

UNOFFICIAL COPY



THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN
TO:

Doc#: 0803018047 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/30/2008 11:40 AM Pg: 1 of 10

Bell, Boyd & Lloyd LLP
70 West Madison
Suite 3100
Chicago, Illinois 60602
Attn: Michael J. Roth, Esq.

This space reserved for Recorder's use only

FOURTH MODIFICATION OF LOAN DOCUMENTS

THIS FOURTH MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 8th day of December, 2007, by and among **PREFERRED-HALSTED LLC**, an Illinois limited liability company ("Borrower"), **THOMAS MORABITO** and **EVAN OLIFF** (individually and collectively, "Guarantor") and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a construction loan ("Loan") to Borrower in the principal amount of Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000) pursuant to the terms and conditions of a Construction Loan Agreement dated as of April 8, 2004 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Note dated April 8, 2004, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage, Security Agreement and Fixture Filing dated April 8, 2004 from Borrower to Lender recorded with the Cook County Recorder of Deeds (the "Recorder's Office") on April 12, 2004, as Document No. 0410319002 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "Land"); (ii) that certain Assignment of Rents and Leases dated April 8, 2004 from Borrower to Lender and recorded in the Recorder's Office with the Mortgage (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated April 8, 2004 from Borrower and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Loan Agreement, the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Payment Guaranty and a Completion Guaranty, both dated April 8, 2004 from Guarantor to Lender (collectively, the "Guaranties").

D. Lender, Borrower and Guarantor entered into a Modification of Loan Documents, dated as of August 19, 2005, and recorded on October 19, 2005 with the Recorder's Office as

UNOFFICIAL COPY

Document No. 0529245080, which, among other things, increased the Loan Amount to Ten Million Seven Hundred Fifty Thousand Dollars (\$10,750,000) and extended the Maturity Date; a Partial Release and Second Modification of Loan Documents dated as of August 31, 2006 and recorded on October 27, 2006, with the Recorder's Office as Document No. 0630031087, which, among other things, decreased the Loan Amount to FIVE MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$5,850,000) and released certain portions of the original collateral given to Lender as security for the Loan; and a Third Modification of Loan Documents dated as of January 19, 2007 and recorded on January 30, 2007 with the Recorder's Office as Document No. 0703044093, which, among other things, increased the Loan Amount to SIX MILLION EIGHT HUNDRED THIRTY EIGHT THOUSAND THREE HUNDRED THIRTY FIVE DOLLARS (\$6,838,335).

E. Borrower, Lender and Guarantor desire to further extend the Maturity Date and to make certain other amendments to the Loan Agreement, the Mortgage, the Note, the Assignment of Leases and certain of the other Additional Collateral, on the terms and conditions set forth in this Amendment.

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 agreements 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, as defined in the Loan Agreement, is extended to February 8, 2008.

2. **Amendment to Loan Agreement.** The Loan Agreement is hereby amended as follows:

(a) In Section 1.1, the definition of "Loan Maturity Date" is deleted, and the following is substituted in its place:

"Loan Maturity Date. February 8, 2008."

(b) By adding the following new section 2.2(c):

"Borrower shall deposit in the account pledged to Lender under the provisions of the Interest Reserve Pledge Agreement (the "Interest Reserve Pledged Account") the sum equal to two months of monthly payments of interest due on the principal balance of the Loan as a reserve for the payment of monthly payments of interest due on the principal balance of the Loan outstanding from time to time (the "Interest Reserve Pledged Funds"). Provided no Event of Default has occurred and is continuing, Borrower shall be entitled to withdraw Interest Reserve Pledged Funds from the Interest Reserve Pledged Account solely as set forth in the Interest Reserve Pledge Agreement, and for no other purpose."

UNOFFICIAL COPY

(c) In Section 4.8, the “.” at the end of subsection (g) is deleted and “;” is inserted in its place.

(d) In Section 4.8, the following subsection is hereby added:

“(h) on or before the tenth (10th) day of each month, operating statements for the Development and rent rolls for the Development for the immediately preceding month, certified by Borrower as accurate and complete.”

(e) Section 4.12 is deleted, and the following substituted in its place:

“4.12 Boyd Parcel. On or prior to February 1, 2008, Borrower shall acquire fee simple title to the 7,418 square foot parcel of land and the contiguous east west alley known between Borrower and Lender as the “Boyd Parcel” and currently included in Outlot E on the site plan delivered to Lender. Simultaneously with Borrower’s acquisition of the Boyd Parcel, Borrower and Lender shall enter into another Modification of Loan Documents in form and substance acceptable to Lender, which shall, among other things, spread the lien of the Mortgage so as to encumber the Boyd Parcel. Borrower shall also deliver to Lender a “date down” endorsement to the existing Title Policy, which complies with the requirements of Section 6.1(b) and which spreads the title coverage over the Boyd Parcel and any other applicable deliveries required in Article IV hereof with respect to the Boyd Parcel. If Borrower fails to satisfy the foregoing conditions by February 1, 2008, Borrower shall pay to Lender on or before February 7, 2008, an amount required to reduce the outstanding principal balance of the Loan plus the undisbursed portion of the Loan to (a) 65% of the appraised value of Outlots C (as depicted on the site plan delivered to Lender) & E without the Boyd Parcel (based on a then-updated appraisal, at Borrower’s cost, satisfactory to and addressed to Lender prepared by a certified or licensed appraiser who is approved by Lender), plus (b) 80% of the appraised value of the Land without Outlots C & E.”

3. **Amendment to Note.** The Note is hereby amended as follows:

(a) In paragraph 2(a), the date “December 8, 2007” is deleted and the date “*February 8, 2008*” is substituted in its place.

4. **Amendment to Mortgage.** The Mortgage is hereby amended as follows:

(a) In Paragraph C of the Recitals the date “December 8, 2007” is deleted, and the date “*February 8, 2008*” is substituted in its place.

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

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) 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.

UNOFFICIAL COPY

(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, Guarantor 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) Borrower is validly existing under the laws of the State of its formation or organization and 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 Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

6. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause First American Title Insurance Company to issue a date down endorsement to Lender's title insurance policy LP 375795 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage on the Land, 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.

7. **Reaffirmation of Guaranties.** Guarantor ratifies and affirms the Guaranties and agrees that the Guaranties are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranties are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranties continue 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, except as provided in the Guaranties.

8. **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.

9. **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 Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and

UNOFFICIAL COPY

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 or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges 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, Guarantor 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 of each of Borrower's obligations under this Agreement.

UNOFFICIAL COPY

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

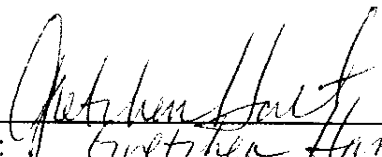
BORROWER:

PREFERRED-HALSTED LLC, an Illinois limited liability company


By: 
One of its Managers


LENDER:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: 
Name: Gretchen Hart
Title: VP

GUARANTORS:


Thomas Morabito, individually


Evan Oliff, individually

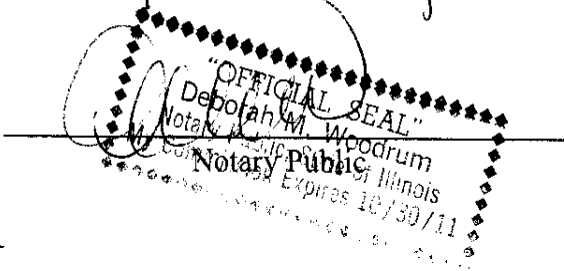
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss.
COUNTY OF Cook)

I Deborah M. Woodrum, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Thomas Morabito, Mary of Preferred Halsted 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 10 day of January, 2008

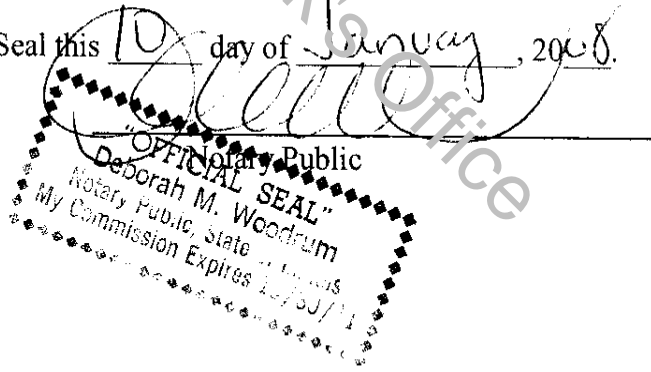


My Commission Expires: _____

STATE OF ILLINOIS)
) ss.
COUNTY OF Cook)

I Deborah M. Woodrum, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Thomas Morabito and Evan Oliff are 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 and delivered said instrument as their own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10 day of January, 2008.



My Commission Expires: _____

UNOFFICIAL COPY

EXHIBIT A

LAND

PARCEL 1:

THAT PART OF HILDRUP'S RESUBDIVISION, RECORDED AS DOCUMENT NUMBER 1032530, AND ALSO PART OF PLACERDALE SUBDIVISION RECORDED AS DOCUMENT NUMBER 383570, BOTH BEING SUBDIVISIONS IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 8 IN SAID HILDRUP'S RESUBDIVISION; THENCE SOUTH 00 DEGREES 42 MINUTES 40 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 8 AND THE SOUTHERLY EXTENSION THEREOF, A DISTANCE OF, 200.08 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 42 MINUTES 14 SECONDS WEST 266.79 FEET; THENCE NORTH 00 DEGREES 16 MINUTES 32 SECONDS WEST 200.17 FEET TO THE NORTH LINE OF SAID HILDRUP'S RESUBDIVISION; THENCE SOUTH 89 DEGREES 43 MINUTES 28 SECONDS WEST ALONG SAID NORTH LINE, 41.00 FEET; THENCE SOUTH 00 DEGREES 16 MINUTES 32 SECONDS EAST, 200.19 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 14 SECONDS WEST, 153.02 FEET; THENCE NORTH 46 DEGREES 12 MINUTES 27 SECONDS WEST, 10.16 FEET TO A LINE PARALLEL WITH AND 30.00 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE EASTERLY LINE OF THE PENNSYLVANIA RAILROAD; THENCE NORTH 20 DEGREES 02 MINUTES 03 SECONDS WEST ALONG SAID PARALLEL LINE, 181.23 FEET; THENCE NORTH 00 DEGREES 16 MINUTES 32 SECONDS WEST, 22.61 FEET TO THE NORTH LINE OF SAID PLACERDALE SUBDIVISION; THENCE SOUTH 89 DEGREES 43 MINUTES 28 SECONDS WEST ALONG SAID NORTH LINE, 40.00 FEET TO THE EASTERLY LINE OF SAID PENNSYLVANIA RAILROAD; THENCE SOUTH 20 DEGREES 02 MINUTES 03 SECONDS EAST ALONG SAID EASTERLY LINE, 634.25 FEET TO THE NORTH LINE OF WEST 116TH STREET; THENCE NORTH 89 DEGREES 40 MINUTES 17 SECONDS EAST ALONG SAID NORTH LINE, 377.98 FEET TO THE EAST LINE OF THE PUBLIC ALLEY AS VACATED PER DOCUMENT NUMBER 17407475; THENCE NORTH 00 DEGREES 42 MINUTES 40 SECONDS WEST, ALONG SAID EAST LINE 275.49 FEET TO THE NORTHEAST CORNER OF SAID PUBLIC ALLEY AS VACATED; THENCE SOUTH 89 DEGREES 42 MINUTES 14 SECONDS WEST ALONG THE NORTH LINE OF SAID PUBLIC ALLEY AS VACATED, 20.00 FEET TO THE NORTHWEST CORNER OF SAID PUBLIC ALLEY AS VACATED, SAID CORNER ALSO BEING ON THE EAST LINE OF LOT 14 IN BLOCK 1 OF SAID PLACERDALE SUBDIVISION; THENCE NORTH 00 DEGREES 42 MINUTES 40 SECONDS WEST ALONG SAID EAST LINE AND ALONG THE EAST LINE OF LOTS 11 AND 10 IN SAID BLOCK 1, A DISTANCE OF 121.01 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PART DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH SOUTH PUBLIC ALLEY IN BLOCK 1 OF PLACERDALE SUBDIVISION, VACATED PER DOCUMENT NUMBER 17407475;

UNOFFICIAL COPY

THENCE NORTH 00 DEGREES 42 MINUTES 40 SECONDS WEST ALONG THE EAST LINE OF SAID ALLEY, 35.23 FEET; THENCE SOUTH 89 DEGREES 17 MINUTES 20 SECONDS WEST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 34.90 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 40 MINUTES 17 SECONDS WEST, 170.00 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 43 SECONDS WEST, 170.00 FEET; THENCE NORTH 89 DEGREES 40 MINUTES 17 SECONDS EAST, 170.00 FEET; THENCE SOUTH 00 DEGREES 19 MINUTES 43 SECONDS EAST, 170.00 FEET TO THE POINT OF BEGINNING; IN COOK COUNTY, ILLINOIS.

PARCEL 2:

COMMENCING AT THE NORTHEAST CORNER OF LOT 8 IN SAID HILDRUP'S RESUBDIVISION, THENCE SOUTH 00 DEGREES 42 MINUTES 40 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 8 AND THE SOUTHERLY EXTENSION THEREOF, A DISTANCE OF, 200.08 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 14 SECONDS WEST 266.79 FEET; THENCE NORTH 00 DEGREES 16 MINUTES 32 SECONDS WEST 200.17 FEET TO THE NORTH LINE OF SAID HILDRUP'S RESUBDIVISION; THENCE SOUTH 89 DEGREES 43 MINUTES 28 SECONDS WEST ALONG SAID NORTH LINE, 41.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 16 MINUTES 32 SECONDS EAST, 200.19 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 14 SECONDS WEST, 153.02 FEET; THENCE NORTH 46 DEGREES 12 MINUTES 27 SECONDS WEST 10.16 FEET TO A LINE PARALLEL WITH AND 30.00 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE EASTERLY LINE OF THE PENNSYLVANIA RAILROAD; THENCE NORTH 20 DEGREES 02 MINUTES 03 SECONDS WEST ALONG SAID PARALLEL LINE, 181.23 FEET; THENCE NORTH 00 DEGREES 16 MINUTES 32 SECONDS WEST, 22.61 FEET TO THE NORTH LINE OF SAID PLACERDALE SUBDIVISION; THENCE NORTH 89 DEGREES 43 MINUTES 28 SECONDS EAST ALONG SAID NORTH LINE AND ALONG THE NORTH LINE OF SAID HILDRUP'S RESUBDIVISION, 221.59 FEET TO THE POINT OF BEGINNING; IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF LOT 9 AND THAT PART OF THE NORTH HALF OF LOT 12, BOTH IN BLOCK 1, LYING WEST OF THE WEST LINE OF SOUTH HALSTED STREET AS MONUMENTED, ALL IN PLACERDALE SUBDIVISION, BEING A SUBDIVISION IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED AS DOCUMENT NUMBER 383570, IN COOK COUNTY, ILLINOIS.

1154th & HALSTED

25-20-404-007

2520 404 107

2520 404 108

2520 404 020