

# UNOFFICIAL COPY

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Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/15/2017 08:54 AM Pg: 1 of 20

This Instrument Prepared by  
and to be Returned to:

Riordan, Fulkerson, Hupert & Coleman  
30 North LaSalle Street, Suite 2630  
Chicago, Illinois 60602  
Attn: Alan L. Fulkerson, Esq.

Address:  
See Exhibit A attached

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## **FIRST MODIFICATION OF LOAN DOCUMENTS**

**THIS FIRST MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made to be effective as of the 27<sup>th</sup> day of February 2017, by and among **ZALE CONDOS LLC**, an Illinois limited liability company (the "Borrower"), and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois banking corporation (the "Lender").

### **RECITALS:**

A. Pursuant to the terms of a Loan Agreement between Grace-Sheffield Condominiums, LLC, an Illinois limited liability company ("GS") and Lender dated March 5, 2015 (the "GS Loan Agreement"), Lender has heretofore made a loan ("GS Loan") to GS in the original principal amount of Two Million One Hundred Fifteen Thousand and No/100 Dollars (\$2,115,000.00), pursuant to the terms and conditions of a Loan Agreement dated as of March 5, 2013, between GS and Lender, the GS Loan was evidenced by a Promissory Note dated March 5, 2013, in the principal amount of the GS Loan made payable by GS to the order of Lender (the "GS Note"). The GS Note is secured by that certain: (a) Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated March 5, 2013, executed by GS to and for the benefit of the Lender (the "GS Mortgage"), and thereafter recorded in the Office of the Cook County, Illinois Recorder of Deeds (the "Recorder's Office"), on April 10, 2013, as Document No. 1310057937, creating a first mortgage lien on certain real property (the "GS Premises") legally described in Exhibit "A" attached to the GS Mortgage and thereafter amended and restated pursuant to the terms of that certain First Modification of Loan documents between GS and Lender and dated as of February 17, 2015, a Memorandum of which was recorded with the Recorder's Office on February 26, 2015 as Document No. 1505757239 (the "First GS Modification"), and as further modified and amended by the certain Second Modification of Loan documents between GS and Lender bearing an even date herewith (the "Second GS Modification"); and (b) Assignment of Rents and Leases dated March 5, 2013, executed by GS to and for the benefit of the Lender (the "GS Assignment"), and recorded in the Recorder's Office on April 10, 2013, as Document No. 1310057938.

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B. Pursuant to the terms and conditions of an Amended and Restated Loan Agreement, dated as of February 17, 2015, between GS, Ashland Ave., LLC, an Illinois limited liability company ("AA"), 1986 LLC, an Illinois limited liability company ("1986"), Borrower and Lender (the "GS Amended Loan Agreement") the principal balance of the GS Loan was increased to Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00) (the "Amended GS Loan") and AA, 1986 and Borrower were added as additional borrowers. The Amended GS Loan is evidenced by that certain Amended and Restated Promissory Note dated February 17, 2015, in the principal amount of the Amended GS Loan (the "Amended GS Note") made payable by GS, AA, 1986 and Borrower to the order of Lender. The Amended GS Note is to be secured by, among other items, (i) the GS Mortgage, the First GS Modification and the Second GS Modification; (ii) that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated February 17, 2015, executed by AA to and for the benefit of the Lender (the "AA Mortgage"), and thereafter recorded in the Recorder's Office on February 26, 2015, as Document No. 1505757241, creating a first mortgage lien on certain real property (the "AA Premises") legally described in Exhibit "A" attached to the AA Mortgage, as the same has been amended and restated by that certain First Modification of Loan Documents between AA and Lender bearing an even date herewith (the "AA First Modification"); (iii) that certain Assignments of Rents and Leases dated February 17, 2015 executed by AA to and for the benefit of Lender (the "AA Assignment"), and thereafter recorded in the Recorder's Office on February 26, 2015, as Document No. 1505757242; (iv) that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated February 17, 2015, executed by Borrower to and for the benefit of the Lender (the "ZC Mortgage"), and thereafter recorded in the Recorder's Office on February 26, 2015, as Document No. 1505757247, creating a first mortgage lien on certain real property (the "ZC Premises") legally described in Exhibit "A" attached to the ZC Mortgage, as the same has been amended and restated by that certain First Modification of Loan Documents between Borrower and Lender bearing an even date herewith (the "ZC First Modification"); (v) that certain Assignments of Rents and Leases dated February 17, 2015 executed by Borrower to and for the benefit of Lender (the "ZC Assignment"), and thereafter recorded in the Recorder's Office on February 26, 2015, as Document No. 1505757248; (vi) that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated February 17, 2015, executed by 1986 to and for the benefit of the Lender (the "1986 Mortgage"), and thereafter recorded in the Recorder's Office on February 26, 2015, as Document No. 1505757244, creating a first mortgage lien on certain real property (the "1986 Premises") legally described in Exhibit "A" attached to the 1986 Mortgage, as the same has been amended and restated by that certain First Modification of Loan Documents between 1986 and Lender bearing an even date herewith (the "1986 First Modification").

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C. Pursuant to the terms of a Loan Agreement dated as of August 26, 2013 between Monroe Associates, LLC, an Illinois limited liability company ("MA") and Lender (the "MA Loan Agreement"), Lender has heretofore made a loan (the "MA Loan") to MA in the principal amount of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) (the "MA Note"). The MA Note is secured by, among other things: (i) that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated August 26, 2013, executed by MA to and for the benefit of the Lender (the "MA Mortgage"), and thereafter recorded in the Recorder's Office on September 4, 2013, as Document No. 1324747035, creating a first mortgage lien on certain real property (the "MA Premises") legally described in Exhibit "A" attached to the MA Mortgage, as the same has been amended and restated by that certain First Modification of Loan Documents between MA and Lender bearing an even date herewith (the "MA First Modification"); (ii) that certain Assignments of Rents and Leases dated August 26, 2013 executed by MA to and for the benefit of Lender (the "MA Assignment"), and thereafter recorded in the Recorder's Office on September 4, 2013, as Document No. 1324747043.

D. Pursuant to the terms of a Loan Agreement dated as of August 26, 2013 between Milton Zale, individually and as Trustee of the MILTON ZALE TRUST, under Trust Agreement dated December 18, 1980, as amended and restated on January 4, 2001 (Collectively referred to as "Zale") and Lender (the "Zale Loan Agreement"), Lender has heretofore made a loan (the "Zale Loan") to Zale in the principal amount of Five Hundred Ten Thousand and No/100 Dollars (\$510,000.00) (the "Zale Note"). The Zale Note is secured by, among other things: (i) that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated August 26, 2013, executed by Zale to and for the benefit of the Lender (the "Zale Mortgage"), and thereafter recorded in the Recorder's Office on September 4, 2013, as Document No. 1324747033, creating a first mortgage lien on certain real property (the "Zale Premises") legally described in Exhibit "A" attached to the Zale Mortgage, as the same has been amended and restated by that certain First Modification of Loan Documents between Zale and Lender bearing an even date herewith (the "Zale First Modification"); (ii) that certain Assignments of Rents and Leases dated August 26, 2013 executed by Zale to and for the benefit of Lender (the "Zale Assignment"), and thereafter recorded in the Recorder's Office on September 4, 2013, as Document No. 1324747034; (the Amended GS Loan Agreement, the GS Mortgage, the GS First Modification, the GS Second Modification, the GS Assignment, the AA Mortgage, the AA First Modification, the AA Assignment, the ZC Mortgage, the ZC First Modification, the ZC Assignment, the 1986 Mortgage, the 1986 First Modification, the 1986 Assignment, the MA Loan Agreement, the MA Mortgage, the MA First Modification, the MA Assignment, the Zale Loan Agreement, the Zale Mortgage, the Zale First Modification, the Zale Assignment and any and all other document now or hereafter given to evidence or secure payment of the Consolidated Note (as defined below) or

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delivered to induce the Lender to disburse the proceeds of the Consolidated Loan (as defined below), as such documents may hereafter be amended, restated or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents"). Reference is hereby made to the Loan Documents (which are incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a statement of the covenants and agreements contained therein, a statement of the rights, remedies, and security afforded thereby, and all matters therein contained.

E. Borrower, GS, AA, 1986, MA, and Zale (collectively referred to as the "Borrowers") have requested consolidation of the GS Amended Loan, the MA Loan and the Zale Loan (collectively the "Loans"), an increase of the principal balance available thereunder, together with an extension of the maturity date.

F. Subject to the terms and conditions hereafter set forth, as well as those of the Consolidated Loan Agreement between Borrowers and Lender bearing an even date herewith, Lender is willing to loan Borrowers the principal sum \$4,575,000.00 (the "Consolidated and Restated Loan") and extend the maturity date.

## AGREEMENTS:

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

1. **Adoption of Recitals.** The parties acknowledge that the Recitals are true and correct and are incorporated into this Agreement as though fully set forth herein.

2. **Consolidation of Loans.** The Amended GS Loan, the MA Loan and the Zale Loan are hereby consolidated and restated and the principal balance of each loan shall be repaid from the proceeds of a Consolidated and Restated Promissory Note from Borrowers to Lender in the principal sum of Four Million Five Hundred Seventy-Five Thousand and No/100 Dollars (\$4,575,000.00)(the "Consolidated Note"). The Consolidated Note shall be in form and substance acceptable to Lender in its sole and absolute discretion.

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### 3. Amendment of ZC Mortgage.

(a) The Purpose Clause which reads “**FOR THE PURPOSE OF SECURING** the following (but not exceeding \$4,800,000.00 in the aggregate):” is stricken and the following is substituted in place thereof:

**FOR THE PURPOSE OF SECURING** the following (but not exceeding \$9,150,000.00 in the aggregate):

(b) Section 1.1. of the ZC Mortgage is stricken in its entirety and the following is substituted in place thereof:

**Section 1.1. Definitions.** The terms defined in this Section (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Mortgage shall have the respective meanings specified in this Section.

“**1986 Mortgage**” means the Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing from Mortgagor’s Affiliate, 1986, to the Lender dated February 17, 2015, and thereafter recorded in the Recorder’s Office on February 26, 2015, as Document No. 1505757244.

“**1986 Assignment of Rents**” means the Assignment of Rents and Leases from Mortgagor’s Affiliate, 1986, to the Lender dated February 17, 2015, and thereafter recorded in the Recorder’s Office on February 26, 2015, as Document No. 1505757245.

“**AA Mortgage**” means the Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing from Mortgagor’s Affiliate, AA, to the Lender dated February 17, 2015, and thereafter recorded in the Recorder’s Office on February 26, 2015, as Document No. 1505757241.

“**AA Assignment of Rents**” means the Assignment of Rents and Leases Mortgagor’s Affiliate, AA, to the Lender dated February 17, 2015, and thereafter recorded in the Recorder’s Office on February 26, 2015, as Document No. 1505757242.

“**Assignment of Rents**” means the Assignment of Rents and Leases bearing an even date herewith from the Mortgagor to the Mortgagee.

“**Code**” means the Uniform Commercial Code of the State of Illinois as from time to time in effect; provided,

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however, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, the Bank's security interest in any collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Illinois, the term "Code" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions of this Agreement or the other Loan Documents relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

**"Default"** means, when used in reference to this Mortgage or any other document, or in reference to any provision of or obligation under this Mortgage or any other document, the occurrence of an event or the existence of a condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Mortgage or such other document, as the case may be.

**"Environmental Laws"** means the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material, in each case as now or hereafter in force and effect.

**"Event of Default"** means –

- (i) when used in reference to this Mortgage, an Event of Default specified in Section 4.1 hereof; and
- (ii) when used in reference to any other document, a default or event of default under such document that has continued after the giving of any applicable notice and the expiration of any applicable grace or cure periods.

**"GS Mortgage"** means the Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture from Mortgageor's Affiliate, GS, to the Lender dated March 5, 2013 and recorded in the Recorder's Office on April 10, 2013, as Document No. 1310057937.

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**“GS Assignment of Rents”** means the Assignment of Rents and Leases from Mortgagor’s Affiliate, GS, to the Lender dated March 5, 2013 and recorded in the Recorder’s Office on April 10, 2013, as Document No. 1310057938.

**“Hazardous Material”** means any hazardous substance or any pollutant or contaminant defined as such in, or for purposes of, any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, in each case as now or hereafter in force and effect; asbestos or any substance or compound containing asbestos; polychlorinated biphenyls or any substance or compound containing any polychlorinated biphenyl; petroleum and petroleum products; pesticides; and any other hazardous, toxic or dangerous waste, substance or material.

**“Hedging Agreements”** means (i) any ISDA Master Agreement between the Mortgagor and the Mortgagee or any other provider, (ii) any Schedule to Master Agreement between the Mortgagor and the Mortgagee or any other provider, and (iii) all other agreements entered into from time to time by the Mortgagor and the Mortgagee or any other provider relating to Hedging Transactions.

**“Hedging Transaction”** means any transaction (including an agreement with respect thereto) now existing or hereafter entered into between the Mortgagor and the Mortgagee or any other provider which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures.

**“Impositions”** means Impositions as defined in Section 2.6(a) hereof.

**“Indemnity Agreement”** means the Indemnity Agreement bearing an even date herewith from the Mortgagor to the Mortgagee.

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**“Leases”** means the Leases as described in the Loan Agreement.

**“Loan”** means the loan made by the Lender to the Mortgagor and its Affiliates in accordance with the terms and conditions of the Loan Agreement.

**“Loan Agreement”** means the Consolidated Loan Agreement between Mortgagor, its Affiliates, and Mortgagee dated February 27, 2017.

**“Loan Amount”** means \$4,575,000.00.

**“Loan Documents”** means this Agreement, the Note, the Loan Agreement, the Mortgage, the GS Mortgage, the AA Mortgage, the MA Mortgage, the Zale Mortgage, the Assignment of Rents the GS Assignment of Rents, the AA Assignment of Rents, the ZC Assignment of Rents, the 1986 Assignment of Rents, the MA Assignment of Rents, the Zale Assignment of Rents any Hedging Agreements to which the Mortgagee is a party, and all other documents and instruments at any time evidencing and securing the indebtedness secured by this Mortgage, the GS Mortgage, the AA Mortgage, the ZC Mortgage, the MA Mortgage or the Zale Mortgage.

**“MA Mortgage”** means the Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture from Mortgagor’s Affiliate, MA, to the Lender dated August 26, 2013 and recorded in the Recorder’s Office on September 4, 2013, as Document No. 1324747035.

**“MA Assignment of Rents”** means the Assignment of Rents and Leases from Mortgagor’s Affiliate, MA, to the Lender dated August 26, 2013 and recorded in the Recorder’s Office on September 4, 2013, as Document No. 1324747043.

**“Maturity Date”** means February 27, 2024.

**“Mortgage”** means this Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing from the Mortgagor to the Mortgagee.

**“Mortgagee”** means The PrivateBank and Trust Company, an Illinois banking corporation.



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**“Mortgagor”** means Ashland Ave., LLC, an Illinois limited liability company.

**“Mortgagor’s Affiliates”** means any one or more of the following: Grace-Sheffield Condominiums., LLC, an Illinois limited liability company (“GS”), Ashland Ave., LLC, an Illinois limited liability company (“AA”), 1986 LLC, an Illinois limited liability company (“1986”), Monroe Associates, an Illinois limited partnership (“MA”), and/or Milton Zale, individually and as Trustee under Trust Agreement dated December 18, 1980, as amended and restated on January 4, 2001 (“Zale”).

**“Note”** means the Consolidated and Restated Promissory Note of the Borrowers dated February 27, 2017 which is payable to the order of the Lender in the Loan Amount.

**“Permitted Encumbrances”** means Permitted Encumbrances as defined in the Loan Agreement.

**“Permitted Materials”** means materials customarily used in the construction and maintenance of buildings, and cleaning materials, office products and other materials customarily used in the operation of properties such as the Premises, provided that, in each case, such materials are stored, handled, used and disposed of in compliance with applicable laws and regulations and are individually and in the aggregate not in such quantities as may result in contamination of the Premises or any part thereof.

**“Premises”** means the real estate described in Exhibit A attached hereto and all improvements now and hereafter located thereon, and all other property, rights and interests described in the foregoing granting clauses of this Mortgage.

**“Zale Mortgage”** means the Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture from Mortgagor’s Affiliate, Zale, to the Lender dated August 26, 2013 and recorded in the Recorder’s Office on September 4, 2013, as Document No. 1324747033.

**“Zale Assignment of Rents”** means the Assignment of Rents and Leases from Mortgagor’s Affiliate, Zale, to the Lender dated August 26, 2013, and thereafter recorded in

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the Recorder's Office on September 4, 2013, as Document No. 1505757234.

(c) Section 2.1 of the ZC Mortgage is stricken in its entirety and the following is substituted in place thereof:

**Section 2.1. Payment of Indebtedness.** The Mortgagor covenants and agrees that it will pay when due the principal of and interest on the indebtedness hereby secured evidenced by the Note, all other sums which may become due pursuant thereto or hereto, and all other indebtedness hereby secured as described in the foregoing granting clauses of this Mortgage, including, but not limited to, all charges, fees and all other sums to be paid by the Mortgagor as provided in the Loan Documents, and that it will duly and punctually perform, observe and comply with all of the terms, provisions and conditions herein and in the other Loan Documents provided to be performed and observed by the Mortgagor. All amounts payable under this Mortgage shall be paid by the Mortgagor without offset or other reduction. The Note secured hereby, which is hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, is in the principal amount of Four Million Five Hundred Seventy-Five Thousand and No/100 Dollars (\$4,575,000.00), and, except as provided in the Note, shall bear interest at a variable rate equal to two and 25/100 percent (2.25%) per annum in addition to a rate based on the rate at which United States dollar deposits are offered in the London Interbank Eurodollar, calculated as provided in the Loan Agreement. Interest is payable on the Note in arrears on the first day of each month commencing as provided in the Loan Agreement. All of the unpaid principal of and accrued and unpaid interest on the Note shall be due and payable on February 27, 2024.

(d) **Events of Default.** Sections 4.1 (a), (k) and (m) of the ZC Mortgage are stricken in their entirety and the following is substituted in place thereof:

(a) A Default shall occur in the payment within ten (10) days after the date when due of any installment of principal of or interest on the Note, or in the payment within ten (10) days after the date when due of any other amount required to be paid by the Mortgagor to the Mortgagee under this Mortgage, the GS Mortgage, the AA Mortgage, the 1986 Mortgage, the MA Mortgage, or the Zale Mortgage, or under

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any of the other Loan Documents, or in the payment when due of any other indebtedness which may hereafter be secured by this Mortgage, the GS Mortgage, the AA Mortgage, the 1986 Mortgage, the MA Mortgage, or the Zale mortgage, or in the payment when due of any other indebtedness secured by this Mortgage; or

(k) If any Event of Default shall occur under this Mortgage, the GS Mortgage, the AA Mortgage, the 1986 Mortgage, the MA Mortgage, or the Zale Mortgage, or under any of the other Loan Documents and such default shall not be cured within the applicable grace or cure periods; or

(m) The ratio of the Loan Amount to the appraised value of the Premises exceeds 75% and Mortgagor or Mortgagor's Affiliates have not within 30 days after written notice of such default reduced the principal balance of the Loan to achieve the aforesaid ratio; or

4. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The Borrower is a duly formed limited liability company under the laws of the State of Illinois, validly existing, in good standing and fully qualified to do business in the State of Illinois. The "Operating Agreement" of the Borrower, a certified copy of which has been furnished to the Lender, is in effect, has not been amended and is the true, correct and complete document relating to the creation and governance of the Borrower. The Borrower and its member have fully complied with all applicable securities and other laws, ordinances and regulations in connection with the formation of the Borrower and the sale and offer for sale of interests therein.

(b) The Operating Agreement of the Borrower shall not, without the prior written consent of the Lender, be amended or modified if such amendment or modification could have a material adverse effect on the Borrower's ability to perform its obligations under any of the Loan Documents nor shall any member of the Borrower be released or discharged from its or his obligations under the Operating Agreement, nor shall any manager of the Borrower transfer, pledge or encumber, in any way, any membership interest in the Borrower or the right to receive income or proceeds from the Borrower. At all times prior to the repayment of the Loan, Milton Zale, not individually, but as Trustee of the Milton Zale Trust, under Trust Agreement dated December 18, 1980, as amended and restated on January 4, 2001, shall be the sole member of the Borrower.

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(c) The Borrower, without the prior written consent of the Lender, shall not (a) permit itself to be dissolved or its existence terminated, or (b) amend or modify its organizational documents if such amendment or modification could have a material adverse effect on (i) the Borrower's ability to perform its obligations under any of the Loan Documents, or (ii) the validity or priority of the Lender's liens or security interests under the Loan Documents.

(d) The Borrower represents and warrants to the Lender that it is able to pay its debts as such debts become due, and it has capital sufficient to carry on its present businesses and transactions and all businesses and transactions in which it is about to engage. The Borrower (i) is not bankrupt or insolvent, (ii) has not made an assignment for the benefit of its creditors, (iii) has not had a trustee or receiver appointed, (iv) has not had any bankruptcy, reorganization or insolvency proceedings instituted by or against it, or (v) shall not be rendered insolvent by its execution, delivery or performance of the Loan Documents or by the transactions contemplated thereunder.

(e) The additional representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(f) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Loan Agreement, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Loan Agreement, the Mortgage or the other Loan Documents.

(g) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(h) There has been no material adverse change in the financial condition of Borrower or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(i) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

5. **Conditions Precedent.** Lender's performance hereunder is contingent upon its receipt of the following:

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- (a) A fully executed copy of this Agreement;
- (b) A fully executed Consolidated Loan Agreement from Borrowers to Lender;
- (c) A fully executed Consolidated and Restated Promissory Note from Borrowers to Lender;
- (d) A fully executed and recordable Second Modification of Loan Documents from GS to Lender, in form and substance acceptable to Lender;
- (e) A fully executed and recordable First Modification of Loan Documents from AA to Lender, in form and substance acceptable to Lender;
- (f) A fully executed and recordable First Modification of Loan Documents from 1986 to Lender, in form and substance acceptable to Lender;
- (g) A fully executed and recordable First Modification of Loan Documents from MA to Lender, in form and substance acceptable to Lender;
- (h) A fully executed and recordable First Modification of Loan Documents from Zale to Lender, in form and substance acceptable to Lender;
- (i) Execution of a lease from The Zale Company, as lessor, and Milton Zale, as leasee, for the owner-occupied commercial space at 3824 N. Ashland Avenue for an amount of \$42,000.00 per year or \$28 per square foot triple net;
- (j) Payment of the Loan Fee described in the Consolidated Loan Agreement;
- (k) Payment of Lender's attorney fees and costs; and
- (l) Such other documents or records as the Lender in its reasonable discretion may hereafter request.

## 6. **Miscellaneous.**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
- (b) This Agreement shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same

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has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by 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 acknowledge that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Consolidated Loan Agreement, the other Loan Documents and this Agreement, 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 Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

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

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

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(g) This Agreement may be executed in any number of counterparts, all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof. Electronic records of executed Loan Documents maintained by the Lender shall be deemed to be originals thereof.

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

**BALANCE OF PAGE INTENTIONALLY LEFT BLANK**

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**IN WITNESS WHEREOF**, the Mortgagor has caused this instrument to be executed as of the date first above written.

**BORROWER:**

**ZALE CONDOS LLC**, an Illinois limited liability company

**By: MILTON ZALE**, as Trustee of the **MILTON ZALE TRUST**, under Trust Agreement dated December 18, 1980, as amended and restated on January 4, 2001, its sole member

By: \_\_\_\_\_

Name: Milton Zale

Title: Trustee

**LENDER:**

**THE PRIVATEBANK AND TRUST COMPANY**, an Illinois banking corporation

By:  \_\_\_\_\_

Name: Donald G. Adams

Title: Managing Director

Property of Cook County Clerk's Office



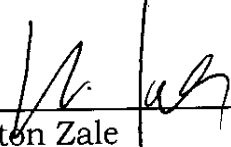
# UNOFFICIAL COPY

**IN WITNESS WHEREOF**, the Mortgagor has caused this instrument to be executed as of the date first above written.

**BORROWER:**

**ZALE CONDOS LLC**, an Illinois limited liability company

**By: MILTON ZALE**, as Trustee of the **MILTON ZALE TRUST**, under Trust Agreement dated December 18, 1980, as amended and restated on January 4, 2001, its sole member

By:   
Name: Milton Zale  
Title: Trustee

**LENDER:**

**THE PRIVATEBANK AND TRUST COMPANY**, an Illinois banking corporation

By: \_\_\_\_\_  
Name: Donald G. Adams  
Title: Managing Director

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald G. Adams, a Managing Director of The PrivateBank and Trust Company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

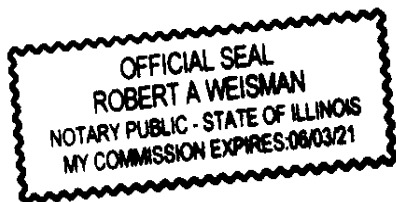
GIVEN under my hand and Notarial Seal this 27<sup>th</sup> day of February, 2017.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I ROBERT A. WEISMAN, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Milton Zale, as trustee of the Milton Zale Trust, as Manager of Zale Condos LLC, and Illinois limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27<sup>th</sup> day of February, 2017.



*Robert A. Weisman*  
\_\_\_\_\_  
Notary Public

# UNOFFICIAL COPY

## EXHIBIT A LEGAL DESCRIPTION OF THE PREMISES

### PARCEL 4:

UNITS, 944-E101, 944-G101, 944-G202, 944-1102 AND 944-1201 IN GRACE-SHEFFIELD CONDOMINIUMS, TOGETHER WITH AN UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS AS DEFINED AND DELINEATED IN THE DECLARATION RECORDED AS DOCUMENT 98338746, OF THE FOLLOWING REAL ESTATE:

### PARCEL 4A:

LOTS 11, 12 AND 13 IN S.H. KERFOOT'S SUBDIVISION OF THE NORTH WEST 1/4 OF BLOCK 7 IN LAFLIN, SMITH AND DYER'S SUBDIVISION OF THE NORTHEAST 1/4 (EXCEPT 1.28 ACRES IN THE NORTH EAST CORNER THEREOF) OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 4B:

THE WEST 1/4 OF THE SOUTHWEST 1/4 OF BLOCK 7 AND ALSO THE WEST 100 FEET OF THE EAST THREE QUARTERS OF THE SAID SOUTHWEST 1/4 OF SAID BLOCK 7 (WHICH SAID WEST 100 FEET ARE OTHERWISE KNOWN AS LOT 3 IN STOCK'S SUBDIVISION OF THE EAST THREE QUARTERS OF THE SOUTHWEST 1/4 OF SAID BLOCK 7): ALL IN LAFLIN, SMITH AND DYER'S SUBDIVISION OF THE NORTHEAST 1/4 (EXCEPT 1.28 ACRES IN THE NORTH WEST CORNER THEREOF) OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING STREETS FROM BOTH PARTS OF THE FOREGOING DESCRIPTION) IN COOK COUNTY, ILLINOIS.

Commonly Known As: 944-54 West Grace, Chicago, Illinois

### Property Index Numbers:

14-20-212-021-1017	14-20-212-021-1034
14-20-212-021-1025	14-20-212-021-1035
14-20-212-021-1028	