

# UNOFFICIAL COPY

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and after recording, return to:

Joseph Q. McCoy, Esq.  
Bryan Cave LLP  
161 N. Clark St., Ste. 4300  
Chicago, Illinois 60601



Doc#: 1333019000 Fee: \$68.00  
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Karen A.Yarbrough  
Cook County Recorder of Deeds  
Date: 11/26/2013 09:11 AM Pg: 1 of 16

**Permanent Tax Index Number[s]:**

See Exhibit "A"

*This space reserved for Recorders use only.*

**Property Address:**

See Exhibit "A"

## **THIRD FORBEARANCE AND MODIFICATION AGREEMENT**

**THIS THIRD FORBEARANCE AND MODIFICATION AGREEMENT** (this "Agreement") is made as of the 21<sup>st</sup> day of October, 2013, but effective as of the 14<sup>th</sup> day of October, 2013, by **CHICAGO TITLE LAND TRUST COMPANY**, not personally, but as Trustee under that certain Trust Agreement dated as of November 17, 1977 pertaining to Trust #25-2956 ("Borrower"), **LATEEF KHAN**, an individual, **GHOUSIA KHAN, NOT PERSONALLY BUT AS SUCCESSOR TRUSTEE OF THE FAZAL KAHN DECLARATION OF TRUST DATED JANUARY 9, 2000**, and **GHOUSIA KHAN, NOT PERSONALLY BUT AS TRUSTEE OF THE GHOUSIA KHAN DECLARATION OF TRUST DATED JANUARY 9, 2000** (collectively, and together with Borrower, the "Mortgagor"), **FIFTH THIRD BANK**, an Ohio banking corporation, successor by merger with Fifth Third Bank, a Michigan banking corporation, its successors and assigns, and successor in interest to LaSalle Bank, a national banking association (the "Lender"), and **WASEEM KHAN** (the "Guarantor").

### **RECITALS:**

A. LaSalle Bank, a national banking association and predecessor to Lender, made a loan to Borrower in the original principal amount of Two Million Six Hundred Thousand and 00/100 Dollars (\$2,600,000.00) (the "Loan").

B. The Loan is evidenced by that certain Promissory Note dated as of April 14, 2004 (as amended, restated, renewed or replaced from time to time, the "Note") executed by Borrower and made payable to the order of Lender in the maximum principal amount of the Loan and due on April 14, 2009 (the "Original Maturity Date"), except as may be accelerated pursuant to the

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terms hereof, of the Note or of any other document or instrument now or hereafter given to evidence or secure the payment of the Note or delivered to induce Lender to disburse the proceeds of the Loan.

C. The Loan is secured by that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of April 14, 2004 (as amended, restated, modified or supplemented and in effect from time to time, the "Mortgage") made by Mortgagor, in favor of Lender, recorded in the Cook County Recorder of Deeds on April 20, 2004, as Document No. 0411147007, and which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A attached hereto (the "Property"); that certain Assignment of Leases and Rents dated as of April 14, 2004 (as amended, restated, modified or supplemented and in effect from time to time, the "Assignment of Rents") made by Mortgagor, in favor of Lender, recorded in the Cook County Recorder of Deeds on April 20, 2004, as Document No. 0411147008; that certain Security Agreement and Assignment of Beneficial Interest dated as of June 29, 2009 executed by and between Lender and Mortgagor (as amended, restated, modified or supplemented and in effect from time to time, the "Security Agreement").

D. Guarantor executed that certain Continuing Guaranty Agreement dated as of April 14, 2011 (the "Guaranty") securing the Loan and in favor of Lender.

E. The Parties hereto agreed to extend the Original Maturity Date of the Loan to April 9, 2011 (the "First Extended Maturity Date") via that certain Amended and Restated Promissory Note dated as of April 14, 2009 (the "Amended and Restated Promissory Note").

F. The Parties hereto agreed to extend the First Extended Maturity Date of the Loan to April 14, 2013 (the "Second Extended Maturity Date") via that certain Term Note dated as of April 14, 2011 (the "Term Note").

G. The Parties hereto entered into that certain Forbearance and Modification Agreement dated as of April 26, 2013, but effective as of April 14, 2013, and recorded in the Cook County Recorder of Deeds on May 8, 2013, as Document No. 1312819079 (the "Forbearance and Modification Agreement"), to, among other things, extend the Second Extended Maturity Date of the Loan to August 14, 2013 (the "Third Extended Maturity Date").

H. The Parties hereto entered into that certain Second Forbearance and Modification Agreement dated as of August 27, 2013, but effective as of August 14, 2013 and recorded in the Cook County Recorder of Deeds on September 11, 2013, as Document No. 1325445051 ("Second Forbearance and Modification Agreement"), to, among other things, extend the Third Extended Maturity Date of the Loan to October 14, 2013 (the "Maturity Date").

I. The Note, Mortgage, Assignment of Rents, Security Agreement, Amended and Restated Promissory Note, Term Note, Forbearance and Modification Agreement, Second Forbearance and Modification Agreement and those certain other loan documents (each in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

J. Borrower acknowledges that a Default has occurred under the Loan Documents, including, among other things, its failure to pay the Loan in full on or before the Maturity Date,

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and that it has breached certain terms contained in the Loan Documents and requests forbearance of certain of its defaults under the Note as more fully set forth herein.

K. In exchange for certain commitments from the Borrower, Lender agrees to forbear for a period expiring on November 14, 2013.

## **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 covenants and agreements contained herein, and (iii) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions.** All terms not otherwise defined herein shall have the meaning ascribed to such terms in the Mortgage.

2. **Principal Balance of the Loan.** As of the date hereof, the principal balance of the Loan is One Million Nine Hundred Nineteen Thousand Three Hundred Thirty Two and 98/100 Dollars (\$1,919,332.98). All references to the Loan in the Loan Documents shall mean One Million Nine Hundred Nineteen Thousand Three Hundred Thirty Two and 98/100 Dollars (\$1,919,332.98). Concurrent with the execution and delivery of this Agreement, Borrower shall pay to Lender a payment of Seventeen Thousand Two Hundred Forty Five and No/100 Dollars (\$17,245.00) to be applied against the outstanding loan balance.

3. **Maturity Date.** Subject to the terms and conditions of this Agreement the Maturity Date of the Loan is hereby extended to November 14, 2013. All references in the Loan Documents to Maturity Date shall mean November 14, 2013.

4. **Third Amended and Restated Term Note.** Concurrent with the delivery of this Agreement, Borrower will deliver to Lender a Third Amended and Restated Term Note (the "**Third Amended and Restated Term Note**") in the original principal amount of One Million Nine Hundred Nineteen Thousand Three Hundred Thirty Two and 98/100 Dollars (\$1,919,332.98).

5. **Exit Fee.** Borrower agrees to pay to lender a non-refundable exit fee in an amount equal to Twenty Five Thousand and 00/100 Dollars (\$25,000.00)(the "**Exit Fee**"). Lender agrees to waive the Exit Fee if Borrower pays all amounts due and owing on the Loan on or before the Maturity Date.

6. **Intentionally Deleted.**

7. **Commitment Letter.** Borrower shall provide to Lender written evidence from at least one (1) lender specifying lender's commitment to provide financing for the Property (the "**Commitment Letter**"). Borrower shall submit said evidence, the sufficiency of which shall be determined by Lender in its sole discretion, on or before November 1, 2013. Borrower's failure to comply with the terms of this section shall constitute an automatic default under this Agreement.

8. **Deposit Accounts.** Borrower hereby certifies that all rental payments, including reimbursement payments, and other income relating to or generated by the Property (collectively,

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the “Proceeds”) have been deposited into that certain Fifth Third Deposit Account No. 7235578650 (the “Deposit Account”). Borrower further agrees to deposit the Proceeds into the Deposit Account going forward.

9. **Taxes.** On or before the Maturity Date, Borrower shall pay any and all real estate tax obligations relating to the Property then due and owing (the “Taxes”). Borrower shall also provide written evidence to Lender, the sufficiency of which shall be determined by Lender of its sole discretion, of payment of the Taxes. Borrower’s failure to comply with requirements of this Section shall constitute an immediate default under this Agreement.

10. **Forbearance.**

(a) **Forbearance of Existing Default.** Borrower hereby acknowledges that it is in Default under the terms of the Loan Documents for among other things, its failure to pay the loan in full at maturity (collectively, the “Existing Default”). Subject to the terms and conditions set forth in this Agreement, Lender hereby agrees to forbear from exercising the rights and remedies available to Lender as a result of the Existing Default (including, but not limited to the right to declare any or all of the Indebtedness to be immediately due and payable) from the date hereof through the Maturity Date (as extended, the “Forbearance Period”). Lender’s agreement to forbear from exercising its rights and remedies as provided for herein applies only to the Existing Default. If, during the Forbearance Period, there shall occur or exist any other condition which constitutes or could, with the giving of notice or the passing of time, constitute an Event of Default under any of the Loan Documents, or if Borrower violates any provision of this Agreement or fails to perform any obligation hereunder, then Lender shall be entitled to exercise any of its rights and remedies provided for in this Agreement or any of the other Loan Documents and its agreement to forbear shall terminate.

(b) **Acknowledgment of Existing Default.** Borrower hereby acknowledges the Existing Default and agrees that Borrower is in default under the Loan Documents. Borrower agrees that Lender has the right to declare that an Event of Default exists and, among the remedies therefore, declare the outstanding amount of the Loan immediately due and payable in full based on the Existing Default. Borrower further acknowledges and agrees that (a) there are no offsets, defenses or counterclaims to the payment of all of the indebtedness of Borrower to Lender and (b) nothing in this Agreement constitutes a waiver of Lender’s right to demand payment in full of the Loan based on the Existing Default or upon the occurrence of any other circumstance constituting or giving rise to the existence of an Event of Default.

11. **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 and attorneys’ fees and expenses.

12. **Ratification.** Except as amended hereby, the Loan Documents and all Schedules, Exhibits and attachments thereto are hereby ratified and confirmed in all respects and remain in full force and effect. All representations and warranties set forth in the Loan Documents are hereby restated as of the date hereof.

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13. **Reservation of Rights**. Borrower acknowledges and agrees that the execution and delivery by Lender of this Agreement shall not be deemed to create a course of dealing or otherwise obligate Lender to give similar agreements in the future.

14. **Reaffirmation of Guaranty**. Guarantor hereby 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 Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder.

15. **Security**. All Loan Documents creating, evidencing and/or perfecting Lender's security interest in the Collateral shall remain in full force and effect and shall secure the Indebtedness, as amended hereby. At any time and from time to time, upon the reasonable request of Lender and at the sole expense of Borrower, Borrower will promptly execute and deliver such further instruments and documents, and take such further actions as Lender may reasonably request, for the purpose of obtaining or preserving the full benefits of this Agreement and the rights and powers herein granted to Lender under the Loan Documents.

16. **Release**. Borrower and Guarantor hereby expressly and collectively covenant, promise, agree and represent to the Lender that they have no defenses, setoffs, claims or counterclaims of any kind or nature whatsoever against Lender in connection with the Loan Documents or any amendments to Loan Documents or any action taken or not taken by the Lender with respect thereto or with respect to the Collateral (as defined in the Agreement). Without limiting the generality of the foregoing, Borrower and Guarantor hereby collectively release and forever discharge the Lender, its affiliates, and each of its officers, agents, employees, attorneys, insurers, successors and assigns, from any and all liabilities, or causes of action, known or unknown, arising out of any action or inaction with respect to the Loan Documents. Borrower and Guarantor agree that they shall not now or hereafter institute, maintain, or assert, either directly or indirectly, any claim, demand, right, or cause of action, known or unknown, that has accrued or could have been made or brought at any time up to and including the date of this Agreement against Lender or its Subsidiaries, affiliates, officers, directors, employees, or agents, past or present, arising out of, or claimed to have arisen out of, any past or present relationship, whether contractual or otherwise, between Borrower and Lender, including without limitation, any claim arising out of or relating to the lending relationship between Borrower and Lender, any Loan Documents relating thereto, and this Agreement. This release may be pleaded as a full and complete defense to, and may be used as a basis for an injunction against, any action, suit, or other proceeding or testimony that may be instituted by Borrower or Guarantor in breach of this release.

17. **Representations and Warranties of Borrower**. Borrower hereby represents, covenants and warrants 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.



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(b) Other than the Existing Defaults identified above, there is currently no Event of Default or Unmatured Default under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the 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 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) 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.

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

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

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(d) Borrower and Lender each acknowledge that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

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

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the 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.

19. **Trustee's Exculpation.** This Agreement is executed by the Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by the Trustee solely in its capacity as trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the Property and has no agents, employees or control over the management of the Property and no knowledge or of other factual matters except as represented to the Trustee by the beneficiary. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this Agreement, all such liability being expressly waived by the Lender and by every person now or hereafter claiming any right or security hereunder; and the owner of any of the Indebtedness (as defined in the Mortgage) or cause of action for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to the Trust estate or the Property conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Notes provided or by action to enforce the personal liability of any guarantor.

20. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Lender hereby notifies Borrower and ML 300 that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and

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Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower and ML 300, which information includes the name and address of Borrower and ML 300, and such other information that will allow Lender to identify Borrower and ML 300 in accordance with the Act. In addition, Borrower and ML 300 shall each (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or ML 300 as applicable, or any subsidiary of Borrower or ML 300 as applicable, is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

*[Reminder of page intentionally left blank; signature page follows]*













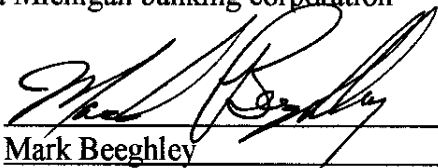




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**LENDER**

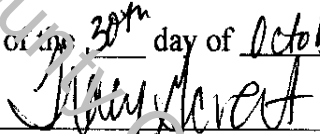
**FIFTH THIRD BANK**, an Ohio banking corporation, successor by merger with Fifth Third Bank, a Michigan banking corporation

By:   
Name: Mark Beeghley  
Title: Vice President

STATE OF Indiana )  
 ) ss.  
COUNTY OF Lake )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Mark Beeghley, a Vice President of Fifth Third Bank, an Ohio banking corporation, successor by merger with Fifth Third Bank, a Michigan banking corporation, 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/she signed and delivered the said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal as of the 30<sup>th</sup> day of October, 2013.

  
Notary Public



My Commission Expires 10.24.20

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## EXHIBIT "A"

### LEGAL DESCRIPTION OF REAL ESTATE

LOTS 4, 5 AND 6 IN WHITE, GALT AND PROUDFOOT'S SUBDIVISION OF BLOCK 4 IN ARGYLE, BEING A SUBDIVISION OF LOTS 1 AND 2 OF FUSSEY AND FENNIMORE'S SUBDIVISION OF THE SOUTHEAST FRACTIONAL QUARTER OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND OF LOTS 1 AND 2 OF COLEHOUR AND CONNARROES SUBDIVISION OF LOT 3 OF SAID FUSSEY AND FENNIMORE'S SUBDIVISION, IN COOK COUNTY, ILLINOIS.

Common Address: 5101 N. SHERIDAN RD, CHICAGO, ILLINOIS

PIN: 14-08-403-003-0000