

# UNOFFICIAL COPY

PREPARED BY, AND AFTER  
RECORDING RETURN TO:  
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LW File No. 0101.21



Doc#: 0923016060 Fee: \$60.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/18/2009 03:03 PM Pg: 1 of 13

ADDRESS OF PROPERTY:  
3447-49 N. Southport Ave.  
Chicago, IL 60657

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

## FOURTH LOAN MODIFICATION AGREEMENT

THIS FOURTH LOAN MODIFICATION AGREEMENT (the "Agreement") is made and entered into as of the 13<sup>th</sup> day of August, 2009 by and among MB FINANCIAL BANK, N.A. ("Lender"), 3447 N. SOUTHPORT LLC, an Illinois limited liability company ("Borrower"), 3415 N. SOUTHPORT LLC, an Illinois limited liability company ("Nominal Party") and EVAN OLIFF and THOMAS MORABITO (herein individually and collectively called "Guarantors").

### RECITALS:

A. Borrower is the owner of certain real estate (the "3447 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.

B. 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).

C. 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:

(i) Note (the "3447 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);

(ii) Guaranty (the "Guaranty") made by Guarantors in favor of Lender;

(iii) Mortgage (the "3447 Mortgage") made by Borrower to Lender encumbering the 3447 Premises and the improvements thereon and all other property, assets and collateral therein described, which 3447 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;

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(iv) Mortgage (the "3415 Mortgage"), as thereafter amended, made by Nominal Party to Lender encumbering certain real estate commonly known as 3415 North Southport Avenue and the improvements thereon and all other property, assets and collateral therein described (the "3415 Premises"), which 3415 Mortgage was dated June 10, 2008 and recorded in the Recorder's Office as Document No. 0816533252;

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

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

(vii) 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;

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

(ix) 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;

(x) Second Loan Modification Agreement by and among Lender, Borrower and Guarantors dated November 13, 2008, which was recorded in the Recorder's Office as Document No. 0900618002; and

(xi) Third Loan Modification Agreement by and among Lender, Borrower and Guarantors dated May 13, 2009, which was recorded in the Recorder's Office as Document No. 0918118001.

D. The Maturity Date of the 3447 Note is September 13, 2009.

E. The unpaid principal balance of the 3447 Note as of August 6, 2009 is \$1,368,000.00.

F. Lender and Borrower have agreed to certain modifications to the Loan Documents.

G. 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:

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1. **Recitals.** The Recitals 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 3447 Note, 3447 Mortgage and in the other Loan Documents.

3. **Amendment to 3447 Note.** In addition to any other modifications contained in this Agreement, the terms of the 3447 Note are hereby amended as follows:

a. The Maturity Date of the 3447 Note shall be September 13, 2010.

b. Notwithstanding the Maturity Date set for September 13, 2010, Borrower shall have an option (the "First Option"), which must be exercised by notice ("First Option Notice") to Lender in writing no later than 60 days prior to the Maturity Date, to extend the Maturity Date to March 13, 2011 ("First Option Maturity Date") provided, however, that the giving of such notice shall not operate to extend the Maturity Date unless at the time of giving of such notice and at the Maturity Date: (a) there shall exist no uncured Event of Default or no event which, with the giving of notice or the passing of time, or both, would constitute an Event of Default hereunder or under any Loan Document; and (b) Borrower shall have paid to Lender an extension fee in the amount of .25% of the unpaid principal balance of the 3447 Note on the date of the First Option Notice.

c. Subject to and conditioned upon Borrower's exercise of the First Option Borrower shall have an option ("Second Option") which must be exercised by notice ("Second Option Notice") to Lender in writing no later than 60 days prior to the First Option Maturity Date, to extend the First Option Maturity Date to September 13, 2011, provided, however, that the giving of such notice shall not operate to extend the First Option Maturity Date unless at the time of giving of such notice and at the First Option Maturity Date: (a) there shall exist no Event of Default or no event which, with the giving of notice or the passing of time, or both, would constitute a default or an Event of Default hereunder or under any Loan Document; and (b) Borrower shall have paid to Lender an extension fee in the amount of .25% of the unpaid principal balance of the 3447 Note on the date of the Second Option Notice.

d. In the event Borrower exercises the Second Option, Borrower shall pay Lender monthly payments of principal in the amount of Two Thousand Dollars and No Cents (\$2,000.00) in addition to and at the time of Borrower's monthly payments of interest to Lender. The first payment of principal shall be on April 5, 2011.

4. **Amendment to Mortgage.**

a. The 3447 Mortgage is modified to secure the 3447 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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b. Notwithstanding anything in the 3447 Note or 3447 Mortgage to the contrary, the parties intend by the Loan Documents that the 3447 Mortgage and the remaining Loan Documents also secure payment to Lender of that certain note dated June 10, 2008 made by 3415 N. Southport LLC, an Illinois limited liability company, in the stated principal sum of Two Million Seven Hundred Seventy Five Thousand Dollars and No Cents (\$2,775,000.00) as thereafter modified (the "3415 Note"). The 3447 Premises and the proceeds from the sale thereof have been and shall continue to be collateral for payment of the 3415 Note. For the purpose of clarity and to resolve any ambiguity in the Loan Documents, the 3447 Premises and proceeds from the sale thereof have been and continue to be granted, mortgaged and conveyed to Lender to secure payment of the 3415 Note in addition to the 3447 Note. The release of the 3447 Mortgage or any related Loan Document with respect to the 3447 Premises or 3447 Note shall not diminish or impair the lien and encumbrance of the 3447 Mortgage and remaining Loan Documents as additional collateral for payment of the 3415 Note.

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. **Extension Fee.** Borrower shall pay Lender an extension fee in connection with this Agreement in the amount of Five Thousand Dollars and No Cents (\$5,000.00) no later than Borrower's and Guarantors' execution and delivery of this Agreement to Lender.

7. **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.

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

9. **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 and to acknowledge that the Guaranty and the other Loan Documents, as amended hereby, remain in full force and effect.

10. **No Defenses, Counterclaims.** Borrower and Guarantors hereby represent and warrant to, and covenant with, Lender that, as of the date hereof, (a) Borrower and Guarantors

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have no defenses, offsets, or counterclaims of any kind or nature whatsoever against Lender with respect to the 3447 Note or any of the Loan Documents, or any action previously taken or not taken by Lender with respect thereto or with respect to any security interest, encumbrance, lien or collateral in connection therewith to secure the liabilities of Borrower and Guarantors, and (b) that Lender has fully performed all obligations to Borrower and Guarantors which it may have had or has on and as of the date hereof.

11. **Release.** Without limiting the generality of the foregoing, Borrower and Guarantors, on their own behalf and on the behalf of its representatives, trustees, affiliated and related entities, successors and assigns (hereinafter collectively referred to as the "Borrowing Group") hereby waive, release and forever discharge Lender, and its officers, directors, subsidiaries, affiliated and related companies or entities, agents, servants, employees, shareholders, representatives, successors, assigns, attorneys, accountants, assets and properties, as the case may be from and against all manner of actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, obligations, liabilities, costs, expenses, losses, damages, judgments, executions, claims and demands, of whatsoever kind or nature, in law or in equity, whether known or unknown, whether or not concealed or hidden, arising out of or relating to any matter, cause or thing whatsoever, that any of the Borrowing Group, jointly or severally, may have had, or now have or that may subsequently accrue against the Lender by reason of any matter or thing whatsoever arising out of or in way connected to, directly, or indirectly, the Loan Documents through the date hereof. Borrower and Guarantors acknowledge and agree that Lender is specifically relying upon the representations, warranties, covenants and agreements contained herein and that such representations, warranties, covenants and agreements constitute a material inducement to enter into this Agreement.

12. **No Custom.** This Agreement shall not establish a custom or waive, limit or condition the rights and remedies of Lender under the Loan Documents, all of which rights and remedies are expressly reserved.

13. **Captions, Counterparts.** The captions used herein are for convenience of reference only and shall be deemed to limit or affect the construction and interpretation of the terms of this Agreement. This Agreement may be executed in any number of counterparts or in any number of counterpart signature pages, all of which together shall be deemed the original and constitute one and the same instrument.

14. **Choice of Law, Severability and Consent to Jurisdiction.** This Agreement and the respective rights and obligations of the parties hereto, shall be governed by and construed according to the internal laws of the State of Illinois (without regard to its conflict of laws principles). The parties agree and stipulate that this Agreement was executed, delivered and accepted by Lender in Illinois, all payments shall be made to Lender and accepted by Lender in Illinois, and that Illinois has a substantial relationship to the parties and to the underlying transaction contemplated by this Agreement. Notwithstanding the foregoing, the parties agree that in the event of any action by the Lender in enforcing any of the Loan Documents, regardless of where the collateral is located, the parties agree and intend that the laws of the State of Illinois shall govern the right of Lender to collect or obtain a judgment and each party hereto consents to the jurisdiction of any federal or state court located in Cook County, Illinois. If any provision of

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this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected thereby and the provisions of this Agreement shall be severable in any such instance.

15. **Notices.** All notices, requests, demand, and other communications permitted hereunder, if any, shall be in writing, and, together with service of process in any action growing out of the subject matter hereof, shall be delivered in person, sent by facsimile transmission, sent overnight delivery service or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at the following addresses or as the parties may from time to time designate in writing:

If to Lender: MB Financial Bank, N.A.  
c/o Mr. Thomas Marvinac  
6111 N. River Rd.  
Rosemont, IL 60018

With a copy to: Michael Weininger  
Lupel Weininger LLP  
30 N. LaSalle St., Suite 3520  
Chicago, IL 60602

If to Borrower and Guarantors: c/o Preferred Development, Inc.  
141 West Jackson Blvd., Suite 3540  
Chicago, IL 60604  
Fax: 312-987-1101

With a copy to: Grant McCorkhill, Esq.  
Holland & Knight  
131 S. Dearborn St., 30<sup>th</sup> Floor  
Chicago, IL 60603

Any notice, request, demand, service of process or other communication sent by registered or certified mail, shall be deemed given two (2) business days after being mailed, postage prepaid, to the addresses at such applicable address and by facsimile transmission or personal delivery upon receipt.

16. **Reviewed by Attorneys.** The Borrower and Guarantors each represents and warrants to the Lender that it/he (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such attorneys and other persons as Borrower and Guarantors may wish, and (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its/his own free will and accord and without threat, duress or other coercion of any kind. The parties hereto acknowledge and agree that neither this Agreement nor the other documents executed pursuant hereto shall be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged

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that all parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents executed pursuant hereto or in connection herewith.

17. **Amendments and Interpretation.** No amendment or modification of any provision of this Agreement shall be effective without the written agreement of Borrower, Guarantors and Lender, and no waiver of any provision of this Agreement, or consent to any departure by the Borrower and Guarantors therefrom, shall be effective without the written consent of Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand upon the Borrower and Guarantors in any case shall entitle Borrower and Guarantors to any other or further notice or demand in similar or other circumstances.

18. **Integration Clause.** Prior drafts of this Agreement, or any negotiations leading up to or regarding the terms contained in those drafts, shall not be admissible in any court to interpret the terms of this Agreement, the parties hereto agreeing that this Agreement and the documents executed pursuant to or in furtherance of this Agreement constitute the full, final and complete expression of the parties' agreement, and supersedes all the prior written and oral understandings regarding the terms of this Agreement.

19. **Limitation of Relationship Between the Parties.** The relationship of the Lender, Borrower and Guarantors has been and shall continue to be, at all times, that of creditor and debtor. Nothing contained in this Agreement, or any instrument, document or agreement delivered in connection therewith, shall be deemed or construed to create a fiduciary relationship between the parties or a joint venture, and any such relationship is expressly disclaimed.

20. **Lender's Acknowledgement.** Lender acknowledges that it does not have actual knowledge of any Events of Default under the Loan Documents as of the date of this Agreement.


21. **WAIVER OF RIGHT TO TRIAL BY JURY.** THE PARTIES ACKNOWLEDGE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM, A TRIAL BY A COURT SITTING WITHOUT A JURY WOULD BE LESS COSTLY BOTH TO PREPARE FOR AND TO PRESENT AND WOULD MOST LIKELY AVOID A LONGER DELAY IN WAITING FOR JURY TRIAL AVAILABILITY ON THE COURT CALENDAR. EACH PARTY TO ALL THE LOAN DOCUMENTS HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER ANY OF THE LOAN DOCUMENTS OR THIS AGREEMENT, OR (2) IN ANY WAY CONNECTED WITH OR RELATED TO OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY OF THE LOAN DOCUMENTS OR THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

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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.

**LENDER:**

**MB FINANCIAL BANK N.A.**

By:   
 Name: Bartlett Johnson  
 Title: Senior Vice President

**BORROWER:**

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

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

**GUARANTOR:**

\_\_\_\_\_  
EVAN OLIFF

**GUARANTOR:**

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

**NOMINAL PARTY:**

**3415 N. SOUTHPORT LLC, an Illinois limited liability company, as Nominal Party for Purposes of Recital C(iv)**

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



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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.

**LENDER:**

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

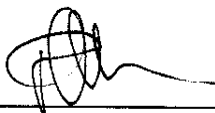
By: \_\_\_\_\_

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

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

**BORROWER:**

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

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

Thomas Morabito, Manager

**GUARANTOR:**

 \_\_\_\_\_  
EVAN OLIFF

**GUARANTOR:**

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

**NOMINAL PARTY:**

**3415 N. SOUTHPORT LLC, an Illinois limited liability company, as Nominal Party for Purposes of Recital C(iv)**

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

Thomas Morabito, Manager

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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 Barrett Johnson, the Senior Vice President 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 17 day of AUGUST, 2009.

Noemi Colon  
 Notary Public



Property of Cook County Clerk's Office

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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 13<sup>th</sup> day of August, 2009.



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 **Thomas Morabito**, the Manager of **3415 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 **3415 N. Southport LLC** for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13<sup>th</sup> day of August, 2009.



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 **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 13<sup>th</sup> day of August, 2009.



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 **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 13<sup>th</sup> day of August, 2009.



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 1/4 of the Southwest 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