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1104844063

**THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

Doc#: 1104844063 **Fee:** \$50.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 02/17/2011 12:42 PM Pg: 1 of 8

Holland & Knight LLP
131 S. Dearborn Street
30th Floor
Chicago, Illinois 60603
Francis L. Keldermans, Esq.

This space reserved for Recorder's use only

FOURTH MODIFICATION OF LOAN DOCUMENTS AND FORBEARANCE AGREEMENT

THIS FOURTH MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 15 day of December, 2010, effective as of September 13, 2009, by and among Wabash to Michigan on Pershing Road, LLC, an Illinois limited liability company ("Borrower") John Martin and Linda Martin, each individually (collectively "Guarantor"), MB Financial Bank, N.A., a national banking association, successor in interest to Heritage Community Bank, an Illinois banking corporation, its successors and assigns ("Lender").

RECITALS

A. Lender has heretofore made a construction loan ("Initial Loan") to Borrower in the principal amount of One Hundred Thirty One Thousand and 00/100 Dollars (\$131,000.00) as evidenced by a Promissory Note dated November 2, 2007 in the principal amount of the Initial Loan made payable by Borrower to the order of Lender ("Initial Note").

B. The Initial Note is secured by, among other things, (i) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated November 2, 2007 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on November 19, 2007 as Document No. 0732342040, which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A-1 hereto ("Property"), as modified by that Modification to Mortgage dated March 14, 2008 from Borrower to Lender and recorded with the Recorder's Office on April 8, 2008 as Document No. 0809957020, and as modified by that Modification to Mortgage dated May 2, 2009 from Borrower to Lender and recorded with the Recorder's Office on September 1, 2009 as Document No. 0924429011 (documents collectively referred to as "Mortgage"), and (ii) certain other loan documents (the Initial Note, the Mortgage and the other documents evidencing, securing and guarantying the Initial Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

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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. **Recitals**. The foregoing recitals are true and correct and are hereby incorporated herein.

2. **Acknowledgements by Borrower**. Borrower and Guarantor acknowledge and agree as follows:

a. **Acknowledgement of Subject Defaults**. On and as of the date hereof (i) the Subject Defaults exist and continue to exist under the Loan Documents; (ii) there are no viable claims, affirmative defenses, causes of action, defenses, charges, pleas, damages, torts, or set-offs in law or equity whatsoever with respect to the Loan Documents, any matters relating to the Loan or against Lender, its officers, directors, shareholders, attorneys and agents (collectively, "Claims") and to the extent that any such Claims exist, in consideration of this Agreement and Lender's agreement to Forebear, Borrower and Guarantor knowingly and voluntarily waive any such Claims; (iii) timely, adequate and proper written notice from Lender of the occurrence of the Subject Defaults is hereby waived by Borrower and Guarantor; (iv) all grace periods, if any, applicable to the cure of the Subject Defaults have expired; (v) the Subject Defaults are continuing without timely cure by Borrower or Guarantor; and (vi) Lender has not, in whole or in part, waived in any respect the Subject Defaults or any of its rights and remedies with respect thereto;

b. **Acknowledgement of Lender's Right to Accelerate and Foreclose**. Borrower acknowledges that as of the date hereof and pursuant to the Loan Documents, the delinquent principal owed to Lender is \$159,770.59 and Borrower agrees to pay all such foregoing amounts to Lender on or before January 15, 2012. As of September 13, 2009: (i) Lender had the right to accelerate and declare the Loan and all other sums due and owing under the Loan Agreement and the Note to be immediately due and payable and to make demand upon Borrower for the immediate payment of all such amounts; (ii) such acceleration and demand for payment, if made, would be in all respects adequate and proper; (iii) Lender had and has the right to forthwith institute an action to foreclose any and all collateral (as defined in the Loan Agreement) for the Loan and to recover damages, costs and attorneys' fees in connection with the breach of any of the provisions of the Loan Documents; and (iv) Borrower and Guarantor waive any and all further notice, presentment, notice of dishonor or demand with respect to the Subject Defaults;

c. **Acknowledgement of Indebtedness**. (i) The total principal amount due to Lender from Borrower under the Loan as of the date hereof is \$159,770.59, (ii) such principal amount plus any accrued but unpaid interest thereon, at the Default Rate, plus all costs, fees, expense, and attorneys fees due from Borrower to Lender under the Loan Documents, remain outstanding and unpaid; and (iii) all such amounts are now due and payable in full, without offset, deduction or counterclaim of any kind or character whatsoever, as a result of any and all interest, fees and other charges, including, without limitation, attorneys' fees and costs of collection, which are payable to Lender under the Loan Documents (items (i), (ii), and (iii) are collectively referred to as the "Indebtedness");

d. **Acknowledgement That Obligations Under the Loan Documents Continue in Full Force and Effect**. The Indebtedness and all other respective liabilities and obligations of

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\$469,895.00, as may be amended from time to time ("469 Note") or any documents relating to or securing the 469 Note ("469 Documents"), together with all renewals or extensions or modifications or consolidations of and substitutions for the Note, Related Documents, 469 Note or 469 Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage or the 469 Documents together with interest on such amounts as provided in this Mortgage and the 469 Documents."

7. **Cross Default.** An Event of Default under the any of the Loan Documents with respect to any indebtedness owing by Borrower and any Guarantor to Lender thereunder ("Other Loans") shall be an Event of Default with respect to this Loan, and upon the occurrence of an Event of Default, Lender shall have the right to exercise any and all remedies granted to Lender under this Agreement in accordance with the terms and conditions hereof..

8. **Reaffirmation of Guaranty.** Each undersigned Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of each Guarantor in the Guaranty are, as of the date hereof, true and correct and none of the Guarantors knows of any default thereunder. The Guaranty continues to be the valid and binding obligation of each Guarantor, enforceable in accordance with its terms and no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder. In addition, each Guarantor hereby expressly and unconditionally waives, releases, and discharges any and all rights or claims under the Illinois Sureties Act, 740 ILCS 55/0.01 et. seq. ("Illinois Sureties Act"), and further acknowledges and agrees that Lender has no duty or obligation to any Guarantor under the Illinois Sureties Act. Each undersigned Guarantor acknowledges and agrees that the failure of any other Guarantor to execute this Agreement (or any of the other Loan Documents) shall not affect, diminish, impinge, amend or alter the Guaranty and such Guaranty shall continue to be the valid and binding obligation of each Guarantor, enforceable in accordance with its terms and no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder by virtue of the failure of any Guarantor to execute this Agreement.

9. **Representations and Warranties of Borrower.** Borrower and Guarantors hereby represent, covenant and warrant to Lender as follows:

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

(b) Other than the Subject Defaults, there is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower and Guarantor do 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 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 and Guarantor enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

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Agreement, Borrower and Guarantor hereby knowingly and voluntarily waive any right or claim to object to the granting of relief from stay to Lender as contemplated by the foregoing sentence.

13. **No Bankruptcy Petition.** Borrower represents and warrants to Lender that it has not petitioned for reorganization under any applicable federal or state bankruptcy laws, and expressly agrees that they will not seek to upset, disturb, set aside, or otherwise overturn any portion of this Agreement in any subsequent bankruptcy proceeding(s) which may be filed.

14. **Extension.** The parties hereby stipulate and agree that the Forbearance Period is intended by the parties to provide to Borrower and Guarantor a full and adequate opportunity to satisfy the obligations set forth herein. In consideration of this Agreement, Borrower hereby acknowledges and agrees that if Borrower should file a petition under any applicable federal or state bankruptcy laws prior to the payment in full of all sums due to Lender under the Loan Documents, such petition and filing shall be deemed to be an act of bad faith as against Lender as contemplated by the case of In re Albany Partners Ltd., 749 F.2d 670 (11th Cir. 1984) and similar cases. Borrower further stipulates and agrees that upon the entry of an order for relief in any bankruptcy case commenced by Borrower, that Lender shall be entitled to immediate relief from the automatic stay, as a consequence of such bad faith.

15. **Environmental.** Borrower and Guarantor represent and warrant to Lender that neither are aware of any condition present at the Property or any portion thereof which constitutes or would give rise to a violation of any law, ordinance, rule or regulation, including, without limiting the generality of the foregoing, those with respect to environmental protection, zoning, building, occupational safety and health, laws, ordinances, rules or regulations relating to "environmental protection", which include but are not limited to those regulating the use of substances defined as or included in the definition of "hazardous materials" or "toxic substances" under any applicable federal or state laws or regulations.

16. **Indemnification.** Borrower and Guarantor shall indemnify and hold Lender and its directors, officers, agents, employees, and attorneys harmless from all liability, loss, expense or damage of any kind or nature, including, without limitation, any suits, proceedings, claims, demands, or damages (including attorneys' fees and costs paid or incurred in connection therewith at both trial and appellate levels), incurred or arising by reason of any act, conduct or omission of Borrower or Guarantor or their respective agents.

17. **Waiver and Release.** Borrower and Guarantor hereby waive and release all defenses, claims, counterclaims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, costs and expenses (including attorneys' fees) of any kind, character or nature whatsoever, known or unknown, fixed or contingent, which Borrower, its officers, managers or members, and Borrower's or Guarantor's respective agents may have or claim to have against Lender, its predecessors, and all of their officers, directors and agents, including, without limitation, any defenses, claims, rights of set off, counterclaims, liabilities or obligations arising with respect to the Loan Documents and the execution and negotiation of this Agreement.

18. **Miscellaneous.**

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

(i) Any notices, communications and waivers under this Agreement, the Loan Agreement, or any of the other Loan Documents shall be in writing and shall be (1) delivered in person or (2) by overnight express carrier, addressed in each case as follows:

To Lender: MB Financial Bank
6111 North River Road, 4th Floor
Rosemont, Illinois 60018
Attn: Dustin J. Ackman, Vice President

With a copy to: Holland & Knight LLP
131 S. Dearborn Street, 30th Floor
Chicago, Illinois 60603
Attn: Francis L. Keldermans

To Borrower: Wabash to Michigan on Pershing Road, LLC
3933 S. Wells, Unit 1
Chicago, IL 60609
Attn: John Martin

With a copy to: _____

To Guarantor: John E. Martin
3933 S. Wells, Unit 1
Chicago, IL 60609

Linda E. Martin
60 E. 89th Place
Chicago, IL 60609

or to any other address as to any of the parties hereto shall designate in a written notice to the other parties. All notices sent pursuant to the terms of this Agreement shall be deemed received (i) if personally delivered, then on the date of delivery or (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent.

(j) To induce Lender to enter into this Agreement, Borrower and Guarantor irrevocably agree that, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, STATE OF ILLINOIS (OR OTHER LOCATION ACCEPTABLE TO LENDER). BORROWER AND GUARANTOR

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

LENDER:

MB FINANCIAL BANK, N.A., a national banking association, successor in interest to HERITAGE COMMUNITY BANK, an Illinois banking corporation

By: [Signature]
Name: Dave J. Acumani
Title: VICE PRESIDENT

BORROWER:

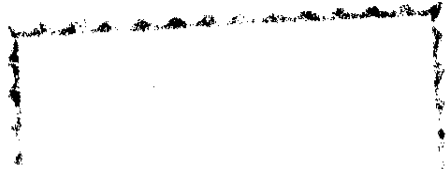
WABASH TO MICHIGAN ON PERSHING ROAD, LLC, an Illinois limited liability company

By: [Signature]
Name: John E. Martin
Title: Manager

GUARANTOR:

[Signature]
John Martin
[Signature]
Linda Martin

County of Cook Clerk's Office

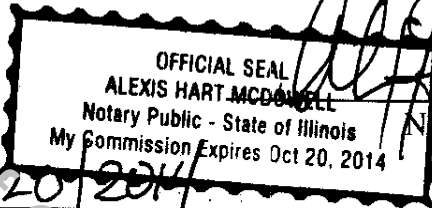


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STATE OF ILLINOIS)
) .ss
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **John Martin** 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 25th day of January, 2011.

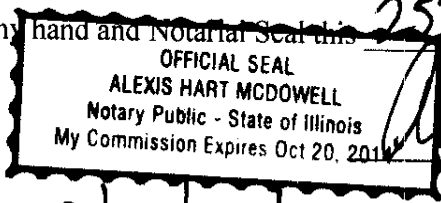


My Commission Expires: 10/20/2014

STATE OF ILLINOIS)
) .ss
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Linda Martin** 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 25th day of January, 2011.



My Commission Expires: 10/20/2014

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EXHIBIT A-2

THE 56 PROPERTY

UNITS A AND B AND PARKING SPACES G-1 AND G-2 IN THE 56 EAST PERSHING CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

THE EAST 31 FEET OF THE WEST 124.00 FEET OF THE SOUTH 97 FEET OF BLOCK 2 IN PAGE'S SUBDIVISION OF THE SOUTH 10 ACRES OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT NORTH 17 FEET DEDICATED FOR AN ALLEY) IN COOK COUNTY, ILLINOIS.

Property Address: 56 E. Pershing Road, Chicago, Illinois

Tax Parcel Number: 17-34-322-055-000

(New P.I.Ns. will be 17-34-322-065-1001- Unit 1 and 17-34-322-065-1002- Unit 2)

#9343319_v6