

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING MAIL TO:

Christyl Marsh
Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062



Doc#: 1128639058 Fee: \$56.25
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/13/2011 09:51 AM Pg: 1 of 10

FIFTH MODIFICATION AGREEMENT

THIS FIFTH MODIFICATION AGREEMENT (hereinafter referred to as this "Modification Agreement") made as of this 5th day of July, 2011, by and among PARC INVESTMENT PROPERTIES LLC, an Illinois limited liability company ("Borrower"), ROBERT C. KING (the "Guarantor"), CARROLL PLACE, LLC, an Illinois limited liability company ("Carroll Place") (Borrower, Guarantor and Carroll Place are hereinafter collectively referred to as the "Obligors"), and MB FINANCIAL BANK, N.A. ("Lender").

WITNESSETH:

WHEREAS, Borrower has executed and delivered to Lender that certain mortgage note dated November 30, 2007 in the original principal sum of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) (as modified, restated or replaced from time to time, the "Note"), which Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor, as modified, restated or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage and security agreement dated as of November 30, 2007 made by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office"), as Document No. 0734039101 (the "Maple Mortgage") encumbering property commonly known as 1890 Maple Avenue, Evanston, Illinois and legally described on **Exhibit "A"** attached hereto and made a part hereof (the "Maple Premises");
- (ii) junior mortgage and security agreement dated as of November 30, 2007 made by Carroll Place in favor of Lender, recorded in the Recorder's Office, as Document No. 0734039103 (the "Oak Mortgage") (the Maple Mortgage and Oak Mortgage are sometimes hereinafter referred to, individually, as the "Mortgage" and, collectively, as the "Mortgages") encumbering property commonly known as 1881 Oak Street, Evanston, Illinois and legally described on **Exhibit "B"** attached hereto and made a part hereof (the "Oak Premises") (the Maple Premises and Oak Premises are sometimes hereinafter referred to, collectively, as the "Premises");

S	7
P	10
S	1
M	M
SC	7
E	N
INT	YHL

UNOFFICIAL COPY

- (iii) assignment of rents and of lessor's interest in leases dated as of November 30, 2007 made by Borrower in favor of Lender, encumbering the Maple Premises, recorded in the Recorder's Office as Document No. 0734039104 (the "Assignment of Rents");
- (iv) guaranty dated as of November 30, 2007 made by Guarantor in favor of Lender (the "Guaranty");
- (v) environmental indemnity agreement dated as of November 30, 2007 made by Borrower and Guarantor in favor of Lender;
- (vi) collateral assignment of tenant's rights under parking lease dated as of November 30, 2007 made by Borrower in favor of Lender;
- (vii) blocked account pledge agreement dated as of December 1, 2009 between Borrower and Lender (the "Blocked Account Agreement").

WHEREAS, the Note and Loan Documents were previously modified pursuant to that certain modification agreement dated as of December 1, 2008, by and among Borrower, Guarantor, Carroll Place and Lender, recorded in the Recorder's Office as Document No. 0902750046, whereby, among other modifications, the following changes were made to the Note and Loan Documents: (i) the interest rate was adjusted, (ii) an interest rate floor of 5.5% per annum was established, and (iii) the maturity date was extended to December 1, 2009.

WHEREAS, the Note and Loan Documents were further previously modified pursuant to that certain second modification agreement dated as of December 1, 2009, by and among Borrower, Guarantor, Carroll Place and Lender, recorded in the Recorder's Office as Document No. 1011129067, whereby, among other modifications, the following change was made to the Note and Loan Documents: the maturity date was extended to December 5, 2010.

WHEREAS, the Note and Loan Documents were further previously modified pursuant to that certain third modification agreement dated as of December 5, 2010, by and among Borrower, Guarantor, Carroll Place and Lender, recorded in the Recorder's Office as Document No. 1104556085, whereby, among other modifications, the following change was made to the Note and Loan Documents: the maturity date was extended to March 5, 2011.

WHEREAS, the Note and Loan Documents were further previously modified pursuant to that certain fourth modification agreement dated as of March 5, 2011, by and among Borrower, Guarantor, Carroll Place and Lender, recorded in the Recorder's Office as Document No. 1120203001, whereby, among other modifications, the following changes were made to the Note and Loan Documents: (i) the maturity date was extended to July 5, 2011, and (ii) the interest rate was adjusted.

WHEREAS, Obligors are desirous of (i) extending the maturity date of the Note to November 5, 2011, and (ii) making certain other changes thereto, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Maple Mortgage held by Lender is a valid, first and

UNOFFICIAL COPY

subsisting lien on the Maple Premises, that the lien of the Oak Mortgage held by Lender is a valid and subsisting junior lien on the Oak Premises, and that the execution of this Modification Agreement will not impair the liens of said Mortgages and that there are no existing subsequent mortgages or other liens subsequent to the liens of the Mortgages held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct.
2. The Maturity Date of the Note is hereby extended to November 5, 2011 (as such maturity date may be extended from time to time in the Lender's sole discretion). Borrower shall continue to make monthly payments of interest only on the fifth (5th) day of each month, through and including the month immediately prior to the month in which the Maturity Date (as herein modified, and as such maturity date may be extended from time to time in the Lender's sole discretion) occurs, followed by a final payment of all accrued but unpaid interest and the unpaid principal balance of the Note on the Maturity Date (as herein modified, and as such maturity date may be extended from time to time in the Lender's sole discretion).
3. The Maple Mortgage is hereby modified by deleting the date "July 5, 2011" as it appears in the first "Whereas" paragraph on page 1 and replacing it with the date "November 5, 2011".
4. The Oak Mortgage is hereby modified by deleting the date "July 5, 2011" as it appears in the first "Whereas" paragraph on page 1 and replacing it with the date "November 5, 2011".
5. Concurrent with the execution of this Modification Agreement, Borrower shall deposit such additional funds into the Blocked Account (as such term is defined in the Blocked Account Agreement) as are necessary, in Lender's sole discretion, to replenish the interest reserve with an amount sufficient to pay interest on the Loan (as such term is defined in the Blocked Account Agreement) through the extended Maturity Date (the "Blocked Account Deposit").
6. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Note, as hereby modified. Each reference in the Loan Documents to the term "Maturity Date" shall hereafter mean November 5, 2011 (as such maturity date may be extended from time to time in the Lender's sole discretion).
7. Except for the modifications stated herein, the Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the loan evidenced by the Note shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Note and other Loan Documents, to forgive or waive any violation, default or breach under the Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

UNOFFICIAL COPY

8. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, the Blocked Account Deposit, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees").

9. The Premises described in the Mortgages shall remain in all events subject to the liens, charges or encumbrances of the Mortgages, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to affect the liens, charges or encumbrances of the Mortgages, or the priority thereof over any other liens, charges, or encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Note, the Mortgages and/or the Assignment of Rents, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

10. This Modification Agreement shall extend to and be binding upon each of the Obligors and their respective heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

11. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Note, the Guaranty and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Note, the Guaranty and other Loan Documents, as so amended.

Without limiting the generality of the foregoing paragraph, the Guarantor hereby further represents and warrants to the Lender with the intent that the Lender rely thereon, as follows with regard to the Guaranty, as hereby modified: (a) the Guaranty is in full force and effect and is binding and enforceable against the Guarantor in accordance with its terms; (b) the Guarantor irrevocably consents and agrees to the Borrower's execution and delivery of this Modification Agreement; (c) the liability of the Guarantor to the Lender under the Guaranty shall in no way be affected, modified, altered, or discharged in any fashion by the Borrower's execution, delivery or performance of this Modification Agreement; (d) the Guarantor hereby restates and reaffirms to Lender all terms and provisions of the Guaranty as if set forth in full herein; and (e) the Guarantor does not possess any claims, defenses, offsets, or counterclaims against the enforcement of the Guaranty as of the date hereof, and any and all such claims, defenses, offsets and counterclaims, whether known or unknown, are forever waived and released, and the Guarantor is unconditionally liable under the Guaranty, for the payment and performance of all present and future indebtedness and all other obligations described therein.

12. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois (exclusive of choice of law principals), including all matters of construction, validity and performance.

UNOFFICIAL COPY

13. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

14. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

15. TO THE MAXIMUM EXTENT PERMITTED BY LAW, OBLIGOR AND LENDER EACH HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

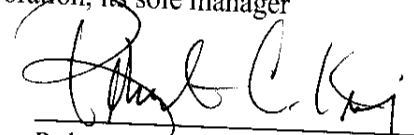
[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

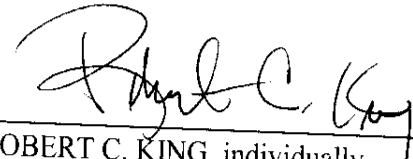
UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

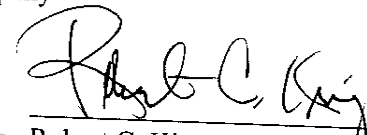
PARC INVESTMENT PROPERTIES LLC, an Illinois limited liability company

By: CARROLL PROPERTIES, INC., an Illinois corporation, its sole manager


By: 
Robert C. King, President


ROBERT C. KING, individually

CARROLL PLACE, LLC, an Illinois limited liability company

By: 
Robert C. King, its sole Member

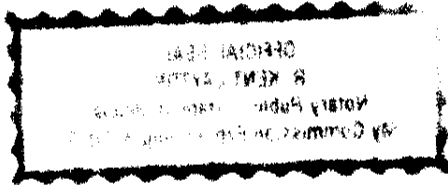
MB FINANCIAL BANK, N.A.

By: 
Its: First Vice President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

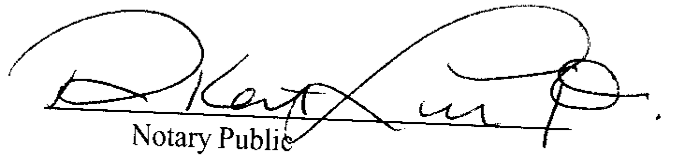


UNOFFICIAL COPY

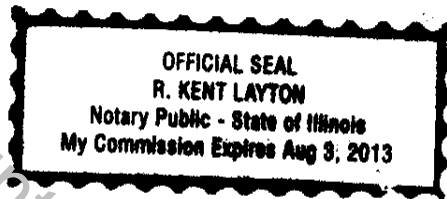
STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that ROBERT C. KING personally known to me as the sole Member of CARROLL PLACE, LLC, an Illinois limited liability company, and 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, sealed and delivered the said instrument as such sole Member of said limited liability company, pursuant to authority, given by the member of said limited liability company, as his own and 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 23RD day of September, 2011.


Notary Public

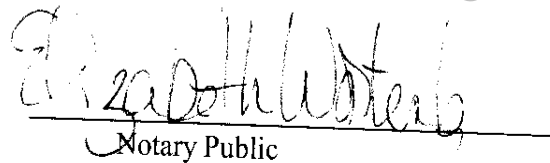
My Commission Expires: 8-30-13



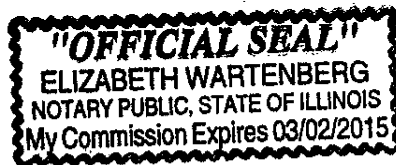
STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Randy Perreault, of MB FINANCIAL BANK, N.A., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such FIRST VICE PRESIDENT, 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 30 day of September, 2011.


Notary Public

My Commission Expires: 3-2-15



UNOFFICIAL COPY

EXHIBIT "A"

MAPLE PREMISES LEGAL DESCRIPTION

PIN: 11-18-112-045-0000 (affects Parcel 1 and other property)

ADDRESS: 1890 Maple Avenue, Evanston, Illinois

PARCEL 1:

LOT 1 (EXCEPT THE WEST 20 FEET THEREOF) IN CITY CONSOLIDATION NO. 1 OF LOTS 1, 2, 3, 4 AND 5 IN CIRCUIT COURT SUBDIVISION OF PARTITION OF LOT 22, BEING A TRIANGULAR PIECE OF LAND BOUNDED ON THE NORTH BY EMERSON STREET, ON THE SOUTHWESTERLY BY EAST RAILROAD AVENUE AND ON THE EAST BY MAPLE AVENUE (EXCEPT 1 ACRE IN THE NORTHWEST CORNER THEREOF) IN COUNTY CLERK'S DIVISION, IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS, TOGETHER WITH THE NORTH HALF OF THE VACATED 16 FOOT ALLEY LYING SOUTH OF AND ADJOINING THE SUBJECT LAND (EXCEPT THE WEST 20 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN ACCESS EASEMENT AGREEMENT RECORDED OCTOBER 30, 2000 AS DOCUMENT 00852574 MADE BY AND BETWEEN EVANSTON NORTHWESTERN HEALTHCARE CORPORATION, CHS 1033 UNIVERSITY ASSOCIATES LIMITED PARTNERSHIP, 1881 OAK LLC AND 1890 MAPLE LLC FOR INGRESS, EGRESS, ACCESS AND VEHICULAR MANEUVERING AND EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN ACCESS EASEMENT AGREEMENT RECORDED APRIL 27, 2007 AS DOCUMENT 0711733064 MADE BY AND BETWEEN 1033 UNIVERSITY, LLC, CARROLL PLACE, LLC AND 1890 MAPLE LLC FOR PEDESTRIAN AND VEHICULAR PASSAGE, CIRCULATION AND INGRESS AND EGRESS.

UNOFFICIAL COPY

EXHIBIT "B"

OAK PREMISES LEGAL DESCRIPTION

PINS: 11-18-112-011-0000 (affects lot 9 [except the west 26 feet thereof] of parcel 1)
11-18-112-012-0000 (affects the west 1/2 of lot 8 of parcel 1)
11-18-112-013-0000 (affects the east 1/2 of lot 8 of parcel 1)
11-18-112-014-0000 (affects lots 6 and 7 of parcel 1)
11-18-112-045-0000 (affects parcel 2 and other property)

ADDRESS: 1881 Oak Street, Evanston, Illinois 60201

PARCEL 1:

LOTS 6, 7, 8 AND LOT 9 (EXCEPT THE WEST 26 FEET THEREOF) IN BLOCK 1 IN CIRCUIT COURT SUBDIVISION IN PARTITION OF LOT 22 IN COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS;

ALSO, THE NORTH HALF OF THE VACATED 16 FOOT ALLEY LYING SOUTH OF AN ADJOINING SAID LOTS 6, 7, 8 AND LOT 9 (EXCEPT THE WEST 26 FEET THEREOF).

PARCEL 2:

THE WEST 20 FEET OF LOT 1 IN CITY CONSOLIDATION NO. 1 OF LOTS 1, 2, 3, 4 AND 5 IN CIRCUIT COURT SUBDIVISION IN PARTITION OF LOT 22, BEING THAT TRIANGULAR PIECE OF LAND BOUNDED ON THE NORTH BY EMERSON STREET, ON THE SOUTHWESTERLY BY EAST RAILROAD AVENUE, AND ON THE EAST BY MAPLE AVENUE (EXCEPT 1 ACRE IN THE NORTHWEST CORNER THEREOF) IN COUNTY CLERK'S DIVISION, IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS, TOGETHER WITH THE WEST 20 FEET OF THE NORTH HALF OF THE VACATED 16 FOOT ALLEY LYING SOUTH OF AND ADJOINING SAID LAND.