

# UNOFFICIAL COPY

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KAREN A. YARBROUGH

COOK COUNTY CLERK'S OFFICE

Date 3/13/2024 10:00 AM Pg: 1 of 12

This Document was prepared  
by and should be returned to:

First Eagle Bank  
1040 E. Lake St.  
Hanover Park, IL 60133

*Julianne Carpenter*

## FIRST AMERICAN TITLE

FILE # 899092M

### SECOND AMENDMENT TO LOAN DOCUMENTS

This Second Amendment to Loan Documents ("Amendment") is dated as of February \_\_\_\_, 2024, but made effective as of November 15, 2023 (the "Effective Date") and is made by and among MBGL Properties, LLC, an Illinois limited liability company (hereinafter referred to as the "Borrower" or the "Grantor"); Martin Barboza and Briana M. Barboza (each individually referred to as a "Guarantor" and collectively referred to herein as the "Guarantors"); and First Eagle Bank ("Lender").

A. On November 22, 2019, Lender made a construction mortgage loan (as modified from time to time, the "Loan") to Borrower in the amount of Nine Hundred Thirteen Thousand Five Hundred Seventy-Nine and 00/100 Dollars (\$913,579.00). The Loan is evidenced by the promissory note (as modified, restated or replaced from time to time, the "Original Note") executed by Borrower in favor of the Lender dated November 22, 2019 in the principal amount of \$913,579.00.

B. The Original Note is secured by a construction mortgage (the "North Mortgage") and an assignment of rents (the "North Assignment") executed by Borrower in favor of Lender, each dated November 22, 2019 and recorded on December 17, 2019 as Document Nos. 1935141009 and 1935141010 with the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office"), which North Mortgage created a first lien on the property known as 1639 N North Park Avenue, Chicago, IL 60614 ("North Property") which is legally described on Exhibit "A" attached hereto and made a part hereof.

C. The Loan was modified to, among other changes: (i) increase the outstanding principal balance of the Original Note at renewal by \$45,000.00 to \$958,579.00, (ii) extend the maturity date to November 15, 2023, and (iii) add additional collateral to secure repayment of the Loan, and in connection with such modifications, Borrower executed and delivered to Lender the following documents: (i) the promissory note dated November 22, 2020 in the principal amount of Nine Hundred Fifty Eight Thousand Five Hundred Seventy Nine and 00/100 Dollars (\$958,579.00), in replacement of and substitution for the Original Note (such note, as modified, restated or replaced from time to time, the "Replacement Note"), (ii) the first amendment to loan documents dated November 22, 2020 made by and among Borrower, Guarantors and Lender, recorded in the Recorder's Office as Document No. 2102534043, and (iii) a mortgage (the "Avers Mortgage") and an assignment of rents (the "Avers Assignment") executed by Borrower in favor of Lender, each dated November 22, 2020 and recorded in the Recorder's Office on January 25, 2021 as Document Nos. 2102534044 and 2102534045 which created a second lien on the property ("Avers Property") known as 2109 N Avers Avenue,

Prepared by: JMC

Officer Review

Initial Review \_\_\_\_\_ Date \_\_\_\_\_

Final Review \_\_\_\_\_ Date \_\_\_\_\_

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Chicago, IL 60647 which is legally described on Exhibit "B" attached hereto and made a part hereof. The North Mortgage and Avers Mortgage are collectively referred to herein as "Mortgages". The North Assignment and the Avers Assignment are collectively referred to herein as the "Assignments". The North Property and Avers Property are collectively referred to herein as "Properties".

D. The Replacement Note is further secured by a commercial guaranty made by each Guarantor dated November 22, 2020 (as amended, restated or replaced from time to time, individually and collectively, as the context may require, the "Guaranty"). The Replacement Note, the Mortgages, the Assignments, the Guaranty and any and all other documents executed pursuant to or in connection with the Loan by Borrower, Guarantors, or any other obligor, as amended, modified, assumed or replaced from time to time are hereinafter collectively referred to as the "Loan Documents".

E. Borrower and Guarantors wish to extend the Maturity Date of the Replacement Note to July 15, 2024. Lender has agreed to extend the Maturity Date as aforesaid, subject to the following covenants, agreements, representations and warranties.

**NOW THEREFORE**, for and in consideration of the covenants, agreements, representations and warranties set forth herein, the parties hereto agree as follows:

1. **Recitals.** The recitals set forth above shall be incorporated herein, as if set forth in their entirety.
2. **Maturity Date.** Each reference in the Replacement Note, the Mortgages, the Assignments, the Guaranty and the other Loan Documents, to the "maturity" of or the "Maturity Date" of the Loan shall hereafter mean July 15, 2024.
3. **Variable Interest Rate.** The following new paragraph is hereby added to the Replacement Note, following the paragraph entitled "Payment".

"VARIABLE INTEREST RATE. As of the Effective Date, the interest rate on the Replacement Note is hereby amended to be a variable rate, subject to change from time to time based on changes in an independent index, which index is the Prime Rate as published in the Wall Street Journal, or if more than one rate is published, the highest of the rates will be used (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. Borrower understands that Lender may make loans based on other rates as well. The interest rate change will not occur more often than once each day. **The Index currently is 8.500% per annum.** Interest on the unpaid principal balance of this Note will be calculated as described in the "Interest Calculation Method" paragraph using a rate of 0.00 percentage points over the Index, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 8.500%. NOTICE: Under no circumstances will the interest rate on the Loan will be less than 8.50% per annum or more than the maximum rate allowed by applicable law. Any increase in the interest rate will increase the payment amounts."

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4. **Interest Rate and Schedule of Payment.** Borrower will pay the Loan, which, as of the Effective Date has an outstanding principal balance of \$914,770.38, together with interest from the Effective Date hereof, on the principal amount remaining from time to time outstanding at the rate per annum equal to the greater of: (i) the Index and (ii) eight and one-half percent (8.50%) per annum. Subject to any payment changes resulting from changes in the Index, Borrower will pay this Loan in accordance with the following schedule:

1 interest payment at or prior to the execution of this Amendment in the amount of \$29,818.93;

4 regular monthly payments of all accrued unpaid interest as of each payment date beginning March 15, 2024, with all subsequent interest payments to be due on the same day of each month after that; and

1 payment on July 15, 2024. This payment due on July 15, 2024 will be for all principal and all accrued interest not yet paid, together with any other unpaid amounts under this Loan.

Borrower acknowledges and agrees that the Loan evidenced by the Replacement Note has been fully disbursed and Lender shall have no obligation to make any further disbursements of principal under the Replacement Note.

5. **Interest and Tax Reserve.** Borrower shall also deposit an additional \$75,000.00 into a Lender controlled checking account #X1401 ("Reserve") that will be utilized for monthly interest and property tax escrow payments on the Loan and on that certain mortgage loan (as modified, increased and decreased from time to time, the "Avers Loan") previously extended by Lender to Borrower on November 3, 2015 in the amount of One Hundred Seventy-Five Thousand and 00/100 Dollars (\$175,000.00). Upon the Reserve being depleted prior to the end of the term of the Loan, or any extensions thereof, Borrower shall be responsible for the payment of all interest charges and property escrow payments during the remainder of the term of the Loan.

6. **Modification of Documents.** The Mortgages, the Assignments, the Guaranty and the other Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Replacement Note, as hereby modified and amended.

7. **Sale of Avers.** Borrower covenants and agrees to list the Avers Property for sale on or before April 15, 2024, with a listing price of not less than \$500,000.

8. **Guarantors Not Released.** Each Guarantor (a) acknowledges and consents to the amendments and modifications set forth in this Amendment, (b) represents and warrants to the Lender that the Guaranty is in full force and effect and is binding and enforceable against the Guarantor in accordance with its terms, (c) the Guarantor irrevocably consents and agrees to the Borrower's execution and delivery of this Amendment, (d) the liability of the Guarantor to the Lender under the Guaranty shall in no way be affected, modified, altered, or discharged in any fashion by the Borrower's execution, delivery or performance of this Amendment, (e) the Guarantor hereby restates and reaffirms to Lender all terms and provisions of the Guaranty as if set forth in full herein, and (f) the Guarantor does not possess any claims, defenses, offsets, or counterclaims against the enforcement of the Guaranty as of the date hereof, and any and all such claims, defenses, offsets and counterclaims, whether known or unknown, are forever waived and released, and the Guarantor is unconditionally liable under the Guaranty, for the

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payment and performance of all present and future indebtedness and all other obligations described therein.

9. **Restatement of Representations.** Borrower and Guarantors hereby ratify and confirm their respective obligations and liabilities under the Replacement Note, the Mortgages, the Assignments, the Guaranty, and the other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that they have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Replacement Note, the Mortgages, the Assignments, the Guaranty, and the other Loan Documents, as so amended.

10. **Defined Terms.** All capitalized terms which are not defined herein shall have the definitions ascribed to them in the Replacement Note, the Mortgages, the Assignments, the Guaranty and the other Loan Documents.

11. **Documents Unmodified.** Except as modified hereby, the Replacement Note, the Mortgages, the Assignments, the Guaranty and the other Loan Documents shall remain unmodified and in full force and effect.

12. **Fee.** In consideration of Lender's agreement to amend the Loan, as aforesaid, Borrower has agreed and shall pay Lender upon execution hereof, a fee in the amount of Four Thousand Five Hundred Seventy-Five and 00/100 Dollars (\$4,575.00) plus all out-of-pocket costs and expenses incurred by Lender in connection with this Amendment, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

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

- (a) The representations and warranties in the Loan Documents are true and correct as of the date hereof.
- (b) There is currently no Event of Default (as defined in the 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 Replacement Note, the Mortgages or the other Loan Documents.
- (c) The Loan Documents are in full force and effect and, following the execution and delivery of this Amendment, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.
- (d) There has been no material adverse change in the financial condition of Borrower, Guarantors or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.
- (e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

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- (f) Borrower validly exists under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Amendment and to perform the Loan Documents as modified herein. The execution and delivery of this Amendment 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 Amendment has been duly executed and delivered on behalf of the Borrower.

14. **Binding Agreement.** This Amendment 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 Amendment, and Borrower, Guarantors and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Amendment. Each of the parties to this Amendment represents that it has been advised by its respective counsel of the legal and practical effect of this Amendment, and recognizes that it is executing and delivering this Amendment, 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 Amendment, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

15. **Severability.** In the event any provision of this Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

16. **Other Modifications.** Anything contained in the Mortgages to the contrary notwithstanding, the Mortgages also secure all loans, advances, debts, liabilities, obligations, covenants and duties owing to the Lender by the Borrower and/or any Related Party (as hereinafter defined), whether now existing, or hereafter created or arising, including, without limitation: (i) the Replacement Note, (ii) the Indebtedness, and (iii) any and all other loans, advances, overdrafts, indebtedness, liabilities and obligations now or hereafter owed by Borrower or any Related Party to Lender, of every kind and nature, howsoever created, arising or evidenced, and howsoever owned, held or acquired, whether now due or to become due, whether direct or indirect, or absolute or contingent, whether several, joint or joint and several, whether liquidated or unliquidated, whether legal or equitable, whether disputed or undisputed, whether secured or unsecured, or whether arising under the Mortgages or any other document or instrument. For purposes of this paragraph, "Related Party" shall mean (i) Grantor, (ii) each beneficiary of Grantor, if Grantor is a land trust, (iii) the maker of the Replacement Note, if other than Grantor, and if more than one maker, each co-borrower of the Replacement Note other than Grantor, and (iv) each guarantor of the Replacement Note.

This Amendment shall extend to and be binding upon each of Borrower and Guarantors and their respective heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

This Amendment shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance.



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This Amendment constitutes the entire agreement between the parties with respect to the aforesaid Amendment and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

This Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

Borrower and Guarantors and any other obligor under the Loan, on behalf of themselves and their respective successors and assigns (collectively and individually, the "Mortgagor Parties"), hereby fully, finally and completely release, remise, acquit and forever discharge, and agree to hold harmless Lender and its respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, fiduciaries, attorneys, agents and properties, past, present and future, and their respective heirs, successors and assigns (collectively and individually, the "Mortgagee Parties"), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, liens, actions, and causes of action of any and every nature whatsoever, known or unknown, direct or indirect, whether at law, by statute or in equity, in contract or in tort, under state or federal jurisdiction, and whether or not the economic effects of such alleged matters arise or are discovered in the future (collectively, the "claims"), which the Mortgagor Parties have as of the date of this Amendment or may claim to have against the Mortgagee Parties, including but not limited to, any claims arising out of or with respect to any and all transactions relating to the Loan or the Loan Documents occurring on or before the date of this Amendment, including but not limited to, any loss, cost or damage of any kind or character arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of the Mortgagee Parties occurring on or before the date of this Amendment. The foregoing release is intended to be, and is, a full, complete and general release in favor of the Mortgagee Parties with respect to all claims, demands, actions, causes of action and other matters described therein, or any other theory, cause of action, occurrence, matter or thing which might result in liability upon the Mortgagee Parties arising or occurring on or before the date of this Amendment. The Mortgagor Parties understand and agree that the foregoing general release is in consideration for the agreements of Lender contained herein and that they will receive no further consideration for such release. Furthermore, each of the Mortgagor Parties represents and warrants to Lender that she, he or it: (i) has read this Amendment, including without limitation, the release set forth in this section (the "Release Provision"), and understands all of the terms and conditions hereof, and (ii) executes this Amendment voluntarily with full knowledge of the significance of the Release Provision and the releases contained herein and execution hereof. The Mortgagor Parties agree to assume the risk of any and all unknown, unanticipated, or misunderstood claims that are released by this Amendment.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH BORROWER, EACH GRANTOR, AND EACH GUARANTOR (EACH AN "OBLIGOR") HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AMENDMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK OR DUPAGE, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

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TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AMENDMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS AMENDMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED AMENDMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

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**IN WITNESS WHEREOF**, this Amendment was executed by the undersigned as of the date and year first set forth above.


**BORROWER:**

MBGL Properties, LLC, an Illinois limited liability company

  
By: Martin Barboza, Manager

**GUARANTORS:**

  
Martin Barboza

  
Briana M. Barboza

**LENDER:**

First Eagle Bank

  
By: Faruk Daudbasic, Senior Vice President

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## BORROWER'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.  
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **Martin Barboza**, Manager of MBGL Properties, 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, sealed and delivered said instrument as his free and voluntary act and deed as well as that of the company he represents, for the uses and purposes therein set forth.

Given under my hand and Official Seal this 29<sup>th</sup> day of February, 2024.

  
\_\_\_\_\_  
Notary Public




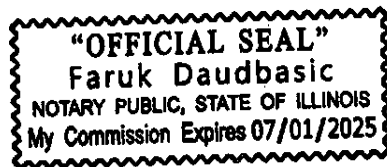
## GUARANTOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS) SS.  
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **Martin Barboza** and **Briana M. Barboza**, 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, sealed and delivered said instrument as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and Official Seal this 29<sup>th</sup> day of February, 2024.

  
\_\_\_\_\_  
Notary Public




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## LENDER'S ACKNOWLEDGMENT

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 **Faruk Daudbasic**, Senior Vice President of FIRST EAGLE BANK, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act and deed as well as that of the bank she represents, for the uses and purposes therein set forth.

Given under my hand and Official Seal this 2<sup>nd</sup> day of FEBRUARY, 2024.

  
\_\_\_\_\_  
Notary Public



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## EXHIBIT "A"

LOT 4 (EXCEPT THAT PART TAKEN FOR NORTH FRANKLIN AVENUE) IN THE SUBDIVISION OF LOT 21 IN GALE'S NORTH ADDITION TO CHICAGO, SAID ADDITION BEING A SUBDIVISION BY STEPHEN F. GALE OF THE SOUTHWEST  $\frac{1}{4}$  OF THE SOUTHEAST FRACTIONAL  $\frac{1}{4}$  OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

ADDRESS: 1639 N NORTH PARK AVENUE, CHICAGO, IL 60614

PIN #14-33-422-016-0000

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## EXHIBIT "B"

LOT 37 IN CHARLES E. NEEROS' RESUBDIVISION OF BLOCK 5 IN GRANT AND ICEENEY'S ADDITION TO PENNOCK, BEING A SUBDIVISION OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 2109 N. AVERS AVENUE, CHICAGO, IL 60647

PIN # 13-35-118-017-0000

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