

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:

Christyl Marsh  
Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062

Doc#: 1823619161 Fee: \$70.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/24/2018 10:02 AM Pg: 1 of 12

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## THIRD MODIFICATION OF LOAN DOCUMENTS

**THIS THIRD MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made as of the 1st day of July, 2018, by and among **GVP Victoria, LLC**, an Illinois limited liability company (the "Borrower"), **Marvin G. Grahn, Peter M. Grahn, Erick V. Grahn and GVP Holdings XIV, LLC**, an Illinois limited liability company (each a "Guarantor", and collectively, the "Guarantors") (Borrower and Guarantors are hereinafter collectively referred to as the "Obligors") and **Oxford Bank & Trust**, its successors and assigns (the "Lender").

### RECITALS:

A. Lender has heretofore made a construction loan (as modified, restated or replaced from time to time, the "Loan") to Borrower in the original principal amount of Two Million Two Hundred Thousand and 00/100 Dollars (\$2,200,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of October 24, 2014, between Borrower and Lender (as modified from time to time, the "Loan Agreement"), and as evidenced by a Promissory Note dated October 24, 2014, in the principal amount of the Loan made payable by Borrower to the order of Lender (as modified, restated or replaced from time to time, the "Note"). All defined terms used herein and not otherwise defined shall have the meanings ascribed to such terms as set forth in the Loan Agreement.

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 24, 2014, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on October 28, 2014, as Document No. 1430119103 (the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A** hereto (the "Property"); (ii) that certain Assignment of Rents and Leases dated October 24, 2014, from Borrower to Lender recorded in the Recorder's Office on October 28, 2014, as Document No. 1430119104 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated October 24, 2014, from Borrower and Guarantors to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Loan Agreement, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the

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Loan, in their original form and as amended from time to time, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Payment and Completion dated October 24, 2014, from Guarantors to Lender (the "Guaranty").

D. The Loan was previously modified pursuant to that certain modification of loan documents dated as of November 19, 2014, made by and among Borrower, Guarantors and Lender, whereby the conditions precedent for commencement of construction of the Project were modified.

E. The Loan was previously modified pursuant to that certain second modification of loan documents dated as of July 1, 2016, made by and among Borrower, Guarantors and Lender, recorded with the Recorder's Office on July 22, 2016 as Document No. 1620418013 whereby (i) the maturity date was extended to October 1, 2017, and (ii) an option to further extend the maturity date to April 1, 2018 was added.

F. Borrower exercised its option to extend the maturity date of the Note from October 1, 2017 to April 1, 2018.

G. The Note was further modified pursuant to a note extension agreement dated April 1, 2016, made by and between Borrower and Lender, whereby the maturity date was extended from April 1, 2018 to July 1, 2018.

H. Borrower desires to further amend the Loan Documents in order to (i) extend the maturity date of the Note to January 1, 2019, (ii) provide for a one-time option to further extend the maturity date of the Note from January 1, 2019 to July 1, 2018, and (iii) to make such other changes set forth below.

## AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinafore (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by 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. Maturity Date. The Maturity Date of the Note is hereby extended to January 1, 2019 (subject to extension as provided in the Note and the other Loan Documents). All references in the Loan Documents to the "Maturity Date" of the Loan shall hereafter mean "January 1, 2019 (subject to extension as provided in the Note and the other Loan Documents)." To evidence such extension, the following specific changes are hereby made to the Note and the Loan Documents:

a. The first sentence in Section 2.1 of the Note is amended and restated in its entirety to read as follows: "Interest shall accrue on the outstanding principal balance of this promissory note (as modified, restated or replaced from time to time, the "Note") from the date hereof through January 1, 2019 (subject to extension as provided in Section 2.4 below, the "Maturity Date") at an annual rate equal to two and one-quarter percent (2.25%) plus the Prime Rate ("Loan Rate")."

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b. The phrase “payable to Mortgagee in the principal amount of the Loan and due on October 1, 2017 (subject to extension to April 1, 2018, as provided in the Note, the (“Maturity Date”))” as it appears in Recitals paragraph A of the Mortgage is deleted and replaced with the phrase “payable to Mortgagee in the principal amount of the Loan and due on January 1, 2019 (subject to extension to July 1, 2019, as provided in the Note, the (“Maturity Date”))”.

2. Option to Extend the Maturity Date. The following is hereby added as new Section 2.4 of the Note:

**“2.4 Extension of Maturity Date.** Notwithstanding the Maturity Date set forth above, Borrower shall have a one-time option (exercisable no later than thirty (30) days prior to the stated Maturity Date) to extend the Maturity Date to July 1, 2019 upon written notice of such exercise given to Lender (the “Notice”); provided, however, that the giving of Notice shall not operate to extend the Maturity Date unless (a) at the time of giving of Notice and at the Maturity Date there shall exist no uncured Event of Default or no event which, with the giving of notice or the passing of time, or both, would constitute an Event of Default hereunder or under any Loan Document, (b) concurrent with the delivery of Notice, Borrower shall have paid to Lender an extension fee of Five Thousand Five Hundred and 00/100 Dollars (\$5,500.00), and (c) concurrent with the delivery of Notice, Borrower shall have provided to Lender the most current (tax returns and updated personal financial statements less than one year old) of each Guarantor (as such term is hereinafter defined), which tax returns and financial statements are acceptable to Lender in its sole discretion.”

3. Loan Agreement Amendments. The Loan Agreement is hereby amended as follows:

a. The definition of “Maturity Date” as it appears in Section 1.1 is hereby amended in its entirety to read as follows: “January 1, 2019, subject to extension to July 1, 2019”.

b. Section 3.5 is amended in its entirety to read as follows:

**“Requirements For Extension of the Maturity Date.** If on or before January 1, 2019 each of the conditions set forth in Section 6.13 hereof have been complied with, then the Maturity Date shall be extended to July 1, 2019.”

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

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

b. There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event

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or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

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

d. There has been no material adverse change in the financial condition of Borrower, Guarantors 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.

e. 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.

f. Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

5. Reaffirmation of Guaranty. Guarantors ratify and affirm the Guaranty and agree that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantors in the Guaranty are, as of the date hereof, true and correct and Guarantors do not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantors, enforceable in accordance with its terms and Guarantors have no claims or defenses to the enforcement of the rights and remedies of Lender thereunder.

Without limiting the generality of the foregoing paragraph, each Guarantor hereby further represents and warrants to the Lender with the intent that the Lender rely thereon, as follows with regard to the Guaranty, as hereby modified: (a) the Guaranty is in full force and effect and is binding and enforceable against the Guarantor in accordance with its terms; (b) the Guarantor irrevocably consents and agrees to the Borrower's execution and delivery of this Modification Agreement; (c) the liability of the Guarantor to the Lender under the Guaranty shall in no way be affected, modified, altered, or discharged in any fashion by the Borrower's execution, delivery or performance of this Modification Agreement; (d) the Guarantor hereby restates and reaffirms to Lender all terms and provisions of the Guaranty as if set forth in full herein; and (e) the Guarantor does not possess any claims, defenses, offsets, or counterclaims against the enforcement of the Guaranty as of the date hereof, and any and all such claims, defenses, offsets and counterclaims, whether known or unknown, are forever waived and released, and the Guarantor is unconditionally liable under the Guaranty, for the payment and performance of all present and future indebtedness and all other obligations described therein.

6. Expenses. As a condition precedent to the agreements contained herein, Borrower shall pay to Lender a loan modification fee in the amount of \$5,500, plus all out-of-pocket costs and

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expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

7. Additional Requirements. The obligations of Lender to enter into this Agreement, extend the Maturity Date and modify the Note and other Loan Documents shall be subject to Borrower having delivered, or having caused to be delivered, to Lender, or the occurrence of the following items and conditions, all of which shall be in form and substance acceptable to Lender:

- a. This Agreement, executed by Borrower and Guarantors;
- b. Certificate of the manager of the Borrower;
- c. Certificate of the manager of GVP Holdings XIV, LLC; and
- d. Such other documents as Lender may reasonably require.

8. Release of Claims. Obligors hereby fully and forever remise, release and discharge the Lender from any and all claims, demands, agreements, contracts, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, accounts, damages, judgments, losses and liabilities of whatever kind or nature in law, equity or otherwise, whether known or unknown, existing as of the date hereof or arising at any time in the future, which the Obligors had, may have had, now have, or can, shall or may have, for or by any reason of any and all matters, causes or things whatsoever from the beginning of time to and including the day the Note is repaid in full.

9. Covenant Not to Sue. Obligors covenant that they will never institute any suit or action at law or equity against the Lender, nor institute, prosecute or in any way aid in the institution or prosecution of any claim, demand, action, or cause of action for damages, costs, loss of services, expenses, or compensation for or on account of any damage, loss or injury either to person or property, or both, whether developed or undeveloped, resulting or to result, known or unknown, past, present, or future which are, were, might, or could have been asserted against the Lender in connection with any of the claims released pursuant to Section 8 above.

10. Bankruptcy Provisions. Obligors hereby acknowledge and agree that, if a petition under any section, chapter or provision of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code") or similar law or statute is filed by or against any Obligor, (i) they shall not contest, and they shall consent to, the relief requested in any motion or application of Lender made in any court of competent jurisdiction seeking sale pursuant to 11 U.S.C. § 363, or a modification or termination of any automatic stay or other injunction against the Lender resulting from such filing, and (ii) they shall execute any order or other document necessary to effectuate such modification or termination. If at any time any Obligor seeks relief under the Bankruptcy Code, including, without limitation, the filing of a petition under Chapter 7 or 11 thereof, such Obligor shall be deemed to have taken such action in bad faith. Furthermore, if such action is taken against any Obligor by a third party, Obligors shall take all action necessary to have (A) the petition filed by such third party dismissed, including consenting to the immediate dismissal thereof, and (B) any additional relief requested by such third party denied, unless instructed in writing to the contrary by Lender. Lender is specifically relying upon the representations, warranties, covenants and agreements contained in this Agreement and such representations, warranties, covenants and agreements constitute a material inducement to accept the terms and conditions set forth in this Agreement and,

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but for the receipt of the benefit of such representations, warranties, covenants and agreements, the Lender would not have agreed to such terms and conditions.

11. Waiver of Defenses. As of the date of this Agreement, Obligors acknowledge that they have no defense, offset, or counterclaim to any of Obligors' obligations under the Loan Documents. Obligors hereby irrevocably waive and release any and all claims, actions, causes of action, suits and defenses which such party might hereafter have against Lender for or by reason of any matter, cause, or thing whatsoever which relates to the Loan, this Agreement, or any discussion between the Borrower, each Guarantor and the Lender.

12. No Course of Dealing. Obligors acknowledge and agree that this Agreement is limited to the terms outlined herein, and shall not be construed as an amendment of any other terms or provisions of the Loan Documents. This Agreement shall not establish a course of dealing or be construed as evidence of any willingness on the Lender's part to grant other or future amendments, should any be requested.

13. No Joint Venture. 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 or Guarantors nor shall privity of contract be presumed to have been established with any third party.

14. Binding Agreement. This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors 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.

15. Entire Agreement. Borrower, Guarantors 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 Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantors 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.

16. Construction of Agreement. Any references to the "Note", the "Loan Agreement" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Loan Agreement 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

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deemed, whenever appropriate in the context, to include the plural and the singular. The Borrower, Guarantors and their respective legal counsel have participated in the drafting of this Agreement, and accordingly, the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

17. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
18. Amendments, Changes and Modifications. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.
19. Counterparts. This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.
20. Time of the Essence. Time is of the essence of each of the Obligor's obligations under this Agreement.
21. Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.
22. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws, and not the laws of conflicts, of the State of Illinois.
23. Venue. TO INDUCE LENDER TO ACCEPT THIS AGREEMENT, OBLIGORS IRREVOCABLY AGREE THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY MANNER, OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED IN COURTS WITHIN COOK COUNTY, STATE OF ILLINOIS AND EACH OF THEM HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE. OBLIGORS EACH HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT OR HIM OR ANY OF THEM BY LENDER IN ACCORDANCE WITH THIS PARAGRAPH OR UNDER THE NOTE AND/OR ANY OTHER LOAN DOCUMENT.
24. Waiver of Jury Trial. OBLIGORS IRREVOCABLY WAIVE, TO THE EXTENT APPLICABLE, ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR WITH THE NOTE OR OTHER LOAN DOCUMENTS, AND/OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR ANY INSTRUMENT, DOCUMENT, OR AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY, TO THE EXTENT SUCH MATTER IS TRIED AT ALL.

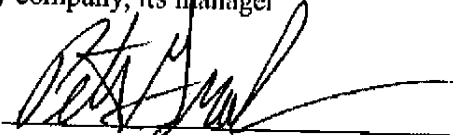
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.


**BORROWER:**

**GVP Victoria, LLC**, an Illinois limited liability company

By: **GVP Holdings XIV, LLC**, an Illinois limited liability company, its manager

By:   
Peter M. Grahn, Manager


**GUARANTORS**

  
Marvin G. Grahn

  
Peter M. Grahn

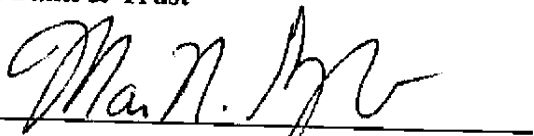
  
Erick V. Grahn

**GVP Holdings XIV, LLC**, an Illinois limited liability company, its manager

By:   
Peter M. Grahn, Manager

**LENDER:**

**Oxford Bank & Trust**

By: 

Name: MARC N. KOZEL

Its: VICE President



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STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Peter M. Grahn, known to me as the Manager of GVP Holdings XIV, LLC, an Illinois limited liability company, the manager of GVP Victoria, LLC, an Illinois limited liability company, and known to me to be the same person whose name is subscribed to the foregoing instrument, personally appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as such Manager of GVP Holdings XIV, LLC, the manager of GVP Victoria, LLC, pursuant to authority, given by the members of said limited liability companies, as his own and free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

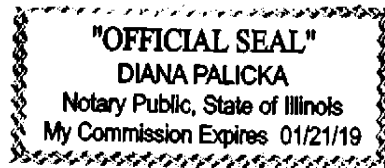
Given under my hand and notarial seal this 1 day of July, 2018.

*Diana Palicka*

Notary Public

My Commission Expires: 1-21-19

STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )



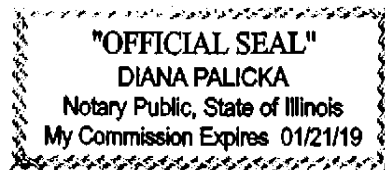
I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **Marvin G. Grahn** personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 1 day of July, 2018.

*Diana Palicka*

Notary Public

My Commission Expires: 1-21-19



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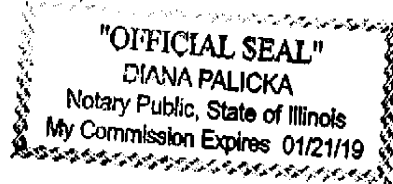
STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **Peter M. Grahn** personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this   1   day of   July  , 2018.

*Diana Palicka*

Notary Public



My Commission Expires:   1-21-19  

STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF COOK     )

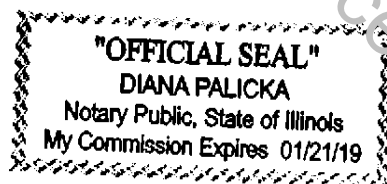
I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **Erick V. Grahn** personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this   1   day of   July  , 2018.

*Diana Palicka*

Notary Public

My Commission Expires:   1-21-19  



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STATE OF ILLINOIS        )  
  )  
COUNTY OF COOK        )        SS

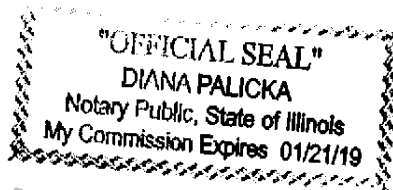
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Peter M. Grahn, known to me as the Manager of **GVP Holdings XIV, LLC**, an Illinois limited liability company, and known to me to be the same person whose name is subscribed to the foregoing instrument, personally appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as such Manager of said limited liability company, pursuant to authority, given by the members of said limited liability company, as his own and 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 1 day of July, 2018.

*Diana Palicka*

Notary Public

My Commission Expires: 1-21-19



STATE OF ILLINOIS        )  
  )  
COUNTY OF DUPAGE     )        SS

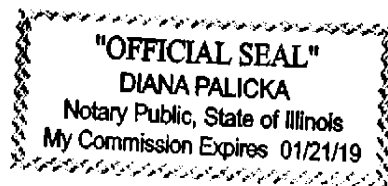
I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Marc N. Gryzlo, a Vice President, Commercial Real Estate of **Oxford Bank & Trust**, known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, personally appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1 day of July, 2018.

*Diana Palicka*

Notary Public

My Commission Expires: 1-21-19



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## EXHIBIT A

### THE PROPERTY

**PIN:** 14-20-303-007-0000

**Address:** 3531 N. Janssen, Chicago, Illinois 60613

LOT 11 AND THE NORTH 1/2 OF LOT 12 IN BLOCK 1 IN LANE PARK ADDITION TO LAKEVIEW IN SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.