



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

Doc#: 1035544042 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/21/2010 02:30 PM Pg: 1 of 12

ADDRESS OF PROPERTY:
3415-21 N. Southport Ave.
Chicago, IL 60657

PERMANENT INDEX NO:
14-20-313-035-0000

FIFTH LOAN MODIFICATION AGREEMENT

THIS FIFTH LOAN MODIFICATION AGREEMENT (the "Agreement") is made and entered into as of the 10th day of September, 2010 by and among MB FINANCIAL BANK, N.A. ("Lender"), 3415 N. SOUTHPORT LLC, an Illinois limited liability company ("Borrower"); 3447 N. SOUTHPORT LLC, an Illinois limited liability company ("Nominal Party"); and EVAN OLIFF and THOMAS MCRABITO (herein individually and collectively called "Guarantors").

RECITALS:

A. Borrower is the owner of certain real estate (the "3415 Premises") commonly known as 3415-21 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 Two Million Seven Hundred Seventy Five Thousand Dollars and No Cents (\$2,775,000.00).

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 June 10, 2008 unless otherwise stated:

(i) Note (the "3415 Note") made by Borrower in the stated principal sum of Two Million Seven Hundred Seventy Five Thousand Dollars and No Cents (\$2,775,000.00);

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

(iii) Mortgage (the "3415 Mortgage") made by Borrower to Lender encumbering the 3415 Premises and the improvements thereon and all other property, assets and collateral therein described, which 3415 Mortgage was recorded in the Office of the Recorder of Deeds of Cook County, Illinois (herein called the "Recorder's Office") as Document No. 0816533252;

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(iv) Mortgage (the "3447 Mortgage") made by Nominal Party to Lender as of February 13, 2008, encumbering the property commonly known as 3447-49 North Southport Avenue, Chicago, Illinois ("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;

(v) Assignment of Rents and Leases made by Borrower to Lender, which was recorded in the Recorder's Office as Document No. 0816533253;

(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. 0816533255 and filed with the Illinois Secretary of State as Document No. 13547948;

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

(ix) Loan Modification Agreement dated March 10, 2009 by and among Lender, Borrower and Guarantors which was recorded in the Recorder's Office as Document No. 0908339045;

(x) Second Loan Modification Agreement dated May 13, 2009 by and among Lender, Borrower and Guarantors which was recorded in the Recorder's Office as Document No. 0918118002;

(xi) Third Loan Modification Agreement dated August 13, 2009 by and among Lender, Borrower, Guarantors and Nominal Party which was recorded in the Recorder's Office on August 18, 2009 as Document No. 0923016059;

(xii) Collateral Pledge Agreement made as of August 13, 2009 by Nominal Party in favor of Lender; and

(xiii) Fourth Loan Modification Agreement dated June 10, 2010 by and among Lender, Borrower, Guarantors and Nominal Party which was recorded in the Recorder's Office on July 15, 2010 as Document No. 1019631077.

D. The Maturity Date of the 3415 Note is September 10, 2010.

E. The unpaid principal balance of the 3415 Note as of September 10, 2010 is \$2,775,000.00.

F. Lender and Borrower have agreed to extend the Maturity Date of the Loan.

G. The agreements of the parties are set forth herein and limited to this Agreement.

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AGREEMENT

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

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 3415 Note, 3415 Mortgage and in the other Loan Documents.

3. **Amendment to 3415 Note.** In addition to any other modifications contained in this Agreement the terms of the 3415 Note are hereby amended as follows:

a. The Maturity Date of the 3415 Note shall be December 10, 2010; and

b. Interest under the 3415 Note shall accrue but shall not be due to be paid until the 3415 Note Maturity Date at which time all accrued but unpaid interest in addition to all principal and other amounts due and owing under the Loan Documents shall be paid in full.

4. **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.

5. **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.

6. **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.

7. **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.

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8. **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 have no defenses, offsets, or counterclaims of any kind or nature whatsoever against Lender with respect to the 3415 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.

9. **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.

10. **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.

11. **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.

12. **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

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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 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.

13. **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 th Floor Chicago, IL 60602

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.

14. **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

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in favor of one than the other based upon which party drafted the same, it being acknowledged 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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **Confession of Judgment.** The undersigned irrevocably authorizes any attorney to appear in any court of competent jurisdiction and confess a judgment without process in favor of the Lender for such amount as may then appear unpaid hereon, and to consent to immediate execution upon such judgment.

20. **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

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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.

(Signature Page Follows)


Property of Cook County Clerk's Office

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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.

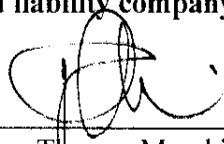
LENDER:

MB FINANCIAL BANK, N.A.

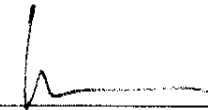
By: 
Name: Brooke E. Cullen
Title: Assistant Vice President

BORROWER:

3415 N. SOUTHPORT LLC, an Illinois limited liability company

By: 
Thomas Morabito, Manager

GUARANTOR:

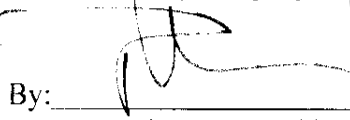

EVAN OLIFF

GUARANTOR:


THOMAS MORABITO

**CONSENTED TO BY
NOMINAL PARTY:**

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

By: 
Thomas Morabito, Manager

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EXHIBIT A

Legal Description

Lot 19 (except the North 4.13 feet thereof), all of Lots 20 and 21 and 22 (except the South 11.26 feet thereof) in Block 7 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.

Also excepting the following described land as acquired by the Chicago Transit Authority by Condemnation Case 04L50862:

Commencing at the Southeast corner of Lot 22 aforesaid; thence North 0 degrees 01 minutes 01 seconds East, along the East line of said lot, 11.26 feet to the point of beginning; thence continuing North 0 degrees 01 minutes 01 seconds East along said East line, 11.50 feet; thence South 89 degrees 59 minutes 37 seconds West, along a line parallel with the South line of said Lot 22, a distance of 36.25 feet; thence North 44 degrees 48 minutes 53 seconds West, 7.33 feet to a line drawn 28.18 feet North of and parallel with the South line of said Lot 22; thence South 89 degrees 59 minutes 37 seconds West, along said parallel line, 17.65 feet; thence South 0 degrees 00 minutes 23 seconds East, along a line perpendicular to said South line of Lot 22 a distance of 16.92 feet to the North line of the South 11.26 feet of said Lot 22; thence North 89 degrees 59 minutes 37 seconds East, along said North line of the South 11.26 feet of Lot 22, a distance of 59.28 feet to the point of beginning, in Cook County, Illinois.

Address of Property: 3415-21 North Southport Avenue
Chicago, IL 60657

Permanent Index No.: 14-20-313-035-0000

Cook County Clerk's Office