

# UNOFFICIAL COPY

**THIS DOCUMENT WAS PREPARED  
BY AND AFTER RECORDING  
SHOULD BE RETURNED TO:**

Jay R. Goldberg  
Field and Goldberg, LLC  
10 South LaSalle Street  
Suite 2910  
Chicago, IL 60603



Doc#: 0900618002 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 01/06/2009 09:52 AM Pg: 1 of 11

**ADDRESS OF PROPERTY:**  
3447-49 North Southport Avenue  
Chicago, IL 60657

**PERMANENT INDEX NO.:**  
14-20-312-003-0000

## SECOND LOAN MODIFICATION AGREEMENT

THIS SECOND LOAN MODIFICATION AGREEMENT (the "Agreement") is made and entered into as of the 13<sup>th</sup> day of November, 2008 by and among **MB FINANCIAL BANK, N.A.** ("Lender"), **3447 N. SOUTHPORT LLC**, an Illinois limited liability company ("Borrower"), and **EVAN OLIF** and **THOMAS MORABITO** (herein individually and collectively called "Guarantors").

### WITNESSETH:

WHEREAS, Borrower is the owner of certain real estate (the "Premises") commonly known as 3447-49 North Southport Avenue, which is located in the City of Chicago, County of Cook, State of Illinois and more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Lender has heretofore made a mortgage loan (the "Loan") to Borrower in the stated principal sum of One Million Three Hundred Sixty Eight Thousand Dollars and No Cents (\$1,368,000.00); and

WHEREAS, the Loan is evidenced and secured by the following documents in favor of Lender (hereinafter defined and, together with all other documents evidencing, securing or otherwise governing the Loan, collectively referred to as the "Loan Documents"); each of which is dated as of February 13, 2008 unless otherwise stated:

- (a) Note (the "Note") made by Borrower in the stated principal sum of One Million Three Hundred Sixty Eight Thousand Dollars and No Cents (\$1,368,000.00);
- (b) Guaranty (the "Guaranty") made by Guarantors in favor of Lender;
- (c) Mortgage (the "Mortgage") made by Borrower to Lender encumbering the Premises and the improvements thereon and all other property, assets and

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collateral therein described, which Mortgage was recorded in the Office of the Recorder of Deeds of Cook County, Illinois (herein called the "Recorder's Office") as Document No. 0804641087;

(d) Assignment of Rents made by Borrower to Lender, which was recorded in the Recorder's Office as Document No. 0804641088;

(e) Security Agreement made by Borrower, as debtor, to Lender, as secured party;

(f) Undated Uniform Commercial Code Financing Statements made by Borrower, as debtor, to Lender, as secured party, which were recorded in the Recorder's Office as Document No. 0804641089 and filed with the Illinois Secretary of State as Document No. 12971001;

(g) Environmental Indemnity Agreement made by Borrower and Guarantors, as indemnitors, to Lender; and

(h) Loan Modification Agreement by and among Lender, Borrower and Guarantors dated June 10, 2008, which was recorded in the Recorder's Office as Document No. 0816533257; and

WHEREAS, Lender and Borrower have agreed to certain modifications to the Loan Documents; and

WHEREAS, the agreements of the parties are set forth herein and limited to this Agreement.

## AGREEMENT

NOW, THEREFORE, for valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. **Preambles.** The preambles hereto are incorporated herein by reference as fully and with the same force and effect as if each and every term, provision and condition thereof was specifically recited herein at length.
2. **Definitions.** All capitalized terms herein not otherwise defined shall have the same meanings as in the Note, Mortgage and in the other Loan Documents.
3. **Amendment to Note.** In addition to any other modifications contained in this Agreement, the terms of the Note are hereby amended as follows:

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a. The definition of "Regular Rate" in Section 2.E is hereby deleted in its entirety and is replaced with the following:

"Regular Rate" shall mean interest payable at the rate equal to the **greater of:** (i) LIBOR plus Three Hundred (300) Basis Points (see Rider attached hereto and incorporated herein by reference), or (ii) Five and One-Half Percent (5.5%) per annum.

b. The Maturity Date of the Note shall be May 13, 2009.

c. The first sentence of the first paragraph of the Rider to the Note shall be deleted in its entirety and is hereby replaced with the following:

Prior to the Maturity Date, or the Loan otherwise becoming due, interest shall accrue on the outstanding principal balance of the Loan from time to time, at an annual interest rate ("Interest Rate") equal to Three Hundred (300) Basis Points in excess of the ninety (90) day London InterBank Offered Rate ("LIBOR"), the sum of which is named "Adjusted LIBOR" and is defined below.

d. The first sentence of the second paragraph of the Rider to the Note shall be deleted in its entirety and is hereby replaced with the following:

For purposes hereof, Adjusted LIBOR shall mean a rate of interest equal to Three Hundred (300) Basis Points in excess of the per annum rate of interest at which U.S. dollar deposits in an amount comparable to the outstanding principal amount of the Loan and for a ninety (90) day period on the first business day of March, June, September and December are offered generally to Lender (rounded upward to the nearest 1/16th of 1.00%) in the London InterBank Market at 11:00 a.m. (London Time) one (1) banking day prior to the commencement of each Interest Period, such rate to remain fixed until the next interest reset date (approximately one calendar quarter later).

e. The final paragraph of the Rider to the Note is deleted in its entirety and is hereby replaced with the following:

Interest after maturity (whether by reason of acceleration or otherwise) shall be paid on the unpaid balance at the rate of LIBOR plus Eight Hundred (800) Basis Points.

4. **Amendment to Mortgage.** The Mortgage is modified to secure the Note as hereby modified and is deemed amended to conform to the terms and provisions hereof and the amendments and modifications to the Loan and Loan Documents effected hereby.

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5. **Continued Priority.** In the event that, by virtue of any of the terms, conditions and provisions of this Agreement, a lien or other property interest in the Premises otherwise junior in priority to the liens created by the Loan Documents shall gain superiority over the liens created by the Loan Documents, this Agreement shall, nunc pro tunc, be null and void without further action of the parties hereto to the fullest extent as if it had never been executed, to the end that the priority of the Loan Documents shall not be impaired.

6. **Title Insurance.** Concurrent with the execution and delivery hereof by Borrower, Borrower agrees to provide Lender with an endorsement to its mortgagee's policy of title insurance ("Title Policy"), which endorsement shall be acceptable to Lender and shall guarantee as of the date hereof that:

- a. there are no objections to title except (a) the objections to title other than real estate taxes reflected on the Title Policy, and (b) general real estate taxes for the year 2008 and subsequent years;
- b. reflects the recording of this Agreement;
- c. re-dates the effective date of the Title Policy to the date of recording of this Agreement; and
- d. together with other endorsements required by Lender.

7. **Lender Expenses.** Borrower agrees to pay all costs, fees and expenses (including but not limited to legal fees) incurred by Lender in connection with the preparation of this Agreement. Such of the foregoing as are incurred prior to the execution and delivery of this Agreement shall be paid concurrent with such execution and delivery. All other fees, costs and expenses shall be paid within five (5) business days after notice from Lender of the amount due and the reason therefor.

8. **Non-Waiver.** In the event Lender shall at any time or from time to time disburse portions of the Loan without Borrower first satisfying all conditions precedent set forth herein or in the Loan Documents, Lender shall not thereby be deemed to have waived its right to require such satisfaction of the same or other condition as a condition precedent to its obligations to make further disbursement of the Loan.

9. **Ratification.** The Loan Documents are hereby ratified, confirmed and approved and are and shall remain in full force and effect pursuant to the terms and conditions set forth therein, except to the extent otherwise expressly modified hereby. Each of the Loan Documents is hereby modified and amended so that all reference to such

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documents shall be deemed to be a reference to the Loan Documents as hereby modified and amended.

10. **Joinder of Guarantors**. Notwithstanding anything to the contrary contained herein Guarantors have entered into this Agreement for the limited purpose of ratifying and confirming Guarantors' obligations under the Guaranty, as amended hereby, and to acknowledge that the Guaranty and the other Loan Documents, as amended hereby, remain in full force and effect.

(Signature Page Follows)

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

**MB FINANCIAL BANK, N.A.**

**3447 N. SOUTHPORT LLC, an Illinois limited liability company**

By: Brooke Cullen  
Name: Brooke Cullen  
Title: Officer

By: \_\_\_\_\_  
Thomas Morabito, Manager

\_\_\_\_\_  
**EVAN OLIF**

\_\_\_\_\_  
**THOMAS MORABITO**

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

**MB FINANCIAL BANK, N.A.**

**3447 N. SOUTHPORT LLC, an Illinois  
limited liability company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

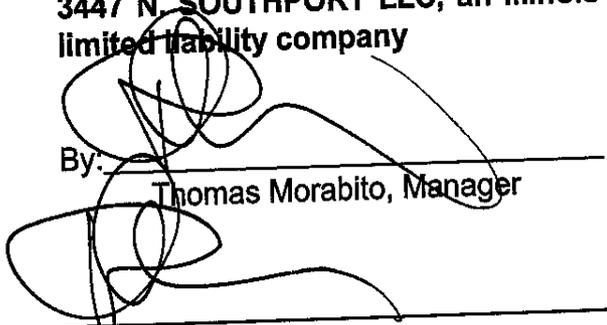
Title: \_\_\_\_\_



**EVAN OLIFF**

By: \_\_\_\_\_

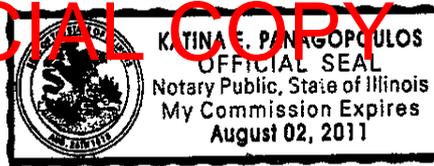
Thomas Morabito, Manager



**THOMAS MORABITO**

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that Broke Cullen, the officer of **MB Financial Bank, N.A.**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of December, 2008

Ky Panagoulis  
Notary Public

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Thomas Morabito**, the Manager of **3447 N. Southport LLC**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me in person and acknowledged that he delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said **3447 N. Southport LLC** for the uses and purposes therein set forth.

Given under my hand and notarial seal this 24<sup>th</sup> day of December, 2008.



Joni Wheat  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that **Evan Oliff**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered 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 24<sup>th</sup> day of December, 2008



Joni Wheat  
Notary Public

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STATE OF ILLINOIS     )  
   ) SS  
 COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that **Thomas Morabito**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered 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 20th day of December, 2008

Joni Wheat  
 Notary Public



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## EXHIBIT A

### Legal Description

The South 6.93 feet of Lot 20 and all of Lot 21 and the North 7 feet of Lot 22 in Block 6 in Oliver's Subdivision of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 20, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

**Address of Property:** 3447-49 North Southport Avenue  
Chicago, IL 60657

**Permanent Index No.:** 14-20-312-003-0000

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