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Cook County Recorder of Deeds
Date: 05/15/2012 09:01 AM Pg: 1 of 11

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FIFTH MODIFICATION OF LOAN INSTRUMENTS

THIS FIFTH MODIFICATION OF LOAN INSTRUMENTS ("Agreement") is executed as of April 15, 2012, by and among 1437-45 W. Greenleaf, LLC, an Illinois limited liability company ("Borrower"), Daniel Herlo and Janet Herlo, each individually (collectively, "Guarantor" or "Guarantors"), and MB Financial Bank, N.A., a national banking association, successor in interest to Heritage Community Bank, an Illinois banking corporation ("Lender").

RECITALS:

A. On or about October 31, 2005, Lender made a construction loan (the "Loan") to New City Builders, Inc., an Illinois corporation ("Original Borrower"), in the amount of Five Million Four Hundred Thousand and 00/100 Dollars (\$5,400,000.00) to finance the acquisition and development of a parcel of real estate known as 1437-45 West Greenleaf Avenue, Chicago, Illinois, as legally described in Exhibit A attached hereto ("Property") and the construction of 39 single-family condominium units thereon.

B. The Loan is evidenced and secured by the following instruments, each dated as of October 31, 2005, unless otherwise noted: (i) Construction Loan Agreement executed by and between Original Borrower and Lender (the "Initial Loan Agreement"); (ii) Construction Note executed by Original Borrower payable to Lender in the amount of Five Million Four Hundred Thousand and 00/100 Dollars (\$5,400,000.00) (the "Initial Note"); (iii) Construction Mortgage executed by Original Borrower, as Mortgagor, to and for the benefit of Lender, as Mortgagee, covering the Property, and recorded on November 2, 2005 in the Cook County Recorder's Office, Cook County, Illinois as Document No. 0530620150 (the "Mortgage"); (iv) Assignment of Rents and Leases executed by Original Borrower, as Assignor, to and for the benefit of Lender, as Assignee, recorded on November 2, 2005 in the Cook County Recorder's Office, Cook County, Illinois as Document No. 0530620151 ("Assignment of Rents"); (v) Guaranty executed by certain guarantors of the Loan ("Original Guarantors") to and for the benefit of Lender (the "Original Guaranty"); (vi) Guaranty of Completion and Performance executed by Original Guarantors to and for the benefit of Lender; (vii) Environmental Indemnity Agreement executed by Original Borrower and Original Guarantors; (viii) Collateral Assignment of Architect's

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Contract executed by Original Borrower to and for the benefit of Lender; (ix) Collateral Assignment of Construction Contract executed by Original Borrower to and for the benefit of Lender; (x) Collateral Assignment of Sale Contracts executed by Original Borrower to and for the benefit of Lender; and, (xi) certain other documents (hereinafter, items (i) through (xi) in this Recital B, together with all other documents and instruments given at any time to evidence, secure or guaranty the Loan, in their original form and as amended from time to time, are referred to collectively as the "Loan Instruments").

C. On January 19, 2006, Original Borrower executed a Warranty Deed conveying and transferring record title to the Property to Borrower, which Warranty Deed was recorded with the Cook County Recorder's Office, Cook County, Illinois, on January 27, 2006 as Document No. 0602747071. Said conveyance of record title to the Property was further evidenced by the execution of that certain Assumption Agreement dated as of January 19, 2006, by and among Original Borrower, Guarantors, Borrower and Lender, recorded with the Cook County Recorder's Office on January 27, 2006 as and Document No. 0602747072 (the "Assumption Agreement").

D. Pursuant to the Assumption Agreement, Borrower assumed the liabilities and obligations of Original Borrower under the terms and conditions of the Loan Instruments.

E. The terms and provisions of the Loan Instruments were modified and amended by the Memorandum of Modification and Extension Agreement dated as of August 13, 2007, recorded with the Cook County Recorder of Deeds, Cook County, Illinois, on September 5, 2007 as Document No. 0724839112 (the "First Memorandum of Modification"), whereby the Interest Rate payable under the Initial Note was decreased and the Maturity Date of the Loan was extended to October 31, 2008.

F. On or about April 3, 2008, a Partial Release of Mortgage dated April 3, 2008 was recorded with the Cook County Recorder of Deeds, Cook County, Illinois on April 30, 2008 as Document No. 0812147005, which released unit 1N at 1445 West Greenleaf.

G. On or about October 2, 2008, Borrower, Guarantors and Lender entered into that Second Memorandum of Modification and Extension Agreement recorded with the Cook County Recorder of Deeds, Cook County, Illinois on November 24, 2008 as Document No. 0832947015 (the "Second Memorandum of Modification") whereby, among other things, certain Original Guarantors were released from the Original Guaranty and the Maturity Date of the Loan was extended to October 31, 2009.

H. In connection with the Second Memorandum of Modification Borrower executed and delivered to Lender that certain first amended and restated Construction Note made payable to Lender in the principal amount of Three Million Ninety-Eight Thousand and 00/100 Dollars (\$3,098,000.00) ("First Amended Note").

I. Also in connection with the Second Memorandum of Modification, Guarantors executed and delivered to Lender a Replacement Guaranty dated October 2, 2008 to reflect that certain Original Guarantors had been released from obligations to repay the Loan ("Replacement Guaranty"; and, together with the Original Guaranty, the "Guaranty").

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J. On or about October 31, 2009, Borrower, Guarantors and Lender entered into that Third Modification of Loan Instruments ("Third Modification") whereby the parties agreed to, among other things, extend the maturity date of the Loan to April 15, 2011. In connection therewith, Borrower executed and delivered to Lender that certain Second Amended and Restated Construction Note ("Second Amended Note") in the principal amount of Nine Hundred Seventy Three Thousand One Hundred Ten and 00/100 Dollars (\$973,110.00).

K. On or about April 15, 2011, Lender, Borrower and Guarantors entered into that certain Fourth Modification of Instruments ("Fourth Modification") in order to, among other things, extend the Maturity Date of the Loan to April 15, 2012. In connection with the Fourth Modification, Borrower executed and delivered to Lender that certain Third Amended and Restated Construction Note, made payable by Borrower to the order of Lender in the principal amount of Three Hundred Forty-Seven Thousand Two Hundred Fifty-Nine and 63/100 Dollars (\$347,259.63) ("Third Amended Note"). Hereinafter, the Initial Loan Agreement, the First Memorandum of Modification, the Second Memorandum of Modification, the Third Modification, the Fourth Modification and this Agreement are referred to collectively herein as the "Loan Agreement." All capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the Loan Agreement or the Loan Instruments.

L. Lender and Borrower have agreed to further modify and amend the Loan Instruments in order to, among other things, extend the Maturity Date of the Loan to July 15, 2012 ("Extension"). In connection with the Extension, Borrower shall execute and deliver to Lender that certain Fourth Amended and Restated Construction Note in the principal amount of Two Hundred Forty-Seven Thousand Two Hundred Fifty-Nine and 63/100 Dollars (\$247,259.63) ("Fourth Amended Note"; and, together with the Initial Note, the First Amended Note, the Second Amended Note and the Third Amended Note, the "Note").

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 Instruments, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable considerations, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date**. The Maturity Date of the Loan is extended to July 15, 2012. Any reference in the Note, the Loan Agreement or any other Loan Instrument to the Maturity Date shall mean and refer to July 15, 2012.

2. **Additional Loan Instruments**. In connection with and as a condition precedent to this Agreement and Lender's obligations hereunder, Borrower shall execute and deliver to Lender (a) the Fourth Amended Note and (b) such other documents or instruments as Lender may reasonably request from time to time in order to more fully effectuate the terms of this Agreement or to otherwise ensure the continued perfection and security of Mortgage and the other Loan Instruments.

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3. **Principal and Interest.** Principal and interest on the Loan shall be due and payable as set forth in the Fourth Amended Note.

4. **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 Instruments are true and correct as of the date hereof.

(b) There is currently no Event of Default under the Note, the Mortgage or the other Loan Instruments 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 Instruments.

(c) The Loan Instruments 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 Instruments as modified herein.

(f) Borrower validly exists 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 Instruments as modified herein. The execution and delivery of this Agreement and the performance of the Loan Instruments 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.

5. **Reaffirmation of Guaranty.** Each Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of each Guarantor in the Guaranty are, as of the date hereof, true and correct and none of the Guarantors knows of any default thereunder. The Guaranty continues to be the valid and binding obligation of each Guarantor, enforceable in accordance with its terms and no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder. In addition, each Guarantor hereby expressly and unconditionally waives, releases, and discharges any and all rights or claims under the Illinois Sureties Act, 740 ILCS 155/0.01 et. seq. ("Illinois Sureties Act"), and further acknowledges and agrees that Lender has no duty or obligation to any Guarantor under the Illinois Sureties Act. Each Guarantor acknowledges and agrees that the failure of any other Guarantor to execute this Agreement (or any of the other Loan Instruments) shall not affect, diminish, impinge, amend or alter the Guaranty and such Guaranty shall continue to be the valid and binding obligation of

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each Guarantor, enforceable in accordance with its terms and no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder by virtue of the failure of any Guarantor to execute this Agreement.

6. **No Release.** Borrower hereby ratifies and affirms its respective obligations and liabilities under the Note, the Mortgage, the Loan Agreement, and all of the other Loan Instruments. All of the representations and warranties of Borrower under the Note, the Mortgage, the Loan Agreement, and all of the other Loan Instruments, as of the date hereof, are true and correct, and are hereby deemed remade as of the date hereof. Other than as previously disclosed to Lender as of the date hereof, Borrower is unaware of any default under the Note, the Mortgage, the Loan Agreement, or any of the other Loan Instruments. The Note, the Mortgage, the Loan Agreement, and all of the other Loan Instruments continue to be the valid and binding obligations of Borrower, enforceable in accordance with their terms and Borrower has no claim or defense to the enforcement of the rights and remedies of Lender thereunder.

7. **Patriot Act.** Lender hereby notifies Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) (the "**Patriot Act**"), Lender is required to obtain, verify and record information that identifies Borrower. Borrower agrees to provide to Lender promptly upon Lender's request, such information as Lender shall require for purposes of complying with the requirements of the Patriot Act, the federal regulations issued pursuant to the Patriot Act and any customer identification program established by Lender in accordance therewith.

8. **Right of Setoff.** In addition to any rights and remedies of the Lender provided by law, upon the occurrence and during the continuance of any Event of Default under this Agreement or any Loan Instrument, the Lender is authorized, at any time, to set off and apply any and all Deposits (as hereinafter defined) of any Borrower held by the Lender against any and all liabilities owing to the Lender. The set-off may be made irrespective of whether or not the Lender shall have made demand under this Agreement or any Loan Instrument or any guaranty. The set-off may be made without prior notice to any Borrower or any other party, any such notice being waived by each Borrower to the fullest extent permitted by law. The Lender agrees promptly to notify the Borrower after any such set-off and application, provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. For the purposes of this paragraph, "Deposits" means any deposits (general or special, time or demand, provisional or final, individual or joint) and any instruments owned by any Borrower which come into the possession or custody or under the control of the Lender.

9. **Confession of Judgment.** Borrower hereby irrevocably authorizes and empowers any attorney-at-law to appear in any court of record and to confess judgment against Borrower for the unpaid amount of the Note and all liabilities due to Lender as defined above, as evidenced by an affidavit signed by any officer of Lender setting forth the amount then due, attorney fees, plus costs of suit, and to release all errors, and waive all rights of appeal. If a copy of any Note and/or this Agreement, verified by an affidavit, shall have been filed in the proceeding, it will not be necessary to file the original as a warrant of attorney. Borrower waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgment will be deemed to exhaust the power,

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whether or not such exercise shall be held by any court to be invalid, voidable, or void; but the power will continue undiminished and may be exercised from time to time as Lender may elect until all amounts owing on all Loan have been paid in full. Borrower hereby waives and releases any and all claims or causes of action which Borrower may have against any attorney acting under the terms of authority which Borrower has granted herein arising out of or connected with the confession of judgment hereunder.

10. **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.

11. **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 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 Instruments 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 Instruments are and remain unmodified and in full force and effect.

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(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 Instruments" contained in any of the Loan Instruments shall be deemed to refer to the Note, the Mortgage and the other Loan Instruments 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.

[Signature Page Follows]

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

LENDER:

MB FINANCIAL BANK, N.A., a national banking association

By: Robert Romero
Name: Robert Romero
Title: V.P.

BORROWER:

1437-45 W. GREENLEAF, LLC, an Illinois limited liability company

By: Daniel Herlo
Name: Daniel Herlo
Title: Managing Member

GUARANTORS:

Daniel Herlo
Daniel Herlo
Janet Herlo
Janet Herlo

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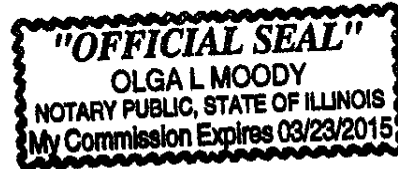
STATE OF ILLINOIS)
).ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert Romero, V.P. of **MB Financial Bank, N.A.**, 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 27th day of April, 2012.

Olga L. Moody
Notary Public

My Commission Expires: 4/27/12



STATE OF ILLINOIS)
).ss
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Daniel Herlo**, the Managing Member of **1437-45 W. Greenleaf, LLC**, an Illinois limited liability company, 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 19th day of April, 2012.

C. Croitoru
Notary Public

My Commission Expires: July 31st, 2013



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STATE OF ILLINOIS)
)
) .ss
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Daniel Herlo** 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 19th day of April, 2012.

C Croitoru
Notary Public

My Commission Expires: July 31st, 2013



STATE OF ILLINOIS)
)
) .ss
COUNTY OF Cook)



I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Janet Herlo** 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 she signed and delivered said instrument as her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24 day of April, 2012.

Janet Herlo
Notary Public

My Commission Expires: 4-26-15

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EXHIBIT A

"Property"

THE WEST 33 FEET, 9-1/4 INCHES OF LOT 7 AND ALL OF LOTS 8 AND 9 IN BLOCK 29 IN ROGER'S PARK SUBDIVISION IN THE NORTHEAST 1/4 AND THAT PART OF THE NORTHWEST 1/4 LYING EAST OF RIDGE ROAD OF SECTION 31, ALSO THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 32, ALSO ALL OF SECTION 30 LYING SOUTH OF THE INDIAN BOUNDARY LINE IN TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

COMMON ADDRESS: 1437-45 WEST GREENLEAF AVENUE
CHICAGO, ILLINOIS 60626

PERMANENT INDEX NO.: 11-32-109-001-0000

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