



Doc#: 0909629037 Fee: \$66.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 04/06/2009 11:55 AM Pg: 1 of 16

**This instrument prepared by
and please return to:**

**Polsinelli Shalton Flanigan Suelthaus PC
180 N. Stetson Avenue, Suite 4525
Chicago, Illinois 60601-6733
Attention: Kimberly K. Enders, Esq.**

P.I.N.: 20-03-108-013-0000
COMMONLY KNOWN AS: 4051-53 S. Michigan, Chicago, Illinois

LOAN MODIFICATION AGREEMENT

This instrument is a Loan Modification Agreement ("Modification") among The PrivateBank and Trust Company, an Illinois banking corporation ("Lender"), 4053/57 Michigan, LLC, an Illinois limited liability company ("Borrower"), and Leigh Ballen, Adolfo Castellanos, and Developers, Inc., an Illinois corporation (collectively "Guarantors").

RECITALS:

A. Borrower holds fee simple title to the real estate commonly known as 4051-53 S. Michigan, Chicago, Illinois, which is legally described on Exhibit A attached hereto ("Real Estate"). Leigh Ballen and Adolfo Castellanos are the managing members of Borrower, and president and secretary, respectively, of Developers, Inc.

B. On June 7, 2006, Borrower, Guarantors and Lender entered into a Loan Agreement ("Loan Agreement"), pursuant to which Lender granted a loan to Borrower in the amount of One Million Five Hundred Twenty-Five Thousand Five Hundred (\$1,525,500.00) Dollars ("Loan"),

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which Loan was evidenced by a Promissory Note in the amount of One Million Five Hundred Twenty-Five Thousand Five Hundred (\$1,525,500.00) Dollars ("Note"). The proceeds of the Loan were used to construct a building on the Real Estate containing eight units ("Units"), submit the Real Estate to the Illinois Condominium Act and sell the Units to third party buyers (the "Project"). To secure the Loan, Borrower, Guarantors and other debtor parties executed and delivered to Lender the following documents (collectively "Security Documents"):

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing, which was recorded with the Cook County Recorder of Deeds on June 26, 2006 as Document No. 06117704196 ("Mortgage");

2. a Guaranty of Note, Mortgage, Loan Agreement and Other Undertakings executed by Guarantors ("Guaranty");

3. UCC Financing Statements authorized by Borrower and filed with the Secretary of State of Illinois;

4. an Assignment and Pledge of Earnest Money and Real Estate Sale Contracts executed by Borrower;

5. an Assignment of Project Documents executed by Borrower;

6. a Letter Agreement regarding waiver of tax and insurance escrows executed by Borrower and Lender;

7. General Contractor's Lien Subordination Agreement executed by Admar Construction, Inc. ("General Contractor"); and

8. a Loan Settlement Statement executed by Borrower.

C. The balance on the Loan is \$812,393.00 and three of the eight units have been sold. The Loan matured on January 1, 2008. Borrower has now requested Lender to extend the

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maturity date of the Loan from January 1, 2008 until December 31, 2008 and to revise the interest rate charged on the Note. Lender is agreeable to these requests subject to the covenants, conditions and restrictions contained herein.

NOW, THEREFORE, in consideration of good and valuable consideration, the parties agree as follows:

1. The Maturity Date set forth in subparagraph (b) of the Note is hereby modified and amended to insert the date of December 31, 2008. Interest payments must be made on the first day of each month until the Loan is paid in full.

2. The interest rate charged on the loan will be at the prime rate of interest in effect from time to time at The Private Bank and Trust Company per annum. The terms "greater of (i) seven and one-half (7.5%) and (ii)" are hereby deleted from subparagraph (a) of the Note.

3. The Security Documents are hereby modified and amended to secure the Note as hereby modified and all references to the Note in the Security Documents are modified and amended to refer to the Note as hereby modified. All interest charged on and all payments made on the Note previously are unchanged.

4. This Modification shall be effective upon Lender's receipt of this Modification executed by the parties hereto and the following documents and items:

(a) an Organizational Resolution of Borrower;

(b) an LLC File Detail Report of Borrower from the Secretary of State of Illinois

Website;

(c) a Certification of No Change to Organizational Documents of Borrower;

(d) a Corporate Resolution of Developers, Inc.;

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(e) a Corporation File Detail Report of Developers, Inc. from the Secretary of State of Illinois Website;

(f) a date down endorsement to Lender's loan title insurance policy;

(g) updated certificates of insurance for all parcels, if required by Lender; and

(h) payment of the fees and expenses set forth in Section 8 hereof.

5. This Modification shall constitute an amendment of the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Note ("Loan Documents") reference is made to the Loan Documents aforesaid, such reference shall be deemed a reference to such Loan Documents as hereby modified and amended. All other provisions of the Loan Documents remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Mortgage as revised by this Modification, or the covenants, conditions and agreements therein contained or contained in the Note.

6. In the event of conflict between any of the provisions of the Loan Documents and this instrument, the provisions of this instrument shall override and control.

7. Borrower and Guarantors hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

8. Concurrently herewith, Borrower agrees to pay Lender's fee in the amount of \$2,000.00 and all of Lender's expenses arising out of and in connection with this Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees. Lender will not charge a release fee upon the sale of each condominium unit.

9. Guarantors hereby expressly acknowledge and confirm that by executing this Modification, Lender has not waived, altered or modified Lender's rights under any of the Loan Documents to amend, extend, renew or modify or otherwise deal with the obligations of the

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parties hereto or any of the security given to Lender in connection therewith without the consent of Guarantors and without such action releasing, modifying, or affecting the obligations of Guarantors or affecting the security heretofore granted to Lender.

10. BORROWER AND GUARANTORS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THIS MODIFICATION, THE MORTGAGE, THE LOAN AGREEMENT, THE SECURITY DOCUMENTS, OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER, BORROWER AND/OR GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER OR GUARANTOR, OR ANY OF THEM.

11. BORROWER AND GUARANTORS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER AND GUARANTORS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER AND GUARANTORS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT

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FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER AND GUARANTORS IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO BORROWER AND GUARANTORS AT THEIR ADDRESSES AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF LENDER. BORROWER AND GUARANTORS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING, AFTER ALL APPEAL RIGHTS ARE EXHAUSTED, SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

BORROWER AND GUARANTORS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER AND GUARANTORS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS; PROVIDED, HOWEVER, UNLESS LENDER IS REQUIRED BY LAW TO INSTITUTE PROCEEDINGS IN ANY OTHER JURISDICTION, LENDER SHALL FIRST INSTITUTE PROCEEDINGS IN A STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS.

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12. Borrower and Guarantors warrant to Lender that neither Borrower nor Guarantors nor any affiliate is identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower and Guarantors covenant to Lender that if they become aware that they or any affiliate are identified on any Blocked Persons List, Borrower and Guarantors shall immediately notify Lender in writing of such information. Borrower and Guarantors further agree that in the event they or any affiliate are at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

Signature page follows

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IN WITNESS WHEREOF, the parties hereto have executed this Modification on _____

May 28, 2008, to be effective as of January 1, 2008.

LENDER:

The PrivateBank and Trust Company, an Illinois banking corporation

By: [Signature]
Its MANAGING DIRECTOR

BORROWER:

4053/57 Michigan, LLC, an Illinois limited liability company

By: [Signature]
Leigh Ballen, Managing member

By: [Signature]
Adolfo Castellanos, Managing member

GUARANTORS:

[Signature]
Leigh Ballen

[Signature]
Adolfo Castellanos

Developers, Inc., an Illinois corporation

By: [Signature]
Leigh Ballen, President

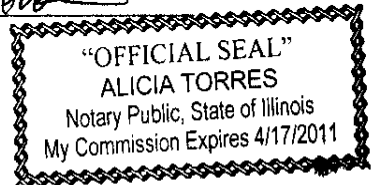
Attest: [Signature]
Adolfo Castellanos, Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

The undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that James F. Wagner Managing Director of The PrivateBank and Trust Company, an Illinois banking corporation, 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 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 May 28, 2008.

[Signature]
Notary Public



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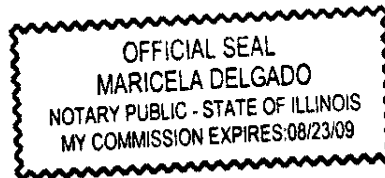
STATE OF ILLINOIS)
)
) SS
COUNTY OF C O O K)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Leigh Ballen, individually and managing member of 4053/57 Michigan, LLC, an Illinois limited liability company, 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 the said instrument as his 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 May 27, 2008.

Maricela Delgado
Notary Public

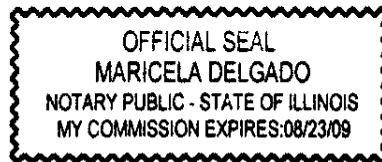
STATE OF ILLINOIS)
)
) SS
COUNTY OF C O O K)



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Adolfo Castellanos, individually and as managing member 4053/57 Michigan, LLC, an Illinois limited liability company, 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 the said instrument as his 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 May 27, 2008.

Maricela Delgado
Notary Public



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STATE OF ILLINOIS)
)
) SS
COUNTY OF C O O K)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Leigh Ballen, President, and Adolfo Castellanos, Secretary, of Developers, Inc., an Illinois corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal May 27, 2008.

Maricela Delgado
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION:

LOT 2 IN O'DONNELL'S RESUBDIVISION OF LOTS 1, 2, 3 AND 4 IN O'DONNELL'S SUBDIVISION OF LOTS 13, 14, 15 AND THE SOUTH NINE FEET OF LOT 16 IN BLOCK 6 IN PRYOR AND HOPKINS' SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 4051-53 S. Michigan, Chicago, Illinois

P.I.N.: 20-03-108-013-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY**PROMISSORY NOTE**

\$1,525,500.00

June 7, 2006

FOR VALUE RECEIVED the undersigned, Harris N.A. as trustee and not individually under trust agreement dated June 1, 2006 and known as its Trust No. HTB-1845 and 4053/57 Michigan, LLC, an Illinois limited liability company ("Borrower"), promises to pay to the order of The PrivateBank and Trust Company (said Bank and each successive owner and holder of this Note being hereinafter called "Holder"), the principal sum of One Million Five Hundred Twenty-Five Thousand Dollars Five Hundred (\$1,525,500.00), or so much thereof as may from time to time be outstanding hereunder, together with interest on the balance of principal from time to time remaining unpaid, in the amounts, at the rates and on the dates hereafter set forth.

The rate of interest payable on this Note will change from time to time as hereafter provided. Monthly payments on account of this Note shall be adjusted from time to time as the rate of interest changes. Payments on account of this Note shall be made as follows:

(a) On July 1, 2006, and on the first day of each succeeding calendar month to and including January 1, 2008, there shall be paid interest only, in arrears, on the outstanding principal balance at a rate equal to the greater of (i) seven and one-half (7.5%) and (ii) the prime rate of interest in effect from time to time at The PrivateBank and Trust Company per annum.

(b) On January 1, 2008 ("Maturity Date"), the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

The prime rate of The PrivateBank and Trust Company is currently the highest prime rate of interest published in The Wall Street Journal. If this index is no longer available, the Bank will choose a new index in compliance with applicable law and will notify Borrower of its choice. Borrower acknowledges that it is advised that said rate is not Bank's lowest or most favorable lending rate.

Interest shall be calculated on the basis of a year having 360 days and paid based on the actual days outstanding.

Payment upon this Note shall be made in lawful money of the United States at such place as the Holder of this Note may from time to time in writing appoint and in the absence of such appointment, shall be made at the offices of The PrivateBank and Trust Company, 10 North Dearborn Street, Suite 900, Chicago, Illinois 60602.

This Note may be prepaid, without premium or penalty, in whole or in part, and all accrued interest hereon shall be payable and shall be paid on the date of prepayment.

Without limiting the provisions of the succeeding paragraphs, in the event any payment of interest is not paid within ten (10) days after the date the same is due, the undersigned promises to

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pay a "Late Charge" of five (5%) percent of the amount so overdue to defray the expense incident to handling any such delinquent payment or payments.

This Note is executed pursuant to a Construction Loan Agreement ("Loan Agreement") and is secured by an instrument entitled "Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing" ("Mortgage") and other documents, all being executed and delivered concurrently herewith.

At the election of the Holder hereof, without notice, the principal sum remaining unpaid hereon, together with accrued interest, shall be and become at once due and payable in the case of default in the payment of principal or interest when due in accordance with the terms hereof or upon the occurrence of any "Event of Default" under the Mortgage or the Loan Agreement.

Under the provisions of the Mortgage and the Loan Agreement, the unpaid balance hereunder may, at the option of the Holder, be accelerated and become due and payable forthwith upon the happening of certain events as set forth therein. The Mortgage and the Loan Agreement are, by this reference, incorporated herein in their entirety and notice is given of such possibility of acceleration.

The principal hereof, including each installment of principal, shall bear interest after the occurrence of an event of default, not cured within the applicable cure period, at the annual rate (herein called the "Default Rate") determined by adding four (4%) percentage points to the interest rate then required to be paid, as above provided, on the principal balance.

Borrower waives notice of default, presentment, notice of dishonor, protest and notice of protest.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceeding, the undersigned promise to pay all costs incurred by Bank in connection therewith including, but not limited to, court costs, litigation expense and reasonable attorneys' fees.

Payments received on account of this Note shall be applied first to the payment of any amounts due pursuant to the next preceding paragraph, secondly to interest and Late Charges and the balance to principal.

Funds representing the proceeds of the indebtedness evidenced herein which are disbursed by Holder by mail, wire transfer or other delivery to Borrower, Escrowees or otherwise for the benefit of Borrower shall, for all purposes, be deemed outstanding hereunder and received by Borrower as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such mailing, wire transfer or other delivery until repaid to Holder, notwithstanding the fact that such funds may not at any time have been remitted by such Escrowees to the Borrower.

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BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES IRREVOCABLY THE RIGHT IT MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, MORTGAGE OR ANY OF THE OTHER OBLIGATIONS, OR THE COLLATERAL SECURED BY THE SECURITY DOCUMENTS, OR ANY AGREEMENT, EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH HOLDER AND BORROWER ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER.

Borrower hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Chicago, Illinois over any action or proceeding based hereon and Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such state or federal court. Borrower hereby irrevocably waives, to the fullest extent they may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Borrower irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to such Borrower at its address as specified herein or otherwise in the records of the Holder. Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

Borrower warrants to Holder that neither the Borrower nor any affiliate is identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower covenants to Holder that if it becomes aware that it or any affiliate is identified on any Blocked Persons List, the Borrower shall immediately notify the Holder in writing of such information. Borrower further agrees that in the event it or any Affiliate is at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Holder to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, the Holder may immediately contact the Office of Foreign Assets Control and any other government agency the Holder deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Holder will forbear enforcement of its rights and remedies during such time as (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List and (2) the Holder determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of the Holder and encumbering, any part of the Premises (as defined in the Mortgages) or otherwise

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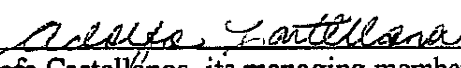
adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

This Note is executed by Harris N.A., not individually or personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in them as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on Trustee personally to pay any indebtedness arising or accruing under or pursuant to this Note, or to perform any covenant, undertaking, representation or agreement, either express or implied, contained in this Note, all such personal liability of Trustee, if any, being expressly waived by each and every person now or hereafter claiming any right under this Note.

Time is of the essence of this Note and each provision hereof.

4053/57 Michigan, LLC, an Illinois limited liability company

By: 
Leigh Ballen, its managing member

By: 
Aldofo Castellanos, its managing member

**SEE EXPLANATORY RIDER ATTACHED
HERE TO AND MADE A PART HEREOF**

Harris N.A., a national banking association, as Trustee and not individually under Trust Agreement dated June 1, 2006 and known as its Trust No. HTP 1845

By: 
Its: Mary M. Bray, Trust Officer

Attest: 
Its: Ronald L. Jansen
Senior Vice President

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EXCULPATORY RIDER

This instrument is executed by the Harris, N.A., as Trustee under the provisions of a Trust Agreement dated 6/1/06, and known as Trust no. HTB 1845, not personally, but solely as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. This instrument is executed and delivered by the Trust solely in the exercise of the powers expressly conferred upon the Trustee under the Trust and upon the written direction of the beneficiaries and/or holders of the power of direction of said Trust and Harris, N.A. warrants that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the trustee while in form purporting to be the said representations, warranties, covenants, undertakings and agreements of said Trustee are each and every one of them not made with the intention of binding Harris, N.A. in its individual capacity, but are made and intended solely for the purpose of binding only that portion of the Trust property specifically described herein. No personal liability or personal responsibility is assumed by or nor shall at any time be asserted or enforceable against the Harris, N.A. on account of any representations, Warranties, (including but not limited to any representations and/or warranties in regards to potential and/or existent Hazardous Waste) covenants, undertakings and agreements contained in the instrument, (including but not limited to any indebtedness accruing plus interest hereunder) either express or implied or arising in any way out of the transaction in connection with which this instrument is executed, all such personal liability or responsibility, if any, being expressly waived and released, and any liability (including any and all liability for any violation under the Federal and/or State Environmental or Hazardous Waste laws) hereunder being specifically limited to the Trust assets, if any, securing this instrument. Any provision of this instrument referring to a right of any person to be indemnified or held harmless, or reimbursed by the Trustee for any costs, claims, losses, fines, penalties, damages, costs of any nature including attorney's fees and expenses, arising in any way out of the execution of this instrument or in connection thereto are expressly waived and released by all parties to and parties claiming, under this instrument. Any person claiming or any provision of this instrument referring to a right to be held harmless, indemnified or reimbursed for any and all costs, losses and expenses of any nature, in connection with the execution of this instrument, shall be construed as only a right of redemption out of the assets of the Trust. Notwithstanding anything in this instrument contained, in the event of any conflict between the body of this exoneration and the body of this instrument, the provisions of this paragraph shall control. Trustee being fully exempted, nothing herein contained shall limit the right of any party to enforce the personal liability of any other party to this instrument.