of 10
Cook County Recorder of Deeds
*RHSP:\$9.00 RPRF:\$1.00 FEES Applied

Recorder's Box

**FIRST AMENDMENT OF
CONSTRUCTION MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING**

THIS FIRST AMENDMENT OF CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (the "**Amendment**") is dated as of the 1st day of April, 2015, by and between ASSOCIATED BANK, NATIONAL ASSOCIATION ("**Lender**") and HB 2727 HIGGINS, LLC, an Illinois limited liability company ("**Mortgagor**").

RECITALS:

WHEREAS, Lender made a construction loan to Mortgagor in the original amount of Seven Million Nine Hundred Nine Thousand Five Hundred Fifty Two and no/100 Dollars (\$7,909,552.00) (the "**Original Loan**") pursuant to the terms and provisions of that certain Construction Loan Agreement dated January 29, 2013 (the "**Loan Agreement**");

WHEREAS, to evidence the Original Loan, Mortgagor executed and delivered to Lender a certain Promissory Note dated January 29, 2013 in the original principal amount of Seven Million Eight Hundred Nine Thousand Five Hundred Fifty Two and no/100 Dollars (\$7,809,552.00) (the "**Promissory Note**") and a certain Letter of Credit Note dated January 29, 2013 in the original amount of One Hundred Thousand and no/100 Dollars (\$100,000.00) ("**Letter of Credit Note**" and together with the Promissory Note are the "**Notes**");

WHEREAS, the Notes were secured by a certain (i) Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated January 29, 2013 ("**Mortgage**") executed by Mortgagor encumbering, inter alia, the real estate located at 2727 Higgins Road, Elk Grove Village, Illinois, as legally described on Exhibit "A" attached hereto and made a part hereof (the "**Property**"), which Mortgage was recorded on February 6, 2013 in the Office of the Recorder of Cook County, Illinois as Document No. 1303722065, and (ii) Assignment of Rents and of Lessor's Interest in Leases dated January 29, 2013, executed by Mortgagor ("**Assignment of Rents**"), which Assignment of Rents was recorded on February 6, 2013 in the Office of the Recorder of Cook County, Illinois as Document No. 1303722066 (the Loan Agreement, Notes, Mortgage, Assignment of Rents and all other loan documents are collectively referred to as the "**Original Loan Documents**");

UNOFFICIAL COPY

WHEREAS, the Loan is guaranteed by Anthony Pricco, Ronald T. Frain, Steven F. Poulos and Mark Christensen (collectively, the "**Guarantors**") pursuant to the terms and provisions of a Guaranty of Payment and Completion dated January 29, 2013;

WHEREAS, certain parties who own direct or indirect membership interests in the Mortgagor have sold, assigned and transferred their membership interests therein to entities owned or controlled by HUNT REALTY INVESTORS, INC. and TEACHERS RETIREMENT SYSTEM OF TEXAS (collectively, the "**New Members**") upon the terms and conditions set forth herein; and

WHEREAS, Mortgagor has requested Lender's consent to the foregoing sales, assignments and transfers to and the admission of the New Members to the Mortgagor's ownership structure.

NOW THEREFORE, in consideration of the premises and the mutual promises of the parties, the receipt and sufficiency of which are hereby acknowledged by Mortgagor, it is hereby agreed as follows:

1. Restrictions on Transfer. Section 14(a) of the Mortgage is hereby deleted in its entirety and the following is inserted in its stead.

(a) The Mortgagor, without the prior written consent of the Lender, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "**Prohibited Transfer**":

(i) the Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral ("**Obsolete Collateral**") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(ii) any shares of capital stock of a corporate Mortgagor, a corporation which is a general partner in a partnership Mortgagor or a managing member or manager in a limited liability company Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subsection (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System);

(iii) all or any part of the managing member or manager interest, as the case may be, in a limited liability company Mortgagor or a limited liability company which is a general partner of a partnership Mortgagor or a manager or managing member of a limited liability company Mortgagor;

(iv) all or any part of the general partner or joint venture interest, as the case may be, of a partnership Mortgagor or a partnership which is a manager or managing member of a limited liability company Mortgagor or the conversion of a partnership Mortgagor to a corporation or limited liability company; or

(v) if there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of the Mortgagor and/or owns a controlling interest in the Mortgagor;

UNOFFICIAL COPY

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the following transfers shall not be considered Prohibited Transfers: (i) liens securing the Indebtedness, (ii) the lien of current taxes and assessments not in default, (iii) any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, (iv) Leases permitted by the terms of the Loan Documents, (v) any transfer, conveyance or assignment, whether directly or indirectly, of the ownership interests in Mortgagor, its sole member, or the manager or members thereof to the extent permitted by the terms of Section 11.3 and Article XII of the Agreement of Limited Partnership of BDP Realty Holdings, L.P. dated as of December 13, 2012, as amended (and in its form as of the date of this Agreement) or the terms of Section 11.2 and Article XII of the Agreement of Limited Partnership of BDP Realty Holdings V, L.P. dated as of April __, 2015, solely to the extent that, after such transfer, either (X) Akard Street Partners, L.P., a Delaware limited partnership, and/or (Y) Bridge Development Partners, LLC ("**Bridge Development**"), is the direct or indirect holder of not less than fifty-one percent (51%) of the equity interests in, and controls, Mortgagor; (vi) any transfer, whether directly or indirectly, as a result of the death of a natural person of membership interests, stock, partnership interests or other direct or indirect equity or ownership interests in Mortgagor, its sole member, or the manager or members thereof to a person entitled thereto; (vii) transfers of up to ten percent (10%) of the membership interests in Bridge Development, as long as Bridge Development continues to be controlled by Ronald T. Train, Steve F. Poulos, and Anthony Pricco; and (viii) the transfer, assignment and distribution of one hundred percent (100%) of the membership interest in Borrower from HB Chicago Industrial, LLC to BDP Realty Holdings V, L.P. ("**BDP-V**"), such that BDP-V thereafter shall be the sole member of Borrower.

2. **Conditions Precedent.** The modifications provided for in this Amendment shall be effective only upon the following conditions being complied with by Mortgagor:

(a) That Mortgagor is and always has been maintained in good standing, and there is no default or Event of Default under the Notes or other Original Loan Documents, as such documents have heretofore been amended, as of the date hereof;

(b) Delivery to Lender of the following, each in form and content satisfactory to Lender:

(i) A Reaffirmation of Guaranty executed by the Guarantors;

(ii) An Amended and Restated Certificate of Representations, Warranties and Covenants executed by Borrower and Guarantors;

(iii) A date down endorsement to First American Title Insurance Company Policy No. 1002-24403-RTT reflecting the recordation of this Amendment, and no unpermitted title exceptions;

(iv) Resolutions by Mortgagor authorizing the execution of this Amendment;

(v) Certified copies of the Operating Agreement of Mortgagor and all amendments thereto;

(vi) A Good Standing certificate of Mortgagor;

UNOFFICIAL COPY

- (vii) A certified copy of the Articles of Organization of Mortgagor;
 - (viii) Certified copies of the operating agreement of HB Chicago Industrial, LLC ("HB") and all amendments thereto;
 - (ix) A Good Standing certificate of HB;
 - (x) A certified copy of HB's Articles of Organization;
 - (xi) Resolutions by HB authorizing the execution of this Amendment;
 - (xii) Certified copies of the Partnership Agreement of BDP Realty Holdings-V, LP ("BDP-V") and all amendments thereto;
 - (xiii) A Good Standing certificate of BDP V;
 - (xiv) A certified copy of the Certificate of Limited Partnership of BDP-V;
 - (xv) Certified copies of the Partnership Agreement of BDP Realty Holdings LP ("BDP") and all amendments thereto;
 - (xvi) A Good Standing certificate of BDP; and
 - (xvii) A certified copy of the Certificate of Limited Partnership of BDP;
 - (xviii) Resolutions by BDP;
 - (xix) Certified copies of the Operating Agreement of Bridge ASP, LLC ("ASP") and all amendments thereto;
 - (xx) A Good Standing certificate of ASP;
 - (xxi) A certified copy of the Articles of Organization of ASP; and
 - (xxii) Resolutions by ASP.
- (c) Legal opinion letter from Mortgagor's counsel;
- (d) Payment of all costs, expenses and fees incurred by Lender, including Lender's legal counsel's fees.

3. **Full Force and Effect.** Nothing herein contained shall impair the Original Loan Documents, as heretofore modified in any way, nor alter, waive, annul, vary, nor affect any provision, condition therein contained except as expressly herein provided, nor affect or impair any right, power or remedy of Lender. It being the intention of the parties hereto that the terms and provision of the Note and other Loan Documents, as heretofore modified, shall continue in full force and effect except as expressly modified in connection herewith.

4. **Reaffirmation of Representations and Warranties.**

- (a) Mortgagor hereby reaffirms as true and correct in all respects, all representations and warranties made by such party as contained in the Original Loan Documents.

UNOFFICIAL COPY

(b) Mortgagor does hereby further warrant and represent to Lender as follows:

(i) To the best knowledge, information and belief of Mortgagor: (a) neither Lender nor Mortgagor is in default under any Original Loan Document, as modified by the Amendment, and (b) there exists no event which, with the giving of notice or lapse of time, or both, would be considered or would become a default under the Original Loan Documents, as modified by the Amendment.

(ii) No lien or judgment has been filed against Mortgagor (or any one of them) that would materially adversely affect repayment of the Loan or the performance by the Mortgagor (or any one of them) of its obligations under the Original Loan Documents, and no bankruptcy, insolvency or other similar proceeding or action has been filed by or against Mortgagor (or any one of them), nor, to the best knowledge, information and belief of the undersigned, has any such proceeding or action been threatened.

5. **Reaffirmation of Covenants.** Mortgagor does hereby reaffirm and agree to perform each and every covenant, condition, obligation and provision of such party set forth in the Original Loan Documents, as herein modified, executed by the respective parties.

6. **Offsets and Defense.** Mortgagor hereby acknowledges that (i) Mortgagor, on and as of the date hereof, has no defense, offset or counterclaim with respect to the payment of any sum owed to Lender, with respect to the Note or any other Original Loan Documents; (ii) Lender, on and as of the date hereof, has fully performed all obligations to Mortgagor which may have had or has on and as of the date hereof; (iv) other than as expressly set forth herein, by entering into this Amendment, Lender does not waive any condition or obligation in the Original Loan Documents.

7. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Illinois.

8. **Multiple Counterparts.** This Amendment may be executed in one or more counterparts, which together shall comprise the entire agreement.

9. **Defined Terms.** All terms not otherwise defined herein shall have the same meaning as set forth in the Original Loan Documents.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

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

MORTGAGOR:

HB 2727 HIGGINS, LLC,
an Illinois limited liability company

By: **HB Chicago Industrial, LLC,**
a Delaware limited liability company,
its sole member

By: **BDP Realty Holdings V, LP,** a Delaware
limited partnership, its managing member

By: **BDP Realty Holdings LP,** a Delaware limited
partnership, its general partner

By: **Bridge ASP, LLC,** an Illinois limited liability
company, its general partner

By: _____
Name: Steven B. Poulos
Its: Manager

LENDER:

**ASSOCIATED BANK, NATIONAL
ASSOCIATION**

By: _____
Name: _____
Title: _____

[Signature page to First Amendment of Construction
Mortgage, Security Agt, Assign of Rents & Leases and Fixture Filing]

UNOFFICIAL COPY

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

MORTGAGOR:

HB 2727 HIGGINS, LLC,
an Illinois limited liability company

By: **HB Chicago Industrial, LLC,**
a Delaware limited liability company,
its sole member

By: **BDP Realty Holdings V, LP,** a Delaware
limited partnership, its managing member


By: **BDP Realty Holdings LP,** a Delaware limited
partnership, its general partner

By: **Bridge ASP, LLC,** an Illinois limited liability
company, its general partner

By: _____
Name: _____
Is: Manager

LENDER:

**ASSOCIATED BANK, NATIONAL
ASSOCIATION**

By:  _____
Name: General H. Robinson
Title: SVP

[Signature page to First Amendment of Construction
Mortgage, Security Agt, Assign of Rents & Leases and Fixture Filing]

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Steven F. Poulos, a Manager of Bridge ASP, LLC, an Illinois limited liability company, the General Partner of BDP Realty Holdings LP, a Delaware limited partnership, the General Partner of BDP Realty Holdings V LP, a Delaware limited partnership, the managing member of HB Chicago Industrial, LLC, the sole member of HB 2727 Higgins, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, 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 14 day of April, 2015.



Amy McMurray
Notary Public

My Commission Expires:
11/12/18

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____, as _____ of ASSOCIATED BANK, NATIONAL ASSOCIATION, who is personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ of said Bank, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their 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 ___ day of _____, 2015.

Notary Public

[Notary page to First Amendment of
Construction Mortgage]

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that _____, a Manager of Bridge ASP, LLC, an Illinois limited liability company, the General Partner of BDP Realty Holdings LP, a Delaware limited partnership, the General Partner of BDP Realty Holdings V LP, a Delaware limited partnership, the managing member of HB Chicago Industrial, LLC, the sole member of HB 2727 Higgins, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, 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 _____ day of _____, 2015.

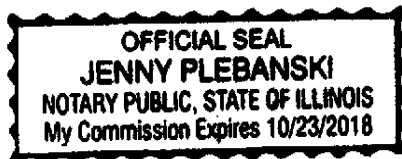
Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Jenny Plebanski, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Harold Rotunno, as SVP of ASSOCIATED BANK, NATIONAL ASSOCIATION, who is personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Harold Rotunno of said Bank, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their 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 15 day of April, 2015.



Jenny Plebanski
Notary Public

[Notary page to First Amendment of
Construction Mortgage]

UNOFFICIAL COPY

EXHIBIT "A"

LOT 1 IN HIGGINS AND TOUHY SUBDIVISION BEING A RE-RESUBDIVISION OF LOTS 32 AND 33 IN CENTEX INDUSTRIAL PARK UNIT NO. 6, BEING A SUBDIVISION IN SECTIONS 26 AND 35, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AND PLAT OF SUBDIVISION RECORDED JULY 20, 2007 AS DOCUMENT 0720115111.

PROPERTY ADDRESS

2727 Higgins Road, Elk Grove Village, Illinois

PERMANENT TAX INDEX NUMBERS: 08-26-410-006-0000 and 08-35-201-012-0000

Property of Cook County Clerk's Office