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Doc#: 1232022011 Fee: \$64.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/15/2012 08:45 AM Pg: 1 of 14

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN
TO:

Gonsky, Baum & Whittaker, Ltd.
112 South Sangamon
4th Floor
Chicago, Illinois 60607
Mitchell P. Whittaker, Esq.

This space reserved for Recorder's use only

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 15th day of July 2012, by and among **THE SHOPS ON WABASH, LLC**, an Illinois limited liability company ("Borrower"), **MB FINANCIAL BANK, N.A.**, its successors and assigns ("Lender"), and **CHICAGO WABASH PROPERTY, LLC**, an Illinois limited liability company, **CHRIS TOMARAS** and **CHRIS GIOTAKIS** (each a "Guarantor" and collectively as "Guarantors").

Recitals

A. Lender has heretofore made a loan ("Loan") to Borrower in the original principal amount of up to **EIGHT MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$8,400,000.00)** on July 28, 2010. Initially capitalized terms used but not expressly defined in this Agreement have the respective meanings given them in the Loan Documents, as defined below.

B. The Loan is evidenced by a Mortgage Note dated July 28, 2010, in the principal amount of the Loan made payable by Borrower to the order of Lender (the "Note"). The Note is secured by, among other things, (i) that certain Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement dated July 28, 2010, from Borrower to Lender, recorded with the Recorder of Deeds of Cook County, Illinois on September 20, 2010, as Document No. 1026331071 (the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "Property"); (ii) that certain Loan Agreement dated July 28, 2010, by and between Borrower and Lender (the "Loan Agreement"); (iii) that certain Amended and Restated Collateral Assignment of Leases and Rents dated July 28, 2010, recorded with the Recorder of Deeds of Cook County, Illinois on September 20, 2010, as document No. 1026331072 (the "Collateral Assignment"); (iv) that certain Environmental Indemnity Agreement dated July 28, 2010, from Borrower to Lender (the

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“Indemnity Agreement”); (v) that certain Guaranty of Payment dated July 28, 2010, from Guarantors to Lender (the “Guaranty of Payment”); and (vi) certain other loan documents, the Note, the Mortgage, the Loan Agreement, the Collateral Assignment, the Indemnity Agreement, the Guaranty of Payment and the other documents evidencing, securing and guarantying the Loan are sometimes collectively referred to herein as the “Loan Documents”).

C. Borrower desires to amend the Loan Documents in accordance with the terms and conditions of this Agreement.

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 agreement 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. **Extension of Maturity Date.** The Maturity Date is hereby extended to November 15, 2012. All references in the Note, the Mortgage, the Loan Agreement, the Indemnity Agreement and the other Loan Documents to the Maturity Date shall be deemed to reference the Maturity Date as extended to November 15, 2012.

2. **Interest Rate.** As of July 15, 2012, principal and interest payments on the unpaid principal balance of the Note shall be payable monthly on the fifteenth (15th) day of each month, starting on the fifteenth (15th) day of August 2012, computed at a per annum fixed rate equal to Five and 50/100 percent (5.5%) (the “Interest Rate”). The indebtedness shall be amortized for a twenty-eight (28) year period, with a balloon payment of the entire Indebtedness that shall be due and payable on November 15, 2012, if not previously repaid as provided herein. The monthly principal and interest payment shall be Forty-Eight Thousand Seventy-Seven and 72/1000 Dollars (\$48,077.72). The term “**Indebtedness**” shall mean the indebtedness evidenced by the Note, including the principal, all interest and all prepayment fees and premiums, if any, and all extensions, renewals, modifications, or substitutions thereof, and all fees, costs and expenses incurred by Lender in connection with the Loan that are reimbursable by Borrower and all other sums due or required to be paid to Lender under the Loan Documents. Simultaneously with the execution of this Agreement, the Borrower shall pay all accrued interest due and owing the Lender through the date of this Agreement.

The Lender shall determine the interest for each day by multiplying a daily interest factor (based on the annual Interest Rate then in effect divided by 360) by the unpaid principal balance outstanding for such day. Interest shall be calculated and accrue on each advance of the principal of this Note from and including the day on which such advance is made.

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Interest on the Note shall be calculated on the basis of a 360-day year and the actual number of days elapsed in any portion of a month for which interest may be due. All interest payable under this Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in this Note. In the event the interest calculation method is found to be unenforceable, Lender has the right to convert the calculation on the basis of a 365-day year and any overpayment shall be credited to the Borrower.


Borrower's Initials

3. **Loan Amount.** As of July 15, 2012, the Loan and the Loan Amount are hereby reduced to Eight Million One Hundred Sixty-Three Thousand Four Hundred Sixteen and 60/100 (\$8,163,416.60).

4. **Right of Setoff.** Upon the occurrence of an Event of Default not cured within any applicable grace period (if any) in addition to any rights of setoff that the Lender may have under applicable law, without notice of any kind to the Borrower, Lender may appropriate and apply to the payment of the Note or of any sums due under this Agreement any and all balances, deposits, credits, accounts, certificates of deposit, instruments or money of the Borrower then or thereafter in the possession of the Lender.

5. **UCC Financing Statements.** Borrower acknowledges that MB Financial Bank, N.A. is the successor in interest to Broadway Bank, and Borrower consents to MB Financial Bank, N.A. filing additional UCC Financing Statements naming MB Financial, N.A. as the creditor in order to protect the Collateral as permitted under the Loan Documents.

6. **Release.**

(a) **Release of Lender.** As consideration for Lender's execution of this Agreement, Borrower and Guarantors hereby release Lender and its affiliates, shareholders, partners, predecessors, employees, officers, directors, attorneys, parent corporations, subsidiaries and agents ("Lender Parties"), from any and all known and unknown claims and causes of action which Borrower and/or Guarantors may have against any of the Lender Parties, arising from or related to, the Note or any other Loan Document, agreement, or understanding, or action or inaction with regard to the Property, or the Loan, purported or acknowledged with respect thereto. Borrower and Guarantors agree and acknowledge that the matters released are not limited to matters which are known or disclosed.

Borrower and Guarantors further acknowledge that this release, among other things, applies to claims arising out of or with respect to any and all transactions relating to the Note, the Loan Documents, or any of them, based on any occurrence prior to the date hereof, including, without limitation, any breach of fiduciary duty or duty of fair dealing, breach of confidence, breach of loan commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violation of the Racketeer Influenced and Corrupt Organizations Act, violation of any other statute, ordinance or regulation, intentional or negligent infliction of mental or emotional distress, tortious interference with contractual relations or prospective business advantage, tortious interference with corporate governance, breach of contract, bad practices,

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unfair competition, libel, slander, consumer fraud, conspiracy or any claim for wrongfully accelerating the Note or attempting to foreclose on any collateral for the Loan.

In connection with this release, Borrower and Guarantors acknowledge that Borrower and Guarantors are aware that Borrower and/or Guarantors may hereafter discover facts in addition to or different from those which Borrower and/or Guarantors now know or believe to be true with respect to the released matter, but that it is the intention of Borrower and Guarantors to hereby fully, finally and forever settle and release all released matters, disputes and differences, known or unknown, suspected or unsuspected, which now exist, may exist or heretofore have existed by Borrower and/or Guarantors against any of the parties released herein. In furtherance of that intention, the release provided herein shall be and remain in effect as a full and complete release notwithstanding the discovery of the existence of any such additional or different facts.

(b) **Reliance.** Borrower and Guarantors hereby acknowledge that Borrower and Guarantors have not relied upon any representation of any kind made by Lender in making the foregoing release.

(c) **Assignment of Claims.** Borrower and Guarantors represent and warrant to Lender that Borrower and Guarantors have not heretofore assigned or transferred, or purported to assign or to transfer, to any person or entity any matter released by such party hereunder or any portion thereof or interest therein, and Borrower and Guarantors agree to indemnify, protect, defend and hold the parties set forth hereinabove harmless from and against any and all claims based on or arising out of any such assignment or transfer or purported assignment or transfer by such party.

(d) **No Admission of Liability.** It is hereby further understood and agreed that the acceptance of delivery of this release by the parties released hereby shall not be deemed or construed as an admission of liability of any nature whatsoever arising from or related to the subject of the within release.

(e) **Acknowledgement and Waiver.** Borrower and Guarantors executing this Agreement acknowledge and agree that Borrower and Guarantors have no defenses to payment and performance of their obligations under the Loan Documents and forever waive any contention to the contrary.

7. **Confession of Judgment.** The Borrower hereby irrevocably authorizes any attorney representing the Lender to appear in any court of competent jurisdiction and confess a judgment without process in favor of the Lender for such amount as may then appear unpaid hereon, and to consent to immediate execution upon such judgment.

8. **Indemnification.** The Borrower hereby indemnifies and holds harmless the Lender and its directors, officers, agents, affiliates, counsel and employees ("Indemnitees") from and against all losses, claims, damages, costs, expenses and liabilities whatsoever (including without limitation the fees and expenses of counsel for and consultants of the Indemnitees), which may be imposed on, incurred by or asserted against any of them (whether direct, indirect or consequential and whether based on any federal or state laws or other statutory regulations, or

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otherwise) in any manner arising out of or relating to this Agreement or the other Loan Documents or any other transaction contemplated hereby or thereby or the use or intended use of the proceeds of the loans hereunder or the operations of the Borrower's business (collectively, the "Indemnified Matters").

9. **Deposit Accounts.** Borrower agrees that all deposit accounts and operating bank accounts of Borrower and subsidiaries are deposited with Lender and Borrower will continue to maintain such accounts with Lender until the Maturity Date. Borrower represents and warrants that Borrower has no other deposit accounts except those listed on Schedule A attached hereto.

10. **Patriot Act Notice.** The Lender hereby notifies the Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) (the "Patriot Act"), the Lender is required to obtain, verify and record information that identifies the Borrower and any other credit parties. The Borrower agrees to provide to the Lender promptly upon the Lender's request, such information as the Lender shall require for purposes of complying with the requirements of the Patriot Act, the federal regulations issued pursuant to the Patriot Act and any customer identification program established by the Lender in accordance therewith.

11. **Lender's Right of Inspection.** The Lender and its representatives shall have the right to inspect the Property and the books and records with respect thereto at all reasonable times upon not less than twenty four (24) hours prior notice to the Borrower, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

12. **Reaffirmation of Covenants.** Borrower does hereby reaffirm and agree to perform all of the terms, covenants, conditions and obligations applicable to such parties as set forth in the Mortgage and the Loan Documents as herein modified.

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

a. Except as disclosed in paragraph 18(i) below, the representations and warranties of Borrower in the other Loan Documents are true and correct in all material respects as of the date hereof.

b. There is currently no Event of Default (as defined in the Note) under the Loan Documents, and to the knowledge of Borrower there is no event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under 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. Except as disclosed in paragraph 18(i) below, there has been no material adverse change in the financial condition of Borrower or any other party whose financial

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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. Each Borrower 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 each Borrower. This Agreement has been duly executed and delivered on behalf of each Borrower.

14. **Representations, Warranties and Covenants of Guarantors.** Each Guarantor hereby represents, warrants and covenants, with respect to itself only, to Lender as follows:

a. The representations and warranties of such Guarantor in the Indemnity Agreement and Guaranty of Payment are true and correct in all material respects as of the date hereof.

b. There is currently no Event of Default (as defined in the Loan Agreement) under the Indemnity Agreement or the Guaranty of Payment, and such Guarantor does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute any such Event of Default.

c. The Indemnity Agreement and Guaranty of Payment 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 such Guarantor, 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 such Guarantor from the date of the most recent financial statement received by Lender.

e. As of the date hereof, such Guarantor has no claims, counterclaims, defenses, or set-offs with respect to the Indemnity Agreement or the Guaranty of Payment.

f. This Agreement has been duly executed and delivered on behalf of such Guarantor.

15. **Reaffirmation of Guaranty of Payment and Indemnity Agreement.**

Guarantors ratify and affirm the Indemnity Agreement and the Guaranty of Payment and agree that the Indemnity Agreement and the Guaranty of Payment, as amended hereby, are in full force and effect following the execution and delivery of this Agreement.

16. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. SA 3174042 (the "Title Policy"), dated as of

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the date this Agreement is recorded, evidencing the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

17. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees, reasonable attorneys' fees and expenses.

18. **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 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 acknowledge and waive 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 or Guarantors nor shall privity of contract be presumed to have been established with any third party.

d. Borrower, Guarantors 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 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.

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 "Loan Agreement", the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer

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to the Loan Agreement, the 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.

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

h. Time is of the essence of each of Borrower's and Guarantors' obligations under this Agreement.

i. The Borrower, Chicago Wabash Property, LLC and Chris Tomaras have disclosed to Lender the sale of Chris Giotakis' membership interest in The Shops on Wabash, LLC to Chris Tomaras. Lender acknowledges that the absence of Chris Giotakis' signature and his refusal to sign this Agreement will not constitute an Event of Default during the Term of this Agreement. However, the Borrower, Chicago Wabash Property, LLC and Chris Tomaras acknowledge that the Lender has not released Chris Giotakis as a Guarantor under his Guaranty of Payment or Indemnitor with respect to the Environmental Indemnity Agreement and the Lender has not consented to nor approved of the sale of Chris Giotakis' membership interest in The Shops On Wabash, LLC to Chris Tomaras.

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

BORROWER:

**THE SHOPS ON WABASH, LLC,
an Illinois limited liability company**

By: Its Manager

CHICAGO WABASH PROPERTY, LLC
an Illinois limited liability company

By: Chris Tomaras

Name: Chris Tomaras

Title: Manager

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GUARANTORS:

CHICAGO WABASH PROPERTY, LLC, an Illinois limited liability company

By: *Chris Tomaras*
Name: CHRIS TOMARAS
Its: Manager

Chris Tomaras
Chris Tomaras

Chris Giotakis

LENDER:

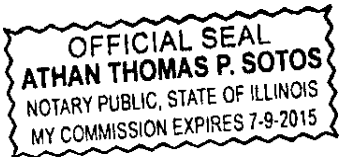
MB FINANCIAL BANK, N.A.

By: *[Signature]*
Name: Constantine Ardelas
Title: VP, Acquired Assets

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I Athanas P. Sotos, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Chris Tomaras, Manager of CHICAGO WABASH PROPERTY, LLC, Manager of THE SHOPS ON WABASH, LLC, 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 15 day of July, 2012.



Athanas P. Sotos
NOTARY PUBLIC
(SEAL)

My commission expires 7-9-2015

Name: Athanas P. Sotos

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Property of Cook County Clerk's Office

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"EXHIBIT A"

Legal Description:

LOT 11 AND THE SOUTH ½ OF LOT 12 IN BLOCK 15 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index No.: 17-10-312-002-0000

Common Address: 17 N. Wabash, Chicago, IL

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SCHEDULE A

DEPOSIT ACCOUNTS

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