



③ 15025650WF
LD Kelly

Doc#: 1614401047 Fee: \$102.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/23/2016 12:39 PM Pg: 1 of 33

After recording, return to:

Bilzin Sumberg Baena
Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131-3456
Attn: Post-Closing Department

(Space Above For Recorder's Use Only)

**NOTE AND MORTGAGE
ASSUMPTION AGREEMENT**
(CGCMT 2013-GC17; Loan No. 625100048)

THIS NOTE AND MORTGAGE ASSUMPTION AGREEMENT ("Agreement") is made effective as of April 21, 2016 ("Effective Date"), and is entered into among U.S. BANK NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE, ON BEHALF OF THE REGISTERED HOLDERS OF CITIGROUP COMMERCIAL MORTGAGE SECURITIES INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2013-GC17 ("Lender"), having an address at 190 LaSalle Street, 7th Floor, Mail Station: MK-IL-SL7C, Chicago, IL 60603, Re: CGCMT 2013-GC17; Loan No. 625100048; SHERINGTON STREAMWOOD, LLC, an Illinois limited liability company ("Original Borrower"), having an address at 34 Appaloosa Lane, Bell Canyon, California 91307 and JB STREAMWOOD INVESTORS, LLC, an Illinois limited liability company ("New Borrower"), having an address at 45W619 Wheeler Road, Sugar Grove, Illinois 60554. Original Borrower and New Borrower are hereinafter sometimes collectively referred to as "Borrower Parties". All capitalized terms used herein but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement (as hereinafter defined)

PRELIMINARY STATEMENT

A. Original Borrower is the current owner of fee title to that certain real property ("Land") and the buildings and improvements thereon ("Improvements"), commonly known as "Willow Pond Plaza" located in the City of Streamwood, County of Cook, State of Illinois, more particularly described in Exhibit A attached hereto and made a part hereof (the Land and the Improvements are hereinafter sometimes collectively referred to as the "Property").

B. Lender is the current owner and holder of a loan ("Loan") in the original principal amount of \$2,400,000.00 made by The Bancorp Bank, a Delaware state chartered bank ("Original Lender") to Original Borrower pursuant to the terms of a Loan Agreement (the "Loan Agreement") dated October 25, 2013, between Original Borrower and Original Lender, as evidenced and/or secured by the documents described in the Loan Agreement and on Exhibit B attached hereto (together with any and all other agreements, documents, instruments

BUX 333-CP

S Y
P 33
S N
SC Y
INT 10

UNOFFICIAL COPY

evidencing, securing or in any manner relating to the Loan, as all of the same may be amended, restated, supplemented or otherwise modified from time to time, shall hereinafter be collectively referred to as the "**Loan Documents**"). The Loan is secured in part by the Property, which Property is described in and encumbered by the "**Security Instrument**" described on **Exhibit B**.

C. New Borrower desires to purchase the Property from Original Borrower and to assume Original Borrower's obligations under the Loan Documents as provided herein.

D. A sale of the Property to, and the assumption of the Loan by, a third party without the consent of the holder of the Security Instrument is prohibited by the terms thereof.

E. The Lender has agreed to consent to the following requested actions (collectively the "**Requested Actions**"): (i) Original Borrower selling the Property to New Borrower, and (ii) New Borrower assuming all of Original Borrower's obligations under the Loan Documents, on the terms and conditions hereinafter set forth.

In consideration of \$10.00 paid by each of the parties to the other, the mutual covenants set forth below, and other good and valuable consideration, receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE 1

ACKNOWLEDGMENTS, WARRANTIES AND REPRESENTATIONS

1.1 **Original Borrower Representations**. As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, Original Borrower acknowledges, warrants, represents and agrees to and with Lender as follows, it being understood that, as used herein, the phrase "to Original Borrower's best knowledge" or words of similar import shall mean the actual knowledge of Original Borrower:

(a) **Incorporation of Recitals**. All of the facts set forth in the Preliminary Statement of this Agreement are true and correct and incorporated into this Agreement by this reference.

(b) **Authority of Original Borrower**. Original Borrower is a duly organized, validly existing limited liability company in good standing under the laws of the State of Illinois. Azam Sher ("**Principal**") is the managing member of Original Borrower. Principal, acting alone without the joinder of any other manager or member of Original Borrower or any other party, has the power and authority to execute this Agreement on behalf of and to duly bind Original Borrower under this Agreement. The execution and delivery of, and performance under, this Agreement by Original Borrower have been duly and properly authorized pursuant to all requisite limited liability company action and will not (x) to Original Borrower's best knowledge, violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Original Borrower or the articles of organization, certificate of formation, operating agreement, limited liability company agreement or any other organizational document of Original Borrower or (y) result in a breach of

UNOFFICIAL COPY

or constitute or cause a default under any indenture, agreement, lease or instrument to which Original Borrower is a party or by which the Property may be bound or affected.

(c) Compliance with Laws. To Original Borrower's knowledge, all permits, licenses, franchises or other evidences of authority to use and operate the Property as it is presently being operated and as contemplated by the Loan Documents are current, valid and in full force and effect. Original Borrower has not received any written notice from any governmental entity claiming that Original Borrower or the Property is not presently in compliance with any laws, ordinances, rules and regulations bearing upon the use and operation of the Property, including, without limitation, any notice relating to any violations of zoning, building, environmental, fire, health, or other laws, ordinances, rules, codes or regulations.

(d) Rent Roll. The Rent Roll ("**Rent Roll**") attached hereto and made a part hereof as **Exhibit C** is a true, complete and accurate summary of all tenant leases ("**Leases**") affecting the Property as of the Effective Date.

(e) Leases. The Leases are the only leases affecting the Property and are currently in full force and effect. Original Borrower has not been notified of any landlord default under any of the Leases; there are no leasing broker's or finder's commissions of any kind due or to become due with respect to the Leases or the Property; the rents and security deposits under the Leases shown on the Rent Roll are true and correct; Original Borrower has not received any prepaid rents or given any concessions for free or reduced rent under the Leases, which would reduce the rent below the rents shown on the Rent Roll and will not accept any prepaid rents for more than one month in advance. All tenants at the Property are currently in possession of and are operating businesses from their leased premises.

(f) Title to Property and Legal Proceedings. Original Borrower is the current owner of fee title in the Property. Original Borrower has received no written notice of any pending or threatened suits, judgments, arbitration proceedings, administrative claims, executions or other legal or equitable actions or proceedings against Original Borrower or the Property, or any pending or threatened condemnation proceedings or annexation proceedings affecting the Property, or any agreements to convey any portion of the Property, or any rights thereto to any person, entity, or government body or agency not disclosed in this Agreement.

(g) Loan Documents. The Loan Documents constitute valid and legally binding obligations of Original Borrower enforceable against Original Borrower, as limited herein, and the Property in accordance with their terms. Original Borrower acknowledges and agrees that, nothing contained in this Agreement, or the Requested Actions, shall release or relieve Original Borrower from its obligations, agreements, duties, liabilities, covenants and undertakings under the Loan Documents arising prior to the Effective Date. Original Borrower has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever against Lender, Wells Fargo Bank, N.A. ("**Master Servicer**"), LNR Partners, LLC ("**LNR**") and any and all other parties appointed and/or serving as servicers of the Loan together with Master Servicer and LNR (collectively, "**Servicer**"), all subsidiaries, parents and affiliates of Lender and Servicer and each of the foregoing parties' predecessors in interest, and each and all of their respective past, present and future partners, members, certificateholders, officers, directors, employees, agents, contractors, representatives, participants and heirs and each and all

UNOFFICIAL COPY

of the successors and assigns of each of the foregoing (collectively, "**Lender Parties**") or with respect to (i) the Loan, (ii) the Loan Documents, or (iii) the Property. To the extent Original Borrower would be deemed to have any such defenses, setoffs, claims, counterclaims or causes of action as of the Effective Date, Original Borrower knowingly waives and relinquishes them.

(h) Bankruptcy. Original Borrower has no intent to (i) file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A. ("**Bankruptcy Code**"), or in any manner to seek any proceeding for relief, protection, reorganization, liquidation, dissolution or similar relief for debtors ("**Debtor Proceeding**") under any local, state, federal or other insolvency law or laws providing relief for debtors, (ii) directly or indirectly cause any involuntary petition under any Chapter of the Bankruptcy Code to be filed against Original Borrower or any members thereof or (iii) directly or indirectly cause the Property or any portion or any interest of Original Borrower in the Property to become the property of any bankrupt estate or the subject of any Debtor Proceeding.

(i) No Default. To Original Borrower's knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both could constitute a default or Event of Default under the Loan Documents.

(j) Required Repairs. Original Borrower has completed all Required Repairs set forth on Schedule 1 to the Loan Agreement as required by Section 4.2.1 and Section 6.14 of the Loan Agreement.

(k) Reaffirmation. Original Borrower reaffirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the Effective Date other than any impact thereon resulting from the proposed sale, the Requested Actions, and as disclosed herein.

1.2 Acknowledgments, Warranties and Representations of New Borrower. As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, New Borrower acknowledges, warrants, represents and agrees to and with Lender as follows:

(a) Incorporation of Recitals. All of the facts set forth in the Preliminary Statement of this Agreement are true and correct and incorporated into this Agreement by reference.

(b) Authority of New Borrower.

(i) New Borrower. New Borrower is a duly organized, validly existing limited liability company in good standing under the laws of the State of Illinois. JB Commodities, LLC, an Illinois limited liability company ("**New Borrower Member**") is the sole member of New Borrower and K. John Hintzsche, an individual ("**KJH**") and Bradley J. Scott, an individual ("**BJS**") are the managers of New Borrower. Each of KJH or BJS, acting alone, without the joinder of the other manager or any member of New Borrower or any other party, has the power and authority to execute this Agreement on behalf of and to duly bind New Borrower

UNOFFICIAL COPY

under this Agreement and the Loan Documents. The execution and delivery of, and performance under, this Agreement and the Loan Documents by New Borrower have been duly and properly authorized pursuant to all requisite company action and will not (x) to New Borrower's knowledge, violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to New Borrower or the articles of organization, certificate of formation, operating agreement, limited liability company agreement, or any other organizational document of New Borrower or (y) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which New Borrower is a party or by which the Property may be bound or affected.

(c) Financial Statements. The financial statements and other information ("**Financial Statements**") of KJH and BJS (collectively, the "**Principal**") which have been previously delivered to Lender are true, complete and accurate in all material respects and accurately represent the financial condition of Principal as of the date thereof. There has not been any material adverse change to the financial condition of Principal between the date of the Financial Statements and the Effective Date. New Borrower also acknowledges and agrees to cause Principal to timely comply with all financial, bookkeeping and reporting requirements set forth in the Loan Documents, including, without limitation, those set forth in Section 7.3 of the Loan Agreement. New Borrower acknowledges that the Financial Statements have been provided to Lender to induce Lender to enter into this Agreement and are being relied upon by Lender for such purposes. Lender agrees that since New Borrower is a single member limited liability company, to the extent that New Borrower Member files a tax return instead of New Borrower, that it will provide Lender with the tax returns for New Borrower Member instead of New Borrower. Similarly, to the extent that the balance sheets and financial statement of New Borrower are consolidated with those of New Borrower Member, that the consolidated balance sheets and financial statements will clearly identify the assets and liabilities of New Borrower as belonging to New Borrower and will provide Lender with copies of said consolidated balance sheets and financial statements.

(d) Bankruptcy Proceedings. None of New Borrower or Principal (together with any other direct or indirect owners of 10% or more of New Borrower, collectively, the "**New Borrower Parties**") or any other entities which may be owned or controlled directly or indirectly by any of New Borrower Parties (collectively, the "**Related Entities**") has been a party to any Debtor Proceeding within seven (7) years prior to the Effective Date.

(e) Defaults on Other Indebtedness. None of New Borrower Parties or any Related Entities has materially defaulted under its or their obligations with respect to any other indebtedness.

(f) New Borrower's Organizational Documents. New Borrower has not transacted any business in New Borrower's name since its formation. New Borrower is and will continue to be in full compliance with all of its organizational documents and the single purpose entity and separateness requirements of the Loan Documents and such organizational documents do not conflict with any of such single purpose entity and separateness requirements of the Loan Documents.

UNOFFICIAL COPY

(g) Assets of New Borrower. The only assets of New Borrower are the Property, the personal property owned by New Borrower and used in connection with the Property and cash or cash equivalents.

(h) Management of Property. New Borrower is entering into that certain Exclusive Management and Leasing Agreement with Podolsky Circle, LLC, an Illinois limited liability company ("**Property Manager**") for the management of the Property (the "**New Management Agreement**"). The term "**Management Agreement**" or "**management agreement**" or such other similar term in the Loan Documents shall hereafter refer to the New Management Agreement. The term "**Property Manager**" or such other similar term in the Loan Documents shall hereafter refer to the Property Manager. New Borrower covenants and agrees to comply with and to cause the Property Manager to comply with all terms and conditions of the Loan Documents concerning the management of the Property, including without limitation the obligation to obtain Lender's consent to the management of the Property by any entity other than Property Manager. Property Manager shall execute and deliver to Lender a subordination of the New Management Agreement in form acceptable to Lender.

(i) Cash Management Agreement. New Borrower agrees and acknowledges that (i) the Cash Management Agreement is in full force and effect, (ii) all actions have been taken to open any new accounts required thereunder for the New Borrower, and (iii) immediately following the completion of the Requested Actions, New Borrower shall deliver written notice to all tenants and other parties as set forth in the Cash Management Agreement and/or the Loan Documents of the requirements of the Cash Management Agreement.

(j) Loans to Related Entities. There are no loans payable by New Borrower to any of the Related Entities or any other entities or persons.

(k) New Borrower Parties' Interests. None of New Borrower Parties or any of the Related Entities is obtaining a loan to finance its direct or indirect interest in New Borrower or the Property or pledging its direct or indirect interest in New Borrower to any party, and none of the entities or individuals owning a direct or indirect interest in New Borrower has any right to take over control from any of such other entities or individuals.

(l) Prohibited Person. New Borrower warrants and represents, after review of the website identified below, that none of New Borrower or, to the best of New Borrower's knowledge, New Borrower Parties or any of their respective officers, directors, shareholders, partners, members or affiliates (including other holders of indirect equity interests in New Borrower) is an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order 13224, issued on September 24, 2001 ("**EO13224**"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("**OFAC**") most current list of "**Specifically Designated Nationals and Blocked Persons**" (which list may be published from time to time in various media including, but not limited to, the OFAC website, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>, (iii) who commits, threatens to commit or supports "**terrorism**", as that term is defined in EO13224, or (iv) who, to the knowledge of New Borrower, is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses [i] – [iv] above are herein referred to as a "**Prohibited Person**"). New Borrower covenants and agrees that none of New

UNOFFICIAL COPY

Borrower Parties or any of their respective officers, directors, shareholders, partners, members or affiliates (including other holders of indirect equity interests in New Borrower) will (a) knowingly conduct any business, or engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (b) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. New Borrower further covenants and agrees to deliver (from time to time) to Lender any such certification as may be requested by Lender in its reasonable discretion, confirming that, based on reasonable inquiry (x) none of New Borrower Parties or any of their respective officers, directors, shareholders, partners, members or affiliates (including other holders of indirect equity interests in New Borrower) is a Prohibited Person and (y) none of New Borrower, or to the best of New Borrower's knowledge, any of the other New Borrower Parties, or their respective officers, directors, shareholders, partners, members or affiliates (including the holders of indirect equity interests in New Borrower) has (a) knowingly conducted any business, or engaged in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person or (b) knowingly engaged in or conspired to engage in any transaction that evaded or avoided, or had the purpose of evading or avoiding, or attempted to violate, any of the prohibitions set forth in EO13224.

(m) Loan Documents. The Loan Documents, from and after the Effective Date, are valid and legally binding obligations of New Borrower, enforceable against New Borrower and the Property in accordance with their terms. This Agreement and the execution of other documents contemplated hereby do not constitute the creation of a new debt or the extinguishment of the debt evidenced by the Loan Documents, and they shall not in any way affect or impair the liens and security interests created by the Loan Documents, which New Borrower acknowledges to be valid and existing liens and security interests in the Property. New Borrower agrees that the lien and security interests created by the Loan Documents continue to be in full force and effect, unaffected and unimpaired by this Agreement or by the transfer of the Property or any collateral described in financing statements filed in connection with the Loan Documents and that said liens and security interests shall so continue in their perfection and priority until the debt secured by the Loan Documents is fully discharged. New Borrower has no defenses, affirmative defenses, setoffs, claims, counterclaims, crossclaims or causes of action of any kind or nature whatsoever against the Lender Parties with respect to (i) the Loan, (ii) the indebtedness due under the Loan Documents (the "**Indebtedness**"), (iii) the Loan Documents, or (iv) the Property. To the extent New Borrower would be deemed to have any such defenses, affirmative defenses, setoffs, claims, counterclaims, crossclaims or causes of action as of the Effective Date, New Borrower knowingly waives and relinquishes them. New Borrower acknowledges that it has received copies of all of the Loan Documents.

(n) No Default. To New Borrower's actual knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents.

UNOFFICIAL COPY

(o) Inspections. Other than that certain Property Condition Report for the Property dated January 22, 2016, prepared by Podolsky/Circle CORFAC International for Willow Pond Marketplace, 1040-1060 Sutton Road, Streamwood, IL 60107 and that certain Phase 1 Environmental Site Assessment for the Property dated December 23, 2015, prepared by ETS Environmental & Associates, LLC under ETS Project No. 15-1014A, New Borrower has not obtained any other written inspection reports relating to the Property. Additionally, New Borrower has not obtained any tenant estoppel certificates from the tenants located at the Property that have not been delivered to Lender.

(p) Immediate Repairs and Deferred Maintenance. New Borrower shall perform and complete each item of immediate or deferred repair and maintenance at the Property as described in Schedule 1.2 (p) to this Agreement (the "**Immediate Repairs**") within one hundred twenty (120) days after the Effective Date and provide satisfactory evidence to Lender of its full and timely completion of same. New Borrower's failure to complete (or cause to be completed) the Immediate Repairs within one hundred twenty (120) days after the Effective Date shall be an Event of Default under the Loan Documents.

(q) Reaffirmation. To New Borrower's actual knowledge, New Borrower affirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the Effective Date, other than any impact thereon resulting from the proposed sale, the Requested Actions, and as disclosed herein.

ARTICLE 2

ACKNOWLEDGMENTS AND COVENANTS OF BORROWER PARTIES

As a material inducement to Lender to enter into this Agreement and to consent to Requested Actions each of Borrower Parties, as to itself only, acknowledges, warrants, represents, covenants and agrees to and with Lender as follows:

2.1 Assumption of Loan. New Borrower hereby assumes the indebtedness due under the Note, the Loan and all of Original Borrower's other obligations, as grantor, mortgagor, borrower, assignor, trustor, indemnitor, guarantor, or maker, as the case may be, under the Loan Documents to the same extent as if New Borrower had signed such instruments. New Borrower agrees to comply with and be bound by all the terms, covenants and agreements, conditions and provisions set forth in the Loan Documents.

2.2 Indebtedness. As of April 18, 2016, the outstanding principal balance of the Loan was \$2,322,552.35 and the following escrow and reserve balances (collectively, "**Escrow Balances**") are being held by Lender: (a) a tax escrow balance of \$52,737.65; (b) an insurance escrow balance of \$5,223.04; (c) a capital reserve escrow balance of \$7,072.56; (d) a rollover reserve escrow balance of \$42,527.30; and (e) a payment reserve escrow balance of \$0.10. Further, Borrower Parties acknowledge and agree that Lender will continue to hold the Escrow Balances for the benefit of New Borrower in accordance with the terms of the Loan Documents. In the event of any error in, or omission from, the foregoing, Lender shall not be prejudiced, limited, or estopped, in any way in its right to charge, collect and receive any and all monies lawfully due Lender under the Loan Documents. By its execution hereof, Lender represents and

UNOFFICIAL COPY

warrants to New Borrower that to Lender's actual knowledge (i) the amounts set forth above are correct, (ii) Lender has not issued any written notices of default to Original Borrower which have not been cured, and (iii) there are no existing material defaults under the Loan Documents.

2.3 **Assumption Fee.** Simultaneously with or prior to the execution hereof, any or both of Borrower Parties shall pay to or has paid Lender: (a) a processing fee of \$5,000.00; (b) an assumption fee equal to \$11,612.76, which is .5% of the outstanding principal balance of the Loan; and (c) such other costs, fees, and expenses as shown in the closing statement executed by Borrower Parties in connection with the closing of this transaction. Each of the Borrower Parties agrees that the foregoing fees are for new consideration and are not interest charged in connection with the Loan.

2.4 **Payment of Transaction Costs and Expenses.** Any or both of Borrower Parties shall pay at the time of execution of this Agreement by Lender: (a) the legal fees and disbursements of Lender's counsel, Bilzin Sumberg Baena Price & Axelrod LLP, in connection with the preparation of this Agreement and the transactions contemplated in this Agreement; (b) all recording costs and documentary stamps, or other taxes if any, due upon the recording of this Agreement; and (c) the costs of updating Lender's policy of title insurance insuring the Security Instrument to a current date and endorsing such policy to include this Agreement in the description of the Security Instrument with no additional exceptions, or, at Lender's option, the cost of obtaining a new Lender's policy of title acceptable to Lender insuring the Loan Documents as affected by this Agreement.

2.5 **Information.**

(a) New Borrower and New Indemnitor (as such term is defined in the New Indemnitor Joinder attached to this Agreement (the "**New Indemnitor Joinder**")), confirm that all information provided to Lender and/or any Servicer by or on behalf of New Borrower and/or New Indemnitor or any of their respective employees, officers, directors, partners, members, managers or representatives, in connection with or relating to (i) the Requested Actions, (ii) this Agreement or the contemplated transactions or (iii) the Property, contains no untrue statement of material fact and does not omit a material fact necessary in order to make such information not materially misleading, and the provision of any such information by Lender or any Servicer to any rating agency is expressly consented to by New Borrower and New Indemnitor and will not infringe upon or violate any intellectual property rights of any party (collectively, the "**NB Disclosure Representations**"). New Borrower, by its execution of this Agreement and New Indemnitor, by execution of the New Indemnitor Joinder attached to this Agreement, jointly and severally, agree to reimburse, indemnify and hold Lender Parties harmless from and against any and all liabilities, judgments, costs, claims, damages, penalties, expenses, losses or charges (including, but not limited to, all reasonable legal fees and court costs) (collectively, "**Indemnification Costs**"), which may now or in the future be undertaken, suffered, paid, awarded, assessed or otherwise incurred as a result of or arising out of any breach or inaccuracy of the NB Disclosure Representations or any fraudulent or tortious conduct of New Borrower and/or New Indemnitor in connection with the Requested Actions, this Agreement or the contemplated transactions, or the Property, including any misrepresentation of financial data presented to Lender and/or Servicer.

UNOFFICIAL COPY

(b) Original Borrower and Original Indemnitor (as such term is defined in the Original Indemnitor Joinder attached to this Agreement (the "**Original Indemnitor Joinder**")), confirm that all information provided to Lender and/or any Servicer by or on behalf of Original Borrower and/or Original Indemnitor or any of their respective employees, officers, directors, partners, members, managers or representatives, in connection with or relating to (i) the Requested Actions, (ii) this Agreement or the contemplated transactions or (iii) the Property, contains no untrue statement of material fact and does not omit a material fact necessary in order to make such information not misleading, and the provision of any such information by Lender and/or any Servicer to any rating agency is expressly consented to by Original Borrower and Original Indemnitor and will not infringe upon or violate any intellectual property rights of any party (collectively, the "**OB Disclosure Representations**"). Original Borrower, by its execution of this Agreement and Original Indemnitor, by its execution of the Joinder attached to this Agreement, jointly and severally, agree to reimburse, indemnify and hold Lender Parties harmless from and against any and all Indemnification Costs, which may now or in the future be undertaken, suffered, paid, awarded, assessed or otherwise incurred as a result of or arising out of any breach or inaccuracy of the OB Disclosure Representations or any fraudulent or tortious conduct of Original Borrower and/or Original Indemnitor in connection with the Requested Actions, this Agreement or the contemplated transactions, or the Property, including any misrepresentation of financial data presented to Lender and/or Servicer.

2.6 **Release and Covenant Not To Sue**. Each of Borrower Parties, as to itself and all of its heirs, successors and assigns only, remises, releases, acquits, satisfies and forever discharges Lender Parties from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, inactions, claims, demands and causes of action of any nature whatsoever, whether at law or in equity, whether known or unknown, either now accrued or subsequently maturing, which any of Borrower Parties now has or hereafter can, shall or may have by reason of any matter, cause or thing, from the beginning of the world to and including the Effective Date, including, without limitation, matters arising out of or relating to (a) the Loan, (b) the Loan Documents, (c) the Indebtedness, (d) the Property, and (e) any other agreement or transaction between Borrower Parties or any one of them and any of Lender Parties concerning matters arising out of or relating to the items set forth in subsections (a) – (d) above. Each of Borrower Parties, as to itself and all of its respective heirs, successors and assigns only, covenants and agrees never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against any of Lender Parties by reason of or in connection with any of the foregoing matters, claims or causes of action.

2.7 **Further Assurances**. Borrower Parties shall execute and deliver to Lender such agreements, instruments, documents, financing statements and other writings as may be requested from time to time by Lender to perfect and to maintain the perfection of Lender's security interest in and to the Property, and to consummate the transactions contemplated by or in the Loan Documents and this Agreement.

UNOFFICIAL COPY

ARTICLE 3

ADDITIONAL PROVISIONS

3.1 **Modifications to Loan Documents.** For so long as New Borrower owns the Property and New Indemnitor owns at least 51% and controls New Borrower:

(a) **Additions to Definitions.** The following terms and definitions are added to Section 1.1 of the Loan Agreement in alphabetical order:

"Assumption Agreement" shall mean that certain Note and Mortgage Assumption Agreement dated effective as of April __, 2016 (the "**Assumption Date**"), by and among Lender, Sherington Streamwood, LLC, an Illinois limited liability company ("**Original Borrower**"), and Borrower with a Joinder by and Agreement of Original Indemnitor executed by Azam Sher and a Joinder by and Agreement of New Indemnitor executed by Guarantor.

(b) **Modification to Definitions.** The defined terms in Section 1.1 of the Loan Agreement are modified as follows:

"**Borrower**" shall mean **JB STREAMWOOD INVESTORS, LLC**, an Illinois limited liability company, together with its successor and permitted assigns.

"**Key Principal**" shall mean jointly and severally, K. John Hintzsche and Bradley J. Scott, each a natural person.

"**Loan Documents**" shall also include the Assumption Agreement, and all other documents, agreements and instruments now or hereafter evidencing, securing or delivered to Lender in connection with the Loan, including the following, the Note, the Mortgage, the Assignment of Leases and Rents, the Clearing Account Agreement, each as affected by the Assumption Agreement as each of the foregoing may be (and each of the foregoing defined terms shall refer to such documents as they may be) amended, restated, replaced, severed, split, supplemented or otherwise modified from time to time (including pursuant to Section 10.3 hereof).

(c) **Rent Roll.** Schedule 3 of the Loan Agreement is replaced with **Exhibit C** to the Assumption Agreement.

(d) **Organizational Chart.** Schedule 4 of the Loan Agreement is replaced with **Exhibit D** to the Assumption Agreement.

(e) **Property Management.** Section 6.12.1 of the Loan Agreement titled "**Management Agreement**" is revised to reflect that the Property will be managed by Podolosky Circle, LLC, an Illinois limited liability company ("**Manager**") pursuant to that certain Exclusive Management and Listing Agreement (the "**Management Agreement**") dated as of April ____, 2016.

UNOFFICIAL COPY

3.2 **Consent of Lender.** Subject to the terms of this Agreement, Lender hereby consents to the Requested Actions. Each of Borrower Parties, Original Indemnitor (as defined in the Joinder by and Agreement of Original Indemnitor (the "**Original Indemnitor Joinder**")) and New Indemnitor (as defined in the Joinder by and Agreement of New Indemnitor (the "**New Indemnitor Joinder**")) agrees that neither this Agreement nor Lender's consent to the Requested Actions shall be deemed Lender's consent or a waiver of Lender's right to consent to any other action requiring Lender consent under the Loan Documents that may be contained in any of the documents or items delivered to Lender in connection with the Requested Actions, whether or not such documents or items were reviewed and/or accepted by Lender, including but not limited to any action permitted under limited liability company agreement. Moreover, neither this Agreement nor Lender's consent to the Requested Actions shall constitute a modification of any of the terms or conditions of the Loan Documents, except as expressly provided for in this Agreement.

3.3 **Release of Original Indemnitor and Original Borrower.** By its execution hereof, Lender hereby releases (i) Original Indemnitor from its obligations under the Guaranty (as defined in Exhibit B attached hereto) in accordance with and subject to the terms of the Original Indemnitor Joinder and (ii) Original Borrower for any acts or events occurring or obligations arising under the Loan Documents after the Effective Date with the exception of any liability of Original Borrower based upon (a) any material misrepresentation of Original Borrower in this Agreement or any other document executed in connection herewith and/or (b) its environmental obligations under Section 6.31 of the Guaranty (the "**Environmental Indemnity Obligations Under Guaranty**") or any of the other Loan Documents that are caused by Original Borrower or any of its agents or result from the existence of conditions existing prior to the Effective Date or migrating to or from any portion of the Property prior to the Effective Date, or result from a violation of Environmental Laws (as defined in the Loan Agreement) prior to the Effective Date.

3.4 **UCC Filings.** New Borrower hereby grants and confirms unto Lender a first lien priority security interest in all of New Borrower's assets, including but not limited to all of its (i) personal property and all of the fixtures located at the Property and (ii) the Mortgaged Property (as such term is defined in the Security Instrument) to the maximum extent permitted by the Uniform Commercial Code ("UCC"). Borrower Parties hereby consent to the filing of any financing statements or UCC forms required to be filed in the applicable state or any other applicable filing office, including, but not necessarily limited to, the state of organization of New Borrower and in the Records (as defined in Exhibit B attached hereto) (collectively "**Filings**") in order to perfect or continue the perfection of said interest and, notwithstanding anything contained in any of the Loan Documents to the contrary, in accordance with the UCC, as amended subsequent to the making of the Loan, said Filings may be made by Lender without the consent of either of the Borrower Parties.

3.5 **References to Loan Documents.** All references to the term Loan Documents in Loan Agreement, the Security Instrument and the other Loan Documents shall hereinafter be modified to include this Agreement and all documents executed and/or required in connection with the Requested Actions. All references to the term Loan Agreement in the Loan Agreement, the Security Instrument and the other Loan Documents shall hereafter mean and refer to the Loan Agreement, as modified by the terms of this Agreement.

UNOFFICIAL COPY

ARTICLE 4

MISCELLANEOUS PROVISIONS

4.1 **No Limitation of Remedies.** No right, power or remedy conferred upon or reserved to or by Lender in this Agreement is intended to be exclusive of any other right, power or remedy conferred upon or reserved to or by Lender under this Agreement, the Loan Documents or at law, but each and every remedy shall be cumulative and concurrent, and shall be in addition to each and every other right, power and remedy given under this Agreement, the Loan Documents or now or subsequently existing at law.

4.2 **No Waivers.** Except as otherwise expressly set forth in this Agreement, nothing contained in this Agreement shall constitute a waiver of any rights or remedies of Lender under the Loan Documents or at law. No delay or failure on the part of any party hereto in the exercise of any right or remedy under this Agreement shall operate as a waiver, and no single or partial exercise of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action or forbearance by any party hereto contrary to the provisions of this Agreement shall be construed to constitute a waiver of any of the express provisions. Any party hereto may in writing expressly waive any of such party's rights under this Agreement without invalidating this Agreement.

4.3 **Successors or Assigns.** Whenever any party is named or referred to in this Agreement, the heirs, executors, legal representatives, successors, successors-in-title and assigns of such party shall be included. All covenants and agreements in this Agreement shall bind and inure to the benefit of the heirs, executors, legal representatives, successors, successors-in-title and assigns of the parties, whether so expressed or not.

4.4 **Construction of Agreement.** Each party hereto acknowledges that it has participated in the negotiation of this Agreement and no provision shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Borrower Parties at all times have had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement and have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to execution and delivery. No representations or warranties have been made by or on behalf of Lender, or relied upon by Borrower Parties, pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. All prior statements, representations and warranties, if any, are totally superseded and merged into this Agreement, which represents the final and sole agreement of the parties with respect to the subject matters. All of the terms of this Agreement were negotiated at arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by any of the parties upon the others. The execution and delivery of this Agreement are the free and voluntary act of Borrower Parties.

4.5 **Invalid Provision to Affect No Others.** If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any related transaction at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations

UNOFFICIAL COPY

of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If any clause or provision operates or would prospectively operate to invalidate this Agreement, in whole or in part, then such clause or provision only shall be deemed deleted, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

4.6 **Notices.** Notwithstanding anything to the contrary contained in any of the Loan Documents, any and all notices, elections, approvals, consents, demands, requests and responses ("**Communications**") permitted or required to be given under this Agreement and the Loan Documents shall not be effective unless in writing, signed by or on behalf of the party giving the same, and sent by certified or registered mail, postage prepaid, return receipt requested, or by hand delivery or a nationally recognized overnight courier service (such as FedEx), to the party to be notified at the address of such party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance with this Section. Any Communications shall be effective upon the earlier of their receipt or three days after mailing in the manner indicated in this Section. Receipt of Communications shall occur upon actual delivery but if attempted delivery is refused or rejected, the date of refusal or rejection shall be deemed the date of receipt. Any Communication, if given to Lender, must be addressed as follows, subject to change as provided above:

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
 c/o Wells Fargo Bank, N.A.
 Wells Fargo Commercial Mortgage Servicing
 MAC D 1086-120
 550 S. Tryon Street, 14th Floor
 Charlotte, NC 28202
 Re: CGCMT 2013-GC17; Loan No.: 625100048

With a copy to:

LNR Partners, LLC
 1601 Washington Avenue, Suite 700
 Miami Beach, Florida 33139
 Attn: Director of Servicing
 Re: CGCMT 2013-GC17 Loan No.: 625100048

and, if given to Original Borrower, must be addressed as follows, notwithstanding any other address set forth in the Loan Documents to the contrary, subject to change as provided above:

SHERINGTON STREAMWOOD, LLC
 34 Appaloosa Lane
 Bell Canyon, California 91307
 Attn: Azam Sher
 Facsimile: (818) 638-7848

UNOFFICIAL COPY

With a copy to:

Pope & Gentile, APC
 15431 Anacapa, Suite H
 Victorville, California 92392
 Attn: Daniel K. Gentile, Esq.
 Facsimile: (760) 951-0097

and, if given to New Borrower, must be addressed as follows, subject to change as provided above:

JB STREAMWOOD INVESTORS, LLC
 45W619 Wheeler Road
 Sugar Grove, Illinois 60554
 Attn: John Hintzsche
 Facsimile: (630) 556-3455

With a copy to:

Huck Bouma PC
 1755 S. Naperville Road, Suite 200
 Wheaton, Illinois 60189
 Attn: Jodi L. Henninger, Esq.
 Facsimile: (630) 221-1755

4.7 **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the provisions of Section 11.6 of the Loan Agreement.

4.8 **Headings; Exhibits.** The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part of this Agreement and shall not be used to construe, limit or otherwise affect this Agreement.

4.9 **Modifications.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the Party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted. Lender's consent to the Requested Actions shall not be deemed to constitute Lender's consent to any provisions of the organizational documents that would be in violation of the terms and conditions of any of the Loan Documents.

4.10 **Time of Essence; Consents.** Time is of the essence of this Agreement and the Loan Documents. Any provisions for consents or approvals in this Agreement shall mean that such consents or approvals shall not be effective unless in writing and executed by Lender.

4.11 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

UNOFFICIAL COPY

4.12 **New Indemnitor Joinder.** New Indemnitor shall assume the obligations of Original Borrower and/or Original Indemnitor under the Guaranty pursuant to the Joinder by and Agreement of New Indemnitor attached hereto.

4.13 **WAIVER OF TRIAL BY JURY.** BORROWER PARTIES AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER PARTIES AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EITHER PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDINGS AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

UNOFFICIAL COPY

The parties have executed and delivered this Agreement as of the day and year first above written.

Witnesses:

LENDER:

U.S. BANK NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE, ON BEHALF OF THE REGISTERED HOLDERS OF CITIGROUP COMMERCIAL MORTGAGE SECURITIES INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2013-GC17

By: LNR Partners, LLC, a Florida limited liability company, as attorney-in-fact

By: Arnold Shulkin, Vice President

[Signature]

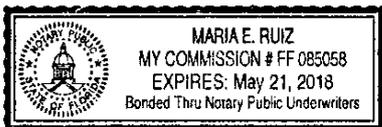
Print Name: Sandra Arizmendi

[Signature]

Print Name: Patricia Valdes

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 20 day of April, 2016, by Arnold Shulkin, as Vice President of LNR Partners, LLC, a Florida limited liability company, on behalf of said limited liability company, as attorney-in-fact for U.S. BANK NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE, ON BEHALF OF THE REGISTERED HOLDERS OF CITIGROUP COMMERCIAL MORTGAGE SECURITIES INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2013-GC17, on behalf of the said trust. He is personally known to me or has produced a driver's license as identification.



[Signature]
Notary Public, State of Florida
Print Name: Maria E. Ruiz
My Commission Expires: May 21, 2018

[AFFIX NOTARY STAMP ABOVE]

LENDER SIGNATURE PAGE TO NOTE AND MORTGAGE ASSUMPTION AGREEMENT

UNOFFICIAL COPY

The parties have executed and delivered this Agreement as of the day and year first above written.

Witnesses:

ORIGINAL BORROWER:

SHERINGTON STREAMWOOD, LLC,
an Illinois limited liability company

[Signature]
Print Name: Anthony Crawford

By: [Signature]
Name: Azam Sher
Title: Managing Member

[Signature]
Print Name: [Signature]

STATE OF CALIFORNIA)
COUNTY OF Los Angeles)

Leslie G. Frankel, Notary Public

On April 19 2016, before me, _____, personally appeared Azam Sher, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



ORIGINAL BORROWER SIGNATURE PAGE TO NOTE AND MORTGAGE ASSUMPTION AGREEMENT

UNOFFICIAL COPY

The parties have executed and delivered this Agreement as of the day and year first above written.

Witnesses:

NEW BORROWER:

JB STREAMWOOD INVESTORS, LLC, an Illinois limited liability company

Jodi L. Hennings
 Print Name: Jodi L. Hennings

Renee Gould
 Print Name: Renee Gould

Jodi L. Hennings
 Print Name: Jodi L. Hennings

Renee Gould
 Print Name: Renee Gould

By: *K. John Hintzsche*
 Name: K. John Hintzsche
 Title: Manager

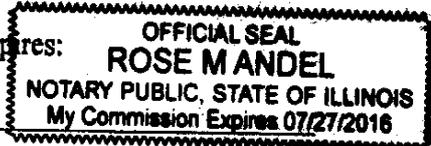
By: *Bradley J. Scott*
 Name: Bradley J. Scott
 Title: Manager

STATE OF ILLINOIS)
)
 COUNTY OF DuPage)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that K. John Hintzsche, the Manager of, JB STREAMWOOD INVESTORS, 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/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20 day of April, 2016

Rose M. Mandel
 Notary Public

My Commission Expires: 

NEW BORROWER SIGNATURE PAGE TO NOTE AND MORTGAGE ASSUMPTION AGREEMENT

UNOFFICIAL COPY

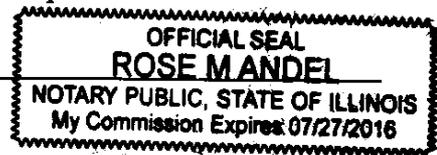
STATE OF ILLINOIS)
)
COUNTY OF DuPage)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Bradley J. Scott, the Manager of, JB STREAMWOOD INVESTORS, 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/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20 day of April, 2016

Rose Mandel
Notary Public

My Commission Expires:



ACKNOWLEDGEMENT TO NEW BORROWER SIGNATURE PAGE
TO NOTE AND MORTGAGE ASSUMPTION AGREEMENT

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOTS 1 AND 2 IN THE FINAL PLAT OF WILLOW POND MARKETPLACE SUBDIVISION PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1, AS SET FORTH IN THE DECLARATION OF EASEMENTS AND COVENANTS RECORDED OCTOBER 3, 1989 AS DOCUMENT 89467463, FOR THE PURPOSE OF CONSTRUCTING A CURB CUT AND FOR INGRESS AND EGRESS TO AND FROM THE PRIVATE ROAD KNOWN AS GULF KEYS ROAD, IN, OVER UNDER ACROSS, ALONG, THROUGH AND UPON A PORTION OF GULF KEYS ROAD INDICATED BY THE CROSS-HATCHINGS ON THE PLAN ATTACHED AS "EXHIBIT C" AND "EXHIBIT D" TO SAID DOCUMENT, AND SHOWN ON THE SURVEY PREPARED BY COMPASS LAND SURVEYING AND MAPPING DATED JANUARY 21, 2004 PROJECT NO. 8811-03 AND LAST REVISED FEBRUARY 23, 2004 AND ALSO SHOWN ON THE SITE PLAN PREPARED BY COMPASS CONSULTING GROUP, LTD. DATED JULY 18, 2003 PROJECT NO. 03-035.

06-28-201-182-000 0

06-28-201-183-000 0

06-28-205-030-000 0

1199 - Sulton Rd Streamwood, IL 60107

UNOFFICIAL COPY

EXHIBIT B

LOAN DOCUMENTS

1. Promissory Note dated October 25, 2013, in the principal amount of \$2,400,000.00 (the "**Note**"), executed by Original Borrower in favor of The Bancorp Bank, a Delaware state chartered bank ("**Original Lender**"), and endorsed to the order of Lender.
2. Mortgage, Assignment of Leases and Rents and Security Agreement dated as of October 25, 2013 ("**Security Instrument**"), executed by Original Borrower in favor of Original Lender and recorded in the Public Records of Cook County, Illinois ("**Records**") on October 25, 2013 as Document 1329819003, and assigned to Lender.
3. Assignment of Leases and Rents dated as of October 25, 2013 ("**Assignment of Leases and Rents**"), executed by Original Borrower in favor of Original Lender and recorded in the Records on October 25, 2013 as Document 1329819004, and assigned to Lender.
4. Loan Agreement dated as of October 25, 2013 ("**Loan Agreement**"), by and between Original Borrower and Original Lender.
5. UCC Financing Statement reflecting Original Borrower, as debtor, and Original Lender, as secured party, recorded in the Records on October 25, 2013 as Document 1329819005, and assigned to Lender.
6. UCC Financing Statement reflecting Original Borrower, as debtor, and Original Lender, as secured party, recorded in the Records on October 25, 2013 as Document 18710846, and assigned to Lender.
7. Guaranty of Recourse Obligations dated as of October 25, 2013 ("**Guaranty**"), executed by Azam Sher ("**Original Indemnitor**") in favor of Original Lender, and assigned to Lender.
8. Cash Management Agreement dated as of October 25, 2013, executed by Original Borrower, Original Lender and Wells Fargo Bank, N.A. ("**Wells Fargo**"), and assigned to Lender.
9. Deposit Account Control Agreement dated as of October 25, 2013, executed by Original Borrower, Original Lender and Wells Fargo, and assigned to Lender.
10. Assignment of Agreements, Licenses, Permits and Contracts executed by Original Borrower in favor of Original Lender, and assigned to Lender.

UNOFFICIAL COPY

EXHIBIT C

RENT ROLL

(INTENTIONALLY DELETED FOR PURPOSES OF RECORDING)

**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY**

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT D
ORGANIZATIONAL CHART

(INTENTIONALLY DELETED FOR PURPOSES OF RECORDING)

Property of Cook County Clerk's Office

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY

UNOFFICIAL COPY

SCHEDULE 1.2 (p) IMMEDIATE REPAIRS

1. Water leakage on one building mounted lighting fixture on the west side of the 1060 Building
2. Routine sidewalk and parking lot maintenance including patching crack sealing, sealcoating and striping (repair "alligatoring" in parking lot)
3. Application of water repellent coating to exterior of 1040 Building and 1060 Building
4. Control Joints at 1040 Building and 1060 Building need to be ground out, reinstalled and sealed
5. Drywall damage caused by water in sprinkler room

UNOFFICIAL COPY

JOINDER BY AND AGREEMENT OF ORIGINAL INDEMNITOR

The undersigned, **AZAM SHER** ("**Original Indemnitor**") being the guarantor/indemnitor under the Guaranty executed in connection with the Loan described in the Note and Mortgage Assumption Agreement ("**Agreement**") to which this Joinder by and Agreement of Original Indemnitor ("**Original Indemnitor Joinder**") is attached, represents and warrants to, and acknowledges and agrees with, Lender the following:

1. **Defined Terms.** All capitalized terms used in this Original Indemnitor Joinder, unless defined below, shall have the meanings given such terms in the Agreement or in the Loan Agreement.
2. **Reaffirmation of Guaranty.** The Guaranty constitutes the valid, legally binding obligation of Original Indemnitor, enforceable against Original Indemnitor in accordance with their respective terms. By Original Indemnitor's execution of this Original Indemnitor Joinder, Original Indemnitor waives and releases any and all defenses, affirmative defenses, setoffs, claims, counterclaims and causes of action of any kind or nature which Original Indemnitor has asserted, or might assert, against any of Lender Parties which in any way relate to or arise out of the Guaranty or any of the other Loan Documents.
3. **Agreements of Original Indemnitor.** Original Indemnitor consents to the execution and delivery of the Agreement by Original Borrower and New Borrower and agrees and acknowledges that, except as set forth in paragraph 5 below, the liability of Original Indemnitor under the Guaranty shall not be diminished in any way by the execution and delivery of the Agreement or by the consummation of any of the transactions contemplated therein, including but not limited to the Requested Actions.
4. **Authority Representations by the Original Indemnitor.** The execution and delivery of, and performance under, this Original Indemnitor Joinder, the Guaranty by Original Indemnitor will not (a) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Original Indemnitor or (b) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which Original Indemnitor is a party or by which the Property may be bound or affected.
5. **Release of Original Indemnitor under Guaranty.** Notwithstanding anything to the contrary in this Original Indemnitor Joinder, the Security Instrument, or the other Loan Documents, Original Indemnitor's obligations under this Original Indemnitor Joinder and under the Guaranty shall not apply with respect to, and by acceptance of this Original Indemnitor Joinder, Lender agrees that Original Indemnitor is released from any and all of Original Indemnitor's obligations under the Guaranty (the "**Guaranteed Obligations**") for acts or events occurring or obligations arising after the Effective Date except for: (a) any material misrepresentation of Original Indemnitor in this Original Indemnitor Joinder or any other document executed in connection with this Original Indemnitor Joinder, (b) Guaranteed Obligations that are caused by Original Borrower and/or Original Indemnitor and/or any of their agents, and/or (c) the environmental obligations under Section 3.1 (h) of the Loan Agreement as incorporated in Section 1.2 (b) of the Guaranty (the "**Environmental Indemnity Obligations Under Guaranty**") occurring after the Effective Date if such Environmental Indemnity

UNOFFICIAL COPY

Obligations Under Guaranty (a) are caused by Original Borrower, Original Indemnitor and/or any of their agents or (b) result from the existence of conditions existing prior to the Effective Date or migrating to or from any portion of the Property prior to the Effective Date, or result from a violation of Environmental Laws (as defined in the Loan Agreement) prior to the Effective Date.

6. **Confirmation of Representations.** By its execution hereof, Original Indemnitor confirms (a) the representations and warranties and agrees to the covenants regarding Original Indemnitor set forth in the Agreement, including, but not limited to, the obligations in Section 2.5(a) to pay the Indemnification Costs, and (b) the truth and accuracy of all representations and warranties set forth in the Guaranty, as applicable.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

UNOFFICIAL COPY

The undersigned Original Indemnitor has executed and delivered this Original Indemnitor Joinder to be effective as of the date of the Agreement.

Witnesses:

ORIGINAL INDEMNITOR:


Print Name: Matthew Crawford


AZAM SHER


Print Name: Carter H. H. H.

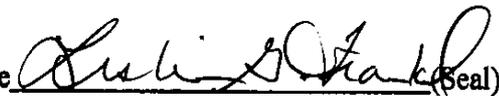
STATE OF CALIFORNIA

COUNTY OF Los Angeles)

On April 19, 2016, before me, **Leslie G. Frankel, Notary Public**, personally appeared Azam Sher, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



ORIGINAL INDEMNITOR SIGNATURE PAGE TO JOINDER BY AND AGREEMENT OF ORIGINAL INDEMNITOR

UNOFFICIAL COPY

JOINDER BY AND AGREEMENT OF NEW INDEMNITOR

The undersigned, **K. JOHN HINTZSCHE** and **BRADLEY J. SCOTT** (individually and collectively "**New Indemnitor**"), being individually and collectively the Principal referred to in the Agreement to which this Joinder (the "**New Indemnitor Joinder**") is attached, intending to be legally bound under the terms and provisions of the Guaranty pursuant to the provisions of this New Indemnitor Joinder, Jointly and Severally represents and warrants to and acknowledges and agrees with Lender the following:

1. **Defined Terms.** All capitalized terms used in this New Indemnitor Joinder, unless defined below, shall have the meanings given such terms in the Agreement, and if not defined below, then in the Original Indemnitor Joinder attached thereto or in the Loan Agreement.

2. **Benefit to New Indemnitor.** Each New Indemnitor, owning a direct and/or indirect interest in New Borrower as a result of the Requested Actions, shall receive a substantial benefit from Lender's consent to the Requested Actions.

3. **Assumption by New Indemnitor of Guaranty.** From and after the Effective Date, New Indemnitor hereby, jointly and severally, assumes and agrees to be liable and responsible for and bound by all of Original Indemnitor's obligations, agreements and liabilities, including but not limited to the jury waiver and other waivers set forth therein, under the Guaranty, as amended by this New Indemnitor Joinder, as fully and completely as if the New Indemnitor had originally executed and delivered such Guaranty, as amended by this New Indemnitor Joinder, as the guarantor/indemnitor thereunder. New Indemnitor further agrees to pay, perform and discharge each and every obligation of payment and performance of any guarantor/indemnitor under, pursuant to and as set forth in the Guaranty, as amended by this New Indemnitor Joinder, at the time, in the manner and otherwise in all respects as therein provided. With respect to the Environmental Indemnity Obligations Under Guaranty, the liability of New Indemnitor shall be joint and several with that of New Borrower and shall not be limited to environmental obligations occurring from and after the Effective Date. From and after the Effective Date, the Guaranty is amended to provide that all references to the term "**Borrower**" used in the Guaranty shall mean and refer to the New Borrower and the term "**Guarantor**" used in the Guaranty shall mean and refer to the New Indemnitor.

4. **Confirmation of Representations.** By its execution of this New Indemnitor Joinder, New Indemnitor confirms (a) the representations and warranties and agrees to the covenants regarding New Indemnitor set forth in the Agreement, including, but not limited to obligations in Section 2.5(a) to pay the Indemnifications Costs and (b) the truth and accuracy of all representations and warranties set forth in the Guaranty, as applicable.

5. **Authority Representations by New Indemnitor.** The execution and delivery of this New Indemnitor Joinder, and performance by New Indemnitor under the New Indemnitor Joinder, the Guaranty will not (a) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to New Indemnitor or (b) result in a breach of or constitute or cause a default under any indenture,

UNOFFICIAL COPY

agreement, lease or instrument to which New Indemnitor is a party or by which the Property may be bound or affected.

6. Modification to Guaranty.

(a) **Additional Payment Guaranty.** In addition to, and not in substitution for or modification or amendment of, the provisions of Section 3.1 of the Loan Agreement or or the definition of "Guaranteed Obligations" as set forth in Section 1 (b) of the Guaranty, New Indemnitor as the "Guarantor" under the Guaranty hereby absolutely, unconditionally and irrevocably guarantees to Lender the full and prompt payment of the Debt evidenced by the Note and secured by the Security Instrument, when due, whether at stated maturity, upon acceleration, or otherwise, and at all times thereafter, and the full and prompt payment of all sums which may now be or may hereafter become due and owing under the Note, the Loan Agreement, the Security Instrument, and the other Loan Documents, provided, however, New Indemnitor's liability under the provisions of this Section 1.1 shall not exceed in the aggregate an amount equal to Ten Percent (10%) of the then outstanding principal balance of the Loan, plus any cost incurred by Lender in connection with the enforcement of this additional payment guaranty and/or the Loan Documents, which costs shall include, but not be limited to, attorneys' fees and costs incurred by Lender at all levels of appeal and in bankruptcy of New Borrower and/or New Indemnitor (collectively, "**Additional Payment Guaranty**").

(b) **Release of Additional Payment Guaranty.** Following the third anniversary date of the Effective Date under the Agreement, the liability of New Indemnitor under the provisions of Section 6 (a) above shall be released by Lender upon satisfaction of all of the following conditions: (i) Lender's receipt of a formal written request for such release from New Indemnitor and/or New Borrower ("**Release Request**"); (ii) the Property meeting a minimum (x) Debt Service Coverage Ratio of 1.5x, (y) occupancy rate of not less than 85%, and (z) Net Operating Income of \$245,000; (iii) no Event of Default has occurred under the Loan Documents prior to or at the time of the Release Request; and (iv) Lender verifies and confirms in writing to New Borrower and New Indemnitor that the conditions for release of the Additional Payment Guaranty have been satisfied.

(c) **Separate and Distinct Guaranty.** New Indemnitor hereby specifically acknowledges and agrees that the Additional Payment Guaranty is a separate and distinct guaranty obligation of New Indemnitor and that it is in addition to, and not in lieu of, or otherwise incorporated with or into, any of New Indemnitor's other obligations under the Guaranty pursuant to, and as modified by, this Joinder.

7. **Notices to New Indemnitor.** From and after the Effective Date, Lender shall deliver any notices to New Indemnitor which are required to be delivered pursuant to the Guaranty, or are otherwise delivered by the Lender thereunder at Lender's sole discretion, to the New Indemnitor at the following address:

UNOFFICIAL COPY

K. JOHN HINTZSCHE
45W619 Wheeler Road
Sugar Grove, Illinois 60554
Facsimile: (630) 556-3455

BRADLEY J. SCOTT
45W619 Wheeler Road
Sugar Grove, Illinois 60554
Facsimile: (630) 556-3455

All notices to be sent by New Indemnitor to Lender under the Guaranty and Loan Documents shall be sent to Lender in the manner set forth in and at the address shown in Section 4.6 of the Agreement to which this New Indemnitor Joinder is attached.

8. **Joint and Several Liability.** If New Indemnitor consists of more than one person or party, the obligations and liabilities of each such person or party shall be joint and several.

9. **Governing Law.** This New Indemnitor Joinder shall be interpreted, construed, and enforced in accordance with the governing law provisions of the Guaranty, as applicable.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

UNOFFICIAL COPY

The undersigned New Indemnitor has executed and delivered this New Indemnitor Joinder to be effective as of the date of the Agreement.

Witnesses:

NEW INDEMNITOR:

Jodi L. Henninger
Print Name: Jodi L. Henninger
Kerree Gould
Print Name: Kerree Gould

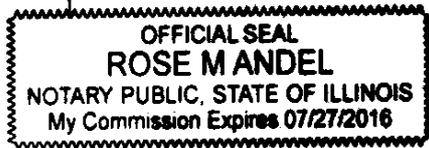
K. John Hintzsche
K. JOHN HINTZSCHE

STATE OF ILLINOIS)
COUNTY OF DuPage)

I, Rose M. Andel, a Notary Public in and for and residing in the said County, in the State aforesaid, do hereby certify that K. John Hintzsche, 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, sealed, and delivered the said instrument as his free and voluntary act in his capacity as partner for the uses and purpose and in the capacity (if any) therein set forth.

GIVEN under my hand and notary seal this 20 day of April, 2016

Signature Rose M. Andel (Seal)



NEW INDEMNITOR (K. JOHN HINTZSCHE) SIGNATURE PAGE TO JOINDER BY AND AGREEMENT OF NEW INDEMNITOR

UNOFFICIAL COPY

The undersigned New Indemnitor has executed and delivered this New Indemnitor Joinder to be effective as of the date of the Agreement.

Witnesses:

NEW INDEMNITOR:

Jodi L. Henninger
Print Name: Jodi L. Henninger

Renee Gould
Print Name: Renee Gould

Bradley J. Scott
BRADLEY J. SCOTT

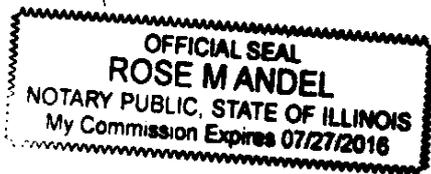
STATE OF ILLINOIS)

COUNTY OF DuPage)

I, Rose M. Mandel, a Notary Public in and for and residing in the said County, in the State aforesaid, do hereby certify that Bradley J. Scott, 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, sealed, and delivered the said instrument as his free and voluntary act in his capacity as ~~Attorney~~, for the uses and purpose and in the capacity (if any) therein set forth.

GIVEN under my hand and notary seal this 20 day of April, 2016

Signature Rose Mandel (Seal)



NEW INDEMNITOR (BRADLEY J. SCOTT) SIGNATURE PAGE TO JOINDER BY AND AGREEMENT OF NEW INDEMNITOR