



# UNOFFICIAL COPY

the Loan, in their original form, and as hereafter amended, restated or replaced from time to time, are sometimes collectively referred to in this Modification as the "Loan Documents").

D. The Mortgage Loan is further secured by a Guaranty of Payment and Completion dated December 13, 2013 from Paul F. Link to Lender ("Guaranty").

E. Mortgagor has requested that Lender, among other things, increase the amount of the Loan to \$1,990,000.00 and extend the maturity date of the Note to November 1, 2026, and Lender has agreed to do so, subject to the terms and conditions of this Modification.

## AGREEMENTS

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Modification), (ii) the agreements by Lender and Mortgagor to modify the Loan Documents, as provided herein, (iii) Mortgagor's agreement to pay all of Lender's reasonable attorneys fees and costs in connection with this Modification, (iv) the covenants and agreements contained herein, and (v) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows::

1. The Mortgage is amended in the following respects:

(a) Recital A is deleted in its entirety and the following is inserted in its place:

"A Pursuant to the terms and conditions of a Loan Agreement dated as of December 13, 2013 (as amended, restated or replaced from time to time "Loan Agreement") between Mortgagor and Mortgagee, Mortgagee has agreed to loan to Mortgagor the principal amount of up to One Million Nine Hundred Ninety Thousand and 00/100 Dollars (\$1,990,000.00) ("Loan"). The Loan shall be evidenced by a certain Amended Mortgage Note of even date herewith (as amended, restated or replaced from time to time, "Note") made by Mortgagor payable to Mortgagee in the principal amount of the Loan and due on \_\_\_\_\_, 2026 ("Maturity Date"), except as may be accelerated pursuant to the terms hereof or of the Note, the Loan Agreement or any other Loan Document (as defined in the Note)."

(b) Section 30 is deleted in its entirety and the following is inserted in its place:

"30. **Financial Statements**. Mortgagor represents and warrants that the financial statements for Mortgagor and the Premises previously submitted to Mortgagee are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Mortgagor or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the

# UNOFFICIAL COPY

financial condition of Mortgagor or the Premises from the dates of said financial statements until the date hereof. Mortgagor shall furnish to Mortgagee such financial information regarding Mortgagor, its constituent partners or members, as the case may be, the Premises and any guarantor of the Note as Mortgagee may from time to time reasonably request, which shall include, without any further request therefor, (i) annual prepared financial statements for Mortgagor and the Premises, including a rent roll certified by an officer and/or managing member of Borrower to be true, correct and complete, no later than ninety (90) days after the end of each year; (ii) copies of the federal income tax returns of Guarantor within 30 days of being filed but no later than October 31<sup>st</sup> of each year; (iii) an annual personal financial statement for Guarantor in each calendar year, no later than April 30 of such calendar year in which the Loan is outstanding, certified by Guarantor as true, complete and correct and otherwise in a form substantially similar to the form of financial statements previously submitted by Guarantor to Mortgagee; and (iv) such other information (including nonfinancial information) as Mortgagee may reasonably request, all in reasonable detail and prepared and certified as accurate by Guarantor.”

(c) Section 37 is added to read as follows:

“37. **Debt Service Coverage Ratio.** Commencing on December 31, 2016 and continuing for each calendar year occurring prior to the Maturity Date, Mortgagor covenants that until all Obligations of Mortgagor under the Loan have been paid and satisfied in full, and Mortgagee’s obligations hereunder have terminated, Mortgagor shall not, at the end of each fiscal year, permit the ratio of Operating Cash Flow (as defined below) during such fiscal year to Debt Service (as defined below) to be less than 1.50 to 1.00. As used in this Section 37, “Operating Cash Flow” shall mean for any period, on a trailing twelve (12) month basis, all rental income (including minimum rent, additional rent, escalation and pass through payments) actually received by Mortgagor during such period arising from the ownership and operation of the Premises (excluding tenant security deposits) less the sum of all costs, taxes, expenses and disbursements of every kind, nature or description actually paid or due and payable during such period in connection with the leasing, management, operation, maintenance and repair of the Premises and of the personal property, fixtures, machinery, equipment, systems and apparatus located therein or used in connection therewith, but excluding (i) non-cash expenses, such as depreciation and amortization costs, (ii) state and federal income taxes, (iii) the non-current portion of capital expenditures determined in accordance with generally accepted accounting principles, (iv) debt service payable on the Mortgage Loan, and (v) principal and interest payments on other loans expressly permitted by Mortgagee. In determining Operating Cash Flow, (a) extraordinary items of income, such as those resulting from casualty or condemnation or lease termination payments of tenants, shall be deducted from income, (b) extraordinary items of expense including tenant improvement, leasing commissions, non-reoccurring legal charges, loan commitment fees and certain non-recurring capital expenditures

# UNOFFICIAL COPY

shall be deducted from expenses, and (c) real estate taxes and insurance premiums shall be treated as expenses to the extent of an annualized amount based upon the amount of the most recent bill for real estate taxes and insurance premiums (regardless of whether the same shall have been paid or have become due and payable during such period). As used in this Section 37, "Debt Service" shall equal the sum of all principal and interest payments on the Loan that are due and payable during such period (on a trailing twelve (12) month basis). Operating Cash Flow and Debt Service shall be calculated by Mortgagee based on the financial information provided to Mortgagee by Mortgagor and independently verified by Mortgagee and the calculations so verified shall be final and binding upon Mortgagor and Mortgagee.

If at any time during the testing period an event has occurred which will cause a decrease in the Operating Cash Flow during such period (including, without limitation, an increase in the real estate taxes due to an increase in the assessed valuation of the Premises, the applicable tax rate or otherwise) and, as a result thereof, the ratio of Operating Cash Flow to Debt Service during such period (or any period thereafter) shall be less than 1.50 to 1.00, in lieu of Mortgagee declaring a default under the Loan Agreement or the Amended Mortgage Note, Mortgagee shall notify Mortgagor in writing of the amount which, when added to the Operating Cash Flow, would be sufficient to maintain the required ratio of Operating Cash Flow to Debt Service of 1.50 to 1.00, and Mortgagor shall have five (5) days thereafter to deposit such amount into an interest bearing account controlled by Mortgagee. If Mortgagor fails to make the required deposit, such failure shall be deemed an Event of Default under the Loan Documents. If there is no Event of Default under the Loan Documents and no event which with the passage of time could cause a default under the Loan Documents, Mortgagee shall release the funds plus accumulated interest in such account to Mortgagor if the ratio of Operating Cash Flow to Debt Service shall become equal to or greater than 1.50 to 1.00, in Mortgagee's sole reasonable discretion.

2. Loan Agreement. With all aspects of construction relating to the Premises having been heretofore completed, all references in the Loan Agreement to the obligations of Borrower relating to construction related matters are hereby deleted, consisting of: (i) the Recitals; (ii) the first sentence in Section 1.1; (iii) all the terms and definitions in Section 1.1, except for the definitions of Borrower, Code, Construction Title Insurance Policy, Default Rate, Environmental Report, Environmental Laws, Event of Default, Guarantor, Hazardous Materials, Interest Rate; Land, Lease(s), Loan Documents; Loan Expenses; Loan Proceeds; Lender; Mortgage Note; Obligations; Permitted Exceptions; Premises; State and Title Insurance Company; (iv) Sections 2.1(q) and 2.1(r); (v) Article 3; (vi) Article 4, except 4.1 (a) through (f), (h) and (i); (vii) Article 5; (viii) Article 6, except Sections 6.2(d) and 6.13; (ix) Article 7, except Section 7.5; (x) Article 8, except Sections 8.3, 8.4, 8.7(c) through (f), 8.8 through 8.10, 8.12 and 8.13; (xi) Sections 12.1(a)(i) through 12.1(a)(v); and (xii) Exhibits C, D, E and F.

3. Distributions. Borrower shall have the right to make distributions to its members, so long as no Event of Default exists or would result therefrom under any of the Loan Documents.

# UNOFFICIAL COPY

4. Conditions Precedent. As a condition precedent to the effectiveness of this Modification, Borrower agrees to execute and deliver to Lender an Amended Mortgage Note in the amount of \$1,990,000.00 dated of even date herewith in form and substance satisfactory to Lender and deliver a date down endorsement issued Chicago Title Insurance Company insuring Lender for the amount of the Amended Mortgage Note.

5. Continuing Validity. Except as expressly modified above, the terms of the Mortgage and the other Loan Documents shall remain unchanged and in full force and effect and are legally valid, binding, and enforceable in accordance with their respective terms. Consent by Lender to this Modification does not waive Lender's rights to require strict performance of the Mortgage nor obligate Lender to make any future modifications. Nothing in this Modification shall constitute a satisfaction of the promissory note or other credit agreement secured by the Mortgage. It is the intention of Lender to retain as liable all parties to the Mortgage and all parties, makers and endorser to the Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Modification.

6. Representations and Warranties. Borrower represents and warrants to Lender that (i) Borrower has authorization to execute and deliver this Modification and to perform its obligations hereunder; (ii) upon the execution and delivery hereof, this Modification shall be valid, binding and enforceable upon Borrower in accordance with its terms, (iii) execution and delivery of this Modification does not and will not contravene, conflict with, violate or constitute a default under any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which Borrower is a party or are bound, and (iv) no Event of Default or event or condition which could become an Event of Default with the giving of notice or passage of time, or both, exists under the Loan Agreement or any of the other Loan Documents.

7. Payment of Expenses. Borrower shall, as of the date of this Modification, pay Lender a loan fee of \$4,750.00, all title and recording charges and other reasonable expenses (including reasonable attorneys' fees) incurred by Lender in connection with this Modification; provided, however, that the maximum amount to be paid by Borrower for attorney fees shall not exceed \$4,500.00.

8. WAIVER OF JURY. BORROWER EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MODIFICATION, OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AMENDMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS MODIFICATION AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE JURY.

9. RELEASE. BORROWER AND ANY OTHER OBLIGOR UNDER THE INDEBTEDNESS, ON BEHALF OF THEMSELVES AND THEIR RESPECTIVE

# UNOFFICIAL COPY

SUCCESSORS AND ASSIGNS (COLLECTIVELY AND INDIVIDUALLY THE "BORROWER PARTIES"), HEREBY FULLY, FINALLY AND COMPLETELY RELEASE, ACQUIT AND FOREVER DISCHARGE, AND AGREE TO HOLD HARMLESS LENDER AND ITS RESPECTIVE SUCCESSORS, ASSIGNS, AFFILIATES, SUBSIDIARIES, PARENTS, OFFICERS, SHAREHOLDERS, DIRECTORS, EMPLOYEES, ATTORNEYS, AGENTS AND PROPERTIES, PAST, PRESENT AND FUTURE, AND THEIR RESPECTIVE HEIRS, SUCCESSORS AND ASSIGNS (COLLECTIVELY AND INDIVIDUALLY THE "LENDER PARTIES"), OF AND FROM ANY AND ALL CLAIMS, CONTROVERSIES, DISPUTES, LIABILITIES, OBLIGATIONS, DEMANDS, DAMAGES, DEBTS, LIENS, ACTIONS AND CAUSES OF ACTION OF ANY AND EVERY NATURE WHATSOEVER, KNOWN OR UNKNOWN, WHETHER AT LAW, BY STATUTE OR IN EQUITY, IN CONTRACT OR IN TORT, UNDER STATE OR FEDERAL JURISDICTION, AND WHETHER OR NOT THE ECONOMIC EFFECTS OF SUCH ALLEGED MATTERS ARISE OR ARE DISCOVERED IN THE FUTURE (COLLECTIVELY, THE "CLAIMS"), WHICH THE BORROWER PARTIES HAVE AS OF THE DATE HEREOF OR MAY CLAIM TO HAVE AS OF THE DATE HEREOF AGAINST THE LENDER PARTIES, INCLUDING BUT NOT LIMITED TO, ANY CLAIMS ARISING OUT OF OR WITH RESPECT TO ANY AND ALL TRANSACTIONS RELATING TO THE LOAN DESCRIBED HEREIN OR THE LOAN DOCUMENTS OCCURRING ON OR BEFORE THE DATE HEREOF, INCLUDING BUT NOT LIMITED TO, ANY LOSS, COST OR DAMAGE OF ANY KIND OR CHARACTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH OR IN ANY WAY RESULTING FROM THE ACTS, ACTIONS OR OMISSIONS OF THE LENDER PARTIES OCCURRING ON OR BEFORE THE DATE HEREOF. THE FOREGOING RELEASE IS INTENDED TO BE, AND IS, A FULL, COMPLETE AND GENERAL RELEASE IN FAVOR OF THE LENDER PARTIES WITH RESPECT TO ALL CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION AND OTHER MATTERS DESCRIBED THEREIN, OR ANY OTHER THEORY, CAUSE OF ACTION, OCCURRENCE, MATTER OR THING WHICH MIGHT RESULT IN LIABILITY UPON THE LENDER PARTIES ARISING OR OCCURRING ON OR BEFORE THE DATE HEREOF. THE BORROWER PARTIES UNDERSTAND AND AGREE THAT THE FOREGOING GENERAL RELEASE IS IN CONSIDERATION FOR THE AGREEMENTS OF LENDER CONTAINED HEREIN AND THAT THEY WILL RECEIVE NO FURTHER CONSIDERATION FOR SUCH RELEASE. FURTHERMORE, THE BORROWER PARTIES REPRESENT AND WARRANT TO LENDER THAT SHE, HE OR IT: (I) READ THIS MODIFICATION, INCLUDING WITHOUT LIMITATION, THE RELEASE SET FORTH IN THIS SECTION (THE "RELEASE PROVISION"), AND UNDERSTANDS ALL OF THE TERMS AND CONDITIONS HEREOF, AND (II) EXECUTES THIS MODIFICATION VOLUNTARILY WITH FULL KNOWLEDGE OF THE SIGNIFICANCE OF THIS MODIFICATION AND THE RELEASES CONTAINED HEREIN AND EXECUTION HEREOF. THE BORROWER PARTIES AGREE TO ASSUME THE RISK OF ANY AND ALL UNKNOWN, UNANTICIPATED, OR MISUNDERSTOOD CLAIMS THAT ARE RELEASED BY THIS RELEASE.

# UNOFFICIAL COPY

## 10. Miscellaneous.

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

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

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

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

(e) This Modification shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

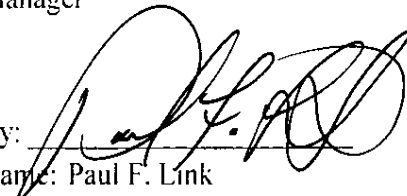
(f) Any references to the "Note", the "Mortgage", or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to such document and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive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

# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Mortgage Modification Agreement has been duly executed as of the day and year specified above.

5100 RAVENSWOOD, L.L.C., an  
Illinois limited liability company

By: LaSalle Street Development, Inc.  
Its: Manager

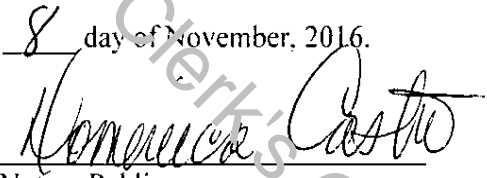
By:   
Name: Paul F. Link  
Its: President

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 Paul F. Link, individually, and as President of LaSalle Street Development, Inc., the Manager of 5100 Ravenswood, L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such President, he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Manager of 5100 Ravenswood, L.L.C., for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8 day of November, 2016.



  
Notary Public

My commission expires:  
07-07-2020

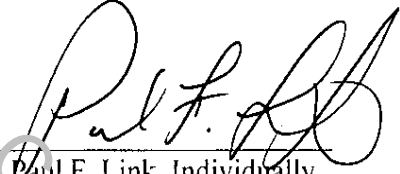


# UNOFFICIAL COPY

## REAFFIRMATION OF GUARANTY

The undersigned as a Guarantor under that certain Guaranty of Payment and Completion in favor of Lender dated as of December 13, 2013 ("Guaranty"), hereby consents to the modifications provided in the foregoing Modification of Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing and hereby expressly ratifies and reaffirms all of his liabilities and obligations as Guarantor under the Guaranty and agrees to comply fully with all of the terms, conditions, provisions, agreements, representations, undertakings, warranties, guaranties, indemnities, grants and security interests and covenants contained in the Guaranty, notwithstanding that such obligations may be modified or amended by the foregoing Modification. Guarantor acknowledges that he has no defenses, causes of action, counterclaims, claims or set-offs to the enforcement of the Guaranty and waives every past and future defense (other than the defense of payment in full), cause of action, counterclaim or setoff, including, but not limited to, breach of the duty of good faith and fair dealing which Guarantor or Borrower may have to any action of Lender in administering or enforcing the Loan Documents or the Guaranty. Guarantor (and Lender by acceptance hereof) knowingly and irrevocably waives the right to a trial by jury with respect to any controversy arising out of the Loan Documents, including the Guaranty.

Dated: November 7, 2016

  
Paul F. Link, Individually

# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description

LOT 13 (EXCEPT THE NORTH 3.00 FEET THEREOF) AND LOT 16 IN BLOCK 1 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Common Address: 5100 N. Ravenswood Ave. Chicago, Illinois 60660

P.I.N. No.: 14-07-402-017-0000

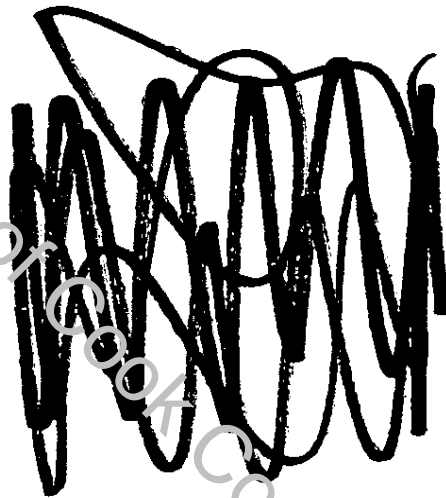
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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

(h) Time is of the essence of Borrower's obligations under this Modification.

(Signature Page Follows)



Property of Cook County Clerk's Office