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Doc#: 0726033020 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/17/2007 07:28 AM Pg: 1 of 11

1 of 2

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FIRST MODIFICATION OF LOAN DOCUMENTS

^{5th} THIS FIRST MODIFICATION (this "Modification") is made and entered into as of the day of SEPTEMBER 2007, by PREFERRED-RIVER FOREST, LLC, an Illinois limited liability company ("Borrower"), and EVAN OLIFF and THOMAS MORABITO (collectively, "Guarantors") to and for the benefit of ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association ("Lender").

RECITALS:

A. Pursuant to the terms of that certain Construction Loan Agreement dated as of December 15, 2006 by and between Borrower and Lender (the "Loan Agreement"), Lender has heretofore made a construction mortgage loan (the "Loan") to Borrower in the original principal amount of One Million Two Hundred Eighty Thousand and No/100 Dollars (\$1,280,000.00). The Loan is evidenced by a Promissory Note in said principal amount dated December 15, 2006, made by Borrower to Lender (the "Note"). Initially capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. The Note is secured by, among other things, a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated December 15, 2006, made by Borrower in favor of Lender, and recorded on December 18, 2006, in the Office of the Cook County Recorder of Deeds as Document No. 0635242157 (the "Mortgage"), currently encumbering the premises legally described in Exhibit A attached hereto and by this reference incorporated herein (the "Project"). The Loan is further evidenced and secured by certain other documents, including but not limited to those described in Exhibit B attached hereto and by this reference incorporated herein (collectively with the Mortgage, the "Security Documents").

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C. In connection with the Loan, Guarantors executed that certain Guaranty of Payment and Performance dated December 15, 2006 to and for the benefit of Lender (the "**Guaranty**").

D. Borrower has asked Lender to advance additional funds to Borrower as a return of cash equity and to provide additional funds to Borrower, and Lender has agreed to do so subject to the terms and conditions herein set forth.

E. The parties desire to modify and amend the Loan Agreement, the Note, the Security Documents and the Guaranty (collectively, the "**Loan Documents**") as provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The aforesaid Recitals are hereby incorporated into this Modification as if fully set forth in this Paragraph 1.

2. **Amendments to Loan Documents.**

(A) The principal amount of the Loan is hereby increased by Three Hundred Thousand and No/100 Dollars (\$300,000.00) ("**Additional Advance**"), for a new Loan Amount of One Million Five Hundred Eighty Thousand and 00/100 (\$1,580,000.00).

(B) References in the Loan Documents to the amount of the Loan shall be deemed increased by the Additional Advance.

(C) All references in a Loan Document to any other Loan Document shall be deemed to refer to such Loan Document as modified by this Modification.

3. **Consent of Guarantors.** Guarantors have received and reviewed this Modification and all documents and instruments in connection herewith and hereby consent to the execution and delivery hereof, agree to pay the fee hereinafter described, and agree that their duties, liabilities and obligations under the Guaranty, as modified hereby, shall not in any manner be impaired, discharged or released by the execution and delivery of this Modification and all documents or instruments in connection therewith.

4. **Reaffirmation of Liability.** Notwithstanding the execution of this Modification, Guarantors hereby reaffirm and acknowledge their liability and obligations to Lender under the Guaranty, as modified hereby.

5. **Reaffirmation of Representations and Warranties.** Borrower and Guarantors (collectively, the "**Obligors**") hereby reaffirm as true and correct in all respects, as of the date hereof, any representations and warranties made by such parties as contained in the Loan Documents.

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6. **Reaffirmation of Covenants.** The Obligors do hereby reaffirm and agree to perform each and every covenant, condition, obligation and provision of such party set forth in the Loan Documents, as herein modified.

7. **No Vitiating of Liability.** Nothing contained herein shall vitiate or discharge any party's liability under the Loan Documents, as herein modified.

8. **Offsets and Defenses.** The Obligors hereby acknowledge and agree that: (A) as of the date of this Modification, there are no and the Obligors hereby waive all offsets, defenses or counterclaims against Lender arising out of or in any way relating to the Loan Documents, including without limitation any covenant of good faith and fair dealing; (B) they release and forever discharge Lender, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations and organizations acting or who have acted in its behalf of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which they or any of them may now have or claim to have against Lender or any of the other persons or entities described in this clause (B) as of the date of this Modification, and whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way touching, concerning, arising out of or founded upon the Loan Documents; and (C) Lender is not in default under the Loan Documents.

9. **Entire Agreement.** The Obligors acknowledge that: (A) there are no other agreements or representations, either oral or written, express or implied, relating to the amendments to the Loan Documents set forth herein and other provisions hereof that are not embodied in this Modification; (B) this Modification represents a complete integration of all prior and contemporaneous agreements and understandings of Lender and the Obligors relating to the matters set forth herein; and (C) all such agreements, understandings, and documents, except for the Loan Documents, are hereby superseded by this Modification.

10. **Full Force and Effect; Inconsistency.** Except as herein modified, the terms, conditions and covenants of the Loan Documents shall remain unchanged and otherwise in full force and effect. In the event of an inconsistency between this Modification and the Loan Documents, the terms herein shall control.

11. **Laws of Illinois.** This Modification shall be governed and construed under the laws of the State of Illinois.

12. **Counterparts.** This Modification may be executed in counterparts, all of which, when taken together, shall constitute a single instrument.

13. **Liens.** The Obligors acknowledge and agree that Lender's mortgage lien and other liens on the Project and any other collateral for the Loan continue to be valid, binding and enforceable liens which secure the obligations under the Loan Documents.

14. **Construction.** The words "hereof", "herein", and "hereunder", and other words of a similar import refer to this Modification as a whole and not to the individual Sections in which such terms are used. References to Sections and other subdivisions of this Modification are to the

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designated Sections and other subdivisions of this Modification as originally executed. The headings of this Modification are for convenience only and shall not define or limit the provisions hereof. Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

15. **No Third Party Beneficiaries.** This Modification shall inure to the sole benefit of the Obligors and Lender. Nothing contained herein shall create, or be construed to create, any right in any person not a party to this Modification.

16. **Fees.** The Obligors shall pay an extension fee of \$1,500.00 to Lender, together with Lender's legal fees in connection with this Modification.

17. **Conditions Precedent.** It shall be a condition precedent to the validity of this First Modification that Borrower shall deliver to Lender:

(a) a date down endorsement to the existing Construction Loan Policy issued by Chicago Title Insurance Company at the original closing of the Loan (Policy No. 008359735) evidencing the recording of Modification, increasing the policy amount to \$1,580,000, showing the lien of Lender's Mortgage as a first and paramount lien on the Project and showing no new liens of record;

(b) evidence of updated insurance,

(c) an updated estoppel certificate from Starbucks Corporation;

(d) an executed copy of the "For Appearances Sake" lease (for 3,140 square feet of space in the Project), along with: (i) an estoppel certificate, and (ii) a Subordination, Non-Disturbance and Attornment Agreement, both executed by such tenant;

(e) organizational documents of Borrower including: (x) a copy of the operating agreement creating such entity, certified by the manager or the controlling member of such entity as being a true and correct copy and as otherwise unmodified and in full force and effect, together with a certified copy of the Articles of Organization, including all amendments thereto (*or a certification from the manager or the controlling member that the operating agreement and Articles of Organization previously furnished to Lender are unmodified and in full force and effect*), (y) a current Certificate of Existence from the State of Illinois, and (z) a resolution from the managers of Borrower authorizing execution and delivery of this First Modification.

[SIGNATURE PAGE TO MODIFICATION OF LOAN DOCUMENTS FOLLOWS.]

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[SIGNATURE PAGE TO MODIFICATION OF LOAN DOCUMENTS.]

IN WITNESS WHEREOF, the parties have caused this Modification to be executed pursuant to authority duly granted as of the date and year first written above.

BORROWER:

PREFERRED RIVER FOREST, LLC, an Illinois limited liability company

By: _____

Name: THOMAS MORABITO

Title: Manager

GUARANTORS:

EVAN OLIFF

THOMAS MORABITO

LENDER:

ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association

By: _____

Name: Robert J. Burda

Title: Vice President

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[SIGNATURE PAGE TO MODIFICATION OF LOAN DOCUMENTS.]

IN WITNESS WHEREOF, the parties have caused this Modification to be executed pursuant to authority duly granted as of the date and year first written above.

BORROWER:

PREFERRED RIVER FOREST, LLC, an Illinois limited liability company

By: _____
Name: _____
Title: Manager


GUARANTORS:

EVAN OLIFF

THOMAS MORABITO

LENDER:

ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association

By:  _____
Name: Robert J. Burda
Title: Vice President

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, JONI WHEAT, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that THOMAS MORRIS, as Manager of PREFERRED-RIVER FOREST, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager of said limited liability company, 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 and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 5th day of Sept, 2007.

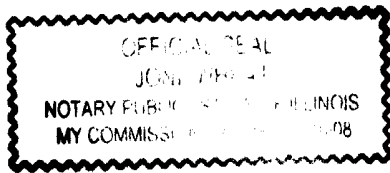


Joni Wheat
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, JONI WHEAT, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that EVAN CLIFF appeared before me this day in person and acknowledged that he signed and sealed the 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 5th day of Sept, 2007.



Joni Wheat
Notary Public

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Jon Wheat, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that THOMAS MORABITO appeared before me this day in person and acknowledged that he signed and sealed the 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 5th day of Sept., 2007.



Jon Wheat
Notary Public

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STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, KIM MEYERS, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that ROBERT J. BURDA, Vice President of Associated Bank, National Association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President of said Bank, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 6TH day of SEPTEMBER, 2007.

Kim Meyers
Notary Public



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EXHIBIT A

Legal Description

LOT 1 (EXCEPT THE WEST 10.00 FEET THEREOF); LOT 54 (EXCEPT THE SOUTH 6.00 FEET THEREOF) IN EDWIN E. WOOD'S SUBDIVISION OF THAT PART OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE SOUTH 42 ACRES THEREOF (EXCEPT THE WEST 220.62 FEET OF THAT PART LYING NORTH OF A LINE 200.00 FEET NORTH OF THE NORTH LINE OF THE SOUTH 66 ACRES OF THE EAST 1/2 OF THE NORTHWEST 1/4 SECTION 1, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN), IN COOK COUNTY, ILLINOIS

PINs: 15-01-106-035-0000
15-01-106-040-0000
15-01-106-041-0000

Address: 7601-7603 North Avenue, River Forest, Illinois 60305

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EXHIBIT B

Other Security Documents

1. Assignment of Rents and Leases dated December 15, 2006, executed by Borrower, recorded on December 18, 2006 in Cook County, Illinois as Document No. 0635242158.
2. UCC Financing Statement showing Borrower, as Debtor, and Lender, as Secured Party, recorded in Cook County, Illinois as Document No. 0700318107.
3. UCC Financing Statement showing Borrower, as Debtor, and Lender, as Secured Party, filed with the Illinois Secretary of State as Document No. 11684203.
4. Environmental Indemnity Agreement dated December 15, 2006 executed by Borrower and Guarantors.
5. Certificate of Representations, Warranties and Covenants dated December 15, 2006 executed by Borrower and Guarantors.