


WHEN RECORDED, RETURN TO:

8377 East Hartford Drive
Suite 200
Scottsdale, Arizona 85255
Attention: Collateral Management
NCS-544176C


20130717000290530 1/6 \$28.00
Shelby Cnty Judge of Probate, AL
07/17/2013 12:36:24 PM FILED/CERT

THIS INSTRUMENT PREPARED BY:

Emily K. Head, Esq.
Kutak Rock LLP
1650 Farnam St.
Omaha, Nebraska 68102

**MODIFICATION
OF MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING
STATEMENT AND FIXTURE FILING**

This **MODIFICATION OF MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT AND FIXTURE FILING** (the "**Modification**") is made as of June 27, 2013, by **MJBJ REAL ESTATE, LLC**, a Kentucky limited liability company ("**Borrower**"), whose mailing address is 2501 Crossings Boulevard, Suite 300, Bowling Green, Kentucky 42104; and **GE CAPITAL BANK**, a Utah industrial loan corporation ("**Lender**"), whose mailing address is 8377 East Hartford Drive, Suite 200, Scottsdale, Arizona 85255.

RECITALS

A. Lender made certain loans to Borrower (the "**Loan**") pursuant to the Loan Agreement, dated July 13, 2012 (as amended, the "**Loan Agreement**"), the Loan being evidenced by the promissory note made by Borrower and payable to the order of Lender (the "**Note**").

B. The obligations pursuant to the Loan Agreement and Note are secured by the Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing, dated July 13, 2012 (the "**Security Instrument**"), executed by Borrower, as mortgagor, in favor of Lender, as mortgagee, and recorded on July 19, 2012, in Instrument No. 20120719000258740, records of Shelby County, State of Alabama. The Security Instrument encumbers, among other property, the real property described on **Exhibit A** to this Modification.

C. Borrower, Lender, and certain other parties, have concurrently herewith, entered into a Cross Collateralization and Cross Default Agreement, dated of even date herewith (the "**Cross Agreement**").

D. Borrower and Lender desire to modify and supplement the Security Instrument in connection with the execution and delivery of the Cross Agreement.

AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and Lender agree as follows:

GEFF smartDocs Form 6005
6/11/12

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Asset No. 069381
Pelham, AL

NOTES TO CLERK: (1) THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED BY THE MORTGAGE HAS NOT CHANGED AND REMAINS \$3,300,000 (\$456,000 BEING ALLOCATED TO THIS SHELBY COUNTY, AL SITE); (2) THIS IS AN AMENDMENT TO THAT CERTAIN MORTGAGE AND SECURITY AGREEMENT RECORDED IN INSTRUMENT NO. 20120719000258740 IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA; AND (3) MORTGAGE TAXES WERE PAID WITH THE RECORDING OF THE MORTGAGE AND SECURITY AGREEMENT DATED JULY 13, 2012 AND THEREFORE NO ADDITIONAL MORTGAGE RECORDING TAX IS DUE.

4819-5053-5956.1

FINAL EXECUTION COPY

1. Accuracy of Recitals. Borrower and Lender acknowledge the accuracy of the Recitals and agree that the Recitals are a part of this Modification.

2. Modification. The Security Instrument is modified and supplemented as follows:

(a) Schedule 1 of the Security Instrument is hereby deleted and replaced in its entirety with the attached schedule.

(b) Cross Collateralization. Without in any way limiting or releasing any of the obligations that are otherwise secured by the Mortgage, it is specifically agreed that the Mortgage also secures payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations contained in or arising with respect to, the "**Related Agreements**" identified in the attached **Schedule 1**; **provided, however**, that if the rights of the lender under any Related Agreement are transferred and assigned to any Person, other than an affiliate of Lender, then from and after such transfer and assignment, the obligations with respect to such Related Agreement shall cease to be secured by the Mortgage.

3. Entire Agreement. The Security Instrument, as modified by this Modification, remains in full force and effect and contains the entire understanding and agreement of the parties in respect of the Security Instrument and supersedes all prior representations, warranties, agreements and understandings. No provision of this Modification may be changed, discharged, supplemented, terminated or waived except in a writing signed by Lender. The execution, delivery, recordation, terms and conditions of this Modification shall not subordinate or otherwise adversely affect the lien, encumbrance and priority of the Security Instrument.

4. Binding Effect. The Security Instrument, as modified by this Modification, shall be binding upon, and inure to the benefit of, Borrower and Lender and their respective successors and assigns.

5. Further Assurances. Borrower shall execute, acknowledge (as appropriate) and deliver to Lender such additional agreements, documents and instruments as are reasonably required by Lender to carry out the intent of this Modification.

6. Counterpart Execution. This Modification may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Modification to physically form one document.

7. Governing Law. This Modification shall be governed by and construed in accordance with the same law as that governing the Security Instrument.

[SIGNATURE PAGE FOLLOWS]



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Executed and effective as of the date first set forth above.

LENDER:

GE CAPITAL BANK, a Utah industrial loan corporation

By: *RJ. Klinko*
Name: Robert J. Klinko
Its: Authorized Signatory

STATE OF IL)
COUNTY OF Cook)SS

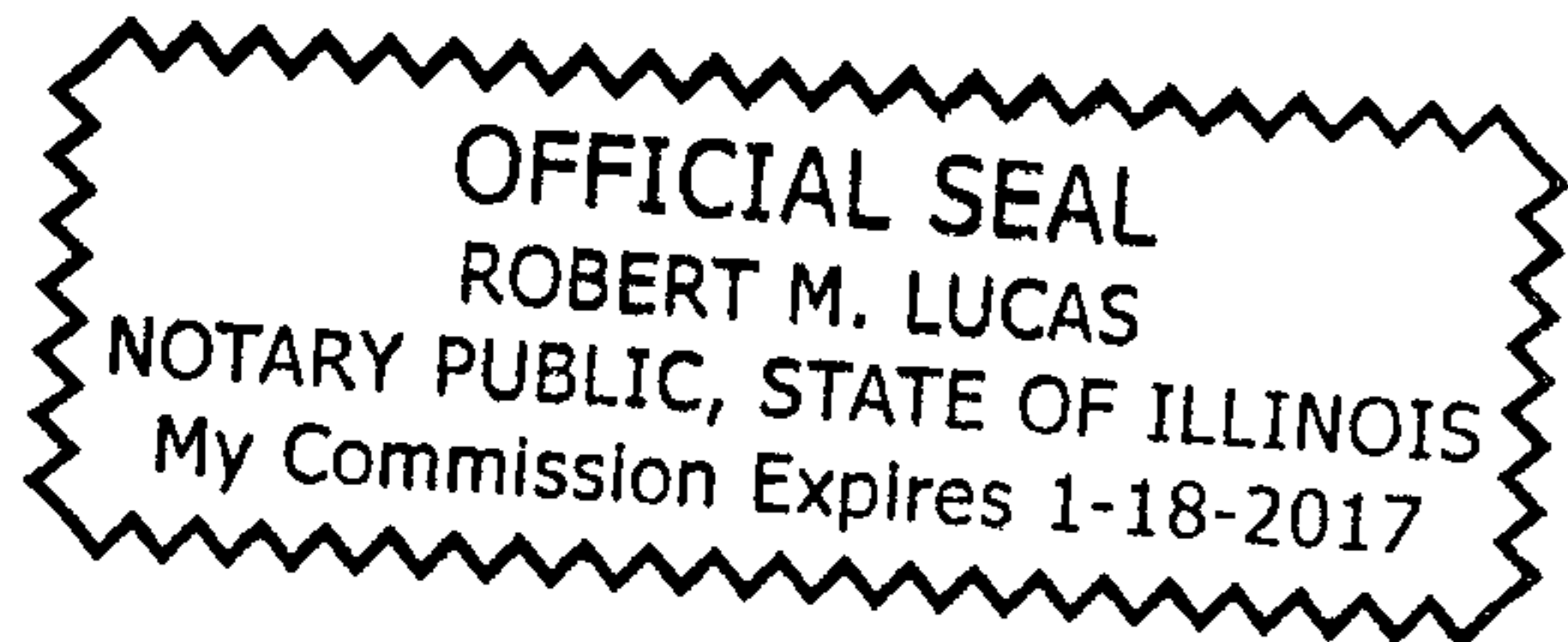
I, Robert M Lucas, a Notary Public in and for said County in said State, hereby certify that Robert J Klinko, the Authorized Signatory of GE Capital Bank, a Utah industrial loan corporation, acknowledged before me on this day that, being informed of the contents of such instrument, he or she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal, this 24 day of June, 2013.

Robert M Lucas
NOTARY PUBLIC

[SEAL]

My Commission Expires 1/18/17



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BORROWER:

MJBJ REAL ESTATE, LLC, a Kentucky limited liability company

By: *Michael OMalley*
Name: Michael Patrick OMalley
Its: Authorized Member

STATE OF *Kentucky*)
)SS
COUNTY OF *WARREN*)

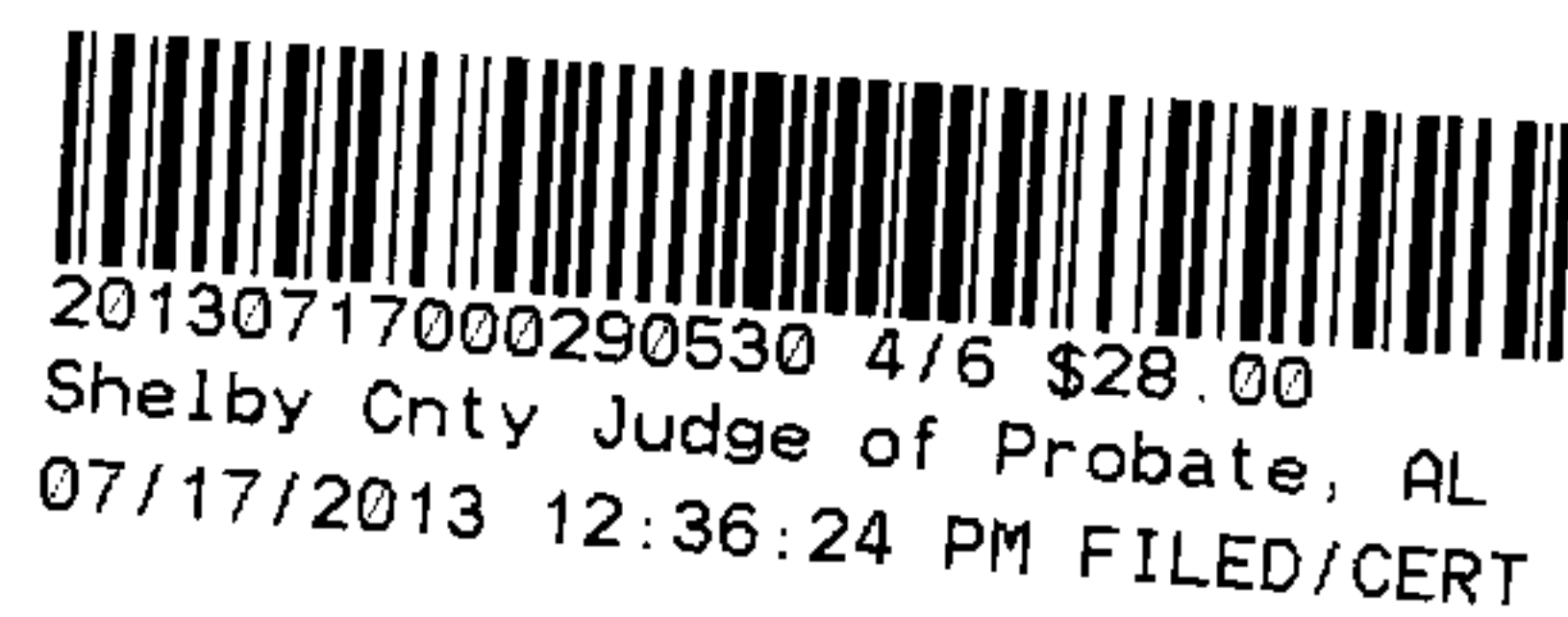
I, *Judy Ramsey*, a Notary Public in and for said County in said State, hereby certify that Michael Patrick OMalley, the Authorized Member of MJBJ Real Estate, LLC, a Kentucky limited liability company, acknowledged before me on this day that, being informed of the contents of such instrument, he or she, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and seal, this *24th* day of *June*, 2013.

Judy Ramsey
NOTARY PUBLIC

My Commission Expires *January 30, 2016*

[SEAL]



**EXHIBIT A
LEGAL DESCRIPTION**

A parcel of land situated in the SW ¼ of the NW ¼ of Section 25, T20S, R3W, being more particularly described as follows:

Commence at the point of intersection of the South line of said ¼ - ¼ Section and the Westerly right of way of Highway 31; thence run Northeasterly 161.16 feet along said light of way to the Point of Beginning; thence continue along last described course 138.0 feet; thence left 103 degrees 00' 35" and Westerly 171.86 feet; thence right 90 degrees and run Northerly 69.79 feet; thence left 90 degrees and run Westerly 52.14 feet; thence left 90 degrees and run Southerly 203.94 feet; thence left 83 degrees 59' 25" and run Easterly 194.00 feet to the Point of Beginning. Together with access, driveway, parking and drainage easement described in the Easement Agreement between Sherman Holland, Jr. and D & T Associates, comprised of Duane L. Hoover and Patricia Anne Hoover as shown in Real Volume 107, Page 951, Probate Office of Shelby County, Alabama.



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**SCHEDULE 1
RELATED AGREEMENTS SCHEDULE**

Loan	GE ACBS Loan ID. No.	Borrower	Guarantor	Lender
1.	012094465 (formerly 011424501 and 011424517)	Wendy's of Bowling Green, Inc.	Gung Ho Real Estate Partners; Michael Patrick O'Malley; and John W. Hughes	GE Capital Bank
2.	012094471 (formerly 011424501 and 011424517)	Wendy's of Bowling Green, Inc.	Gung Ho Real Estate Partners; Michael Patrick O'Malley; and John W. Hughes	GE Capital Bank
3.	011746104 and 011996442 (formerly 011424588)	Wendy's of Bowling Green, Inc. and Gung Ho Real Estate Partners	Michael Patrick O'Malley and John W. Hughes	GE Capital Bank
4.	011424572	Gung Ho Real Estate Partners	Wendy's of Bowling Green, Inc.; Michael Patrick O'Malley; and John W. Hughes	General Electric Capital Corporation
5.	011843837	Wendy's of Bowling Green, Inc.	Michael Patrick O'Malley; John W. Hughes; and MJB Real Estate, LLC	GE Capital Bank
6.	012094253	Wendy's of Bowling Green, Inc., MJB Real Estate, LLC, and Gung Ho Real Estate Partners	Michael Patrick O'Malley and John W. Hughes	GE Capital Bank
7.	012094247	Wendy's of Bowling Green, Inc., MJB Real Estate, LLC, and Gung Ho Real Estate Partners	Michael Patrick O'Malley and John W. Hughes	GE Capital Bank



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