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Doc#: 0602405202 Fee: \$46.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/24/2006 12:36 PM Pg: 1 of 12

SECOND MORTGAGE MODIFICATION AGREEMENT

This Mortgage Modification Agreement ("Modification Agreement") dated this 19th day of December, 2005 entered into by and between DANIEL EBERHARDT ("Borrower"), MRC POLYMERS, INC., an Illinois corporation ("Guarantor") and LASALLE BANK NATIONAL ASSOCIATION ("Lender").

RECITALS:

WHEREAS, Borrower together with Maria Eberhardt have executed and delivered to Lender that certain Mortgage and Security Agreement ("Mortgage") dated January 5, 2004 which was recorded with the Recorder of Deeds of Cook County, Illinois on January 14, 2004 as Document Number 0401442048 as amended by that certain Mortgage Modification Agreement dated September 20, 2005 encumbering that certain parcel of real property described in Exhibit "A" attached hereto and all other Mortgaged Property as defined therein (collectively, the "Mortgaged Property"); and

WHEREAS, Borrower together with Maria Eberhardt has also executed and delivered to Lender that certain Assignment of Rents and Leases (the "Assignment of Rents") dated January 5, 2004 which was recorded with the Recorder of Deeds of Cook County, Illinois on January 14, 2004 as Document 041442049 as amended by that certain Mortgage Modification Agreement encumbering the Mortgaged Property; and

WHEREAS, Borrower and Lender are desirous of restating and an ending that certain One Million Two Hundred Sixty Five Thousand and No/100 (\$1,265,000.00) Dollar Restated Secured Promissory Note ("Existing Note") dated September 20, 2005 and in connection with same making an additional advance (the "Additional Advance") to Borrower of One Hundred Ten Thousand Eight Hundred Ten and No/100 (\$110,810.00) Dollars; and

WHEREAS, Borrower and Lender are also desirous of amending the Mortgage and Assignment of Rents and Leases as set forth herein.

**THIS INSTRUMENT PREPARED BY AND
UPON RECORDING SHOULD BE
RETURNED TO:**

John T. Duax
Robbins, Salomon & Patt, Ltd.
25 East Washington Street
Suite 1000
Chicago, Illinois 60602
9Q647502.DOC

PERMANENT TAX INDEX NUMBER:

16-35-122-028-0000

STREET ADDRESS:

3307 S. Lawndale Avenue
Chicago, Illinois

Box 400-CTCC

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NOW, THEREFORE, in consideration of the mutual promises of the parties hereto and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

IT IS AGREED:

1. The parties hereto agree that the Mortgage and Assignment of Rents are hereby modified to provide that the Mortgage and Assignment of Rents are hereby modified to provide that any and all references in same to the "Note" shall be deemed references to the Second Restated Secured Promissory Note attached hereto as Exhibit "B" (the "Restated Note") which matures on September 30, 2010 and the terms of which are hereby incorporated by reference into the Mortgage and Assignment of Rents.

2. Guarantor, by its execution of this Modification Agreement, hereby acknowledges and agrees that Guarantor remains liable for any and all liabilities and obligations to Lender of Guarantor under that certain Guaranty ("Guaranty") dated January 5, 2004 delivered to Lender in connection with the execution of the Mortgage and Assignment of Rents including the principal and interest due from Borrower to Lender under the Restated Note.

BORROWER:


 Daniel Eberhardt

GUARANTOR:

MRC POLYMERS, INC., an Illinois corporation

By: 

Name: Daniel L. Eberhardt

Title: President

LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By: 

Name: Joseph A. Sheils

Title: First Vice President

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Colleen Farrell, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Daniel Eberhardt, an Illinois resident, 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 the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Witness my hand and seal this 10th day of JANUARY, 2006.

Colleen M. Farrell

Notary Public



My commission expires: 10/3/09

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STATE OF ILLINOIS)

COUNTY OF COOK)

) SS.

I, Colleen Farrell, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that JOSEPH SHELIS, FVP of LASALLE BANK NATIONAL ASSOCIATION, 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 the said instrument as his free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

Witness my hand and seal this 10th day of JANUARY, 2006.

Colleen M. Farrell

Notary Public



My Commission Expires:

10/3/09

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STATE OF ILLINOIS)

COUNTY OF COOK)

) SS.

I, Colleen Farrell, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that DANIEL EBERTHEDT, PRESIDENT of MRC POLYMERS, INC., 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 the said instrument as his free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

Witness my hand and seal this 10th day of JANUARY, 2006.

Colleen M. Farrell

Notary Public



My Commission Expires:

10/3/09

UNOFFICIAL COPY**EXHIBIT "A" TO
MORTGAGE MODIFICATION AGREEMENT****LEGAL DESCRIPTION****PARCEL 1:**

THAT PART OF THE WEST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 33 FEET EAST OF THE WEST LINE AND 150 FEET SOUTH OF THE NORTH LINE OF THE SAID WEST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE EAST ON A LINE PARALLEL TO THE NORTH LINE OF THE SAID SOUTHEAST 1/4, (SAID LINE BEING ALSO THE SOUTHERLY LINE OF RIGHT OF WAY OF THE CHICAGO AND ILLINOIS WESTERN RAILROAD COMPANY), A DISTANCE OF 39.3 FEET TO A POINT OF CURVE IN SAID RIGHT OF WAY; THENCE SOUTHEASTERLY ON A CURVE TANGENT TO THE LAST DESCRIBED LINE AND CONVEX TO THE NORTHEAST WITH A RADIUS OF 573.7 FEET TO ITS INTERSECTION WITH THE EAST LINE OF THE SAID WEST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35; THENCE SOUTH ON THE LAST DESCRIBED LINE 477.71 FEET TO A LINE PARALLEL TO AND 690.31 FEET SOUTH OF THE NORTH LINE OF THE SAID SOUTHEAST 1/4; THENCE WEST ON THE LAST DESCRIBED LINE 300.32 FEET TO A LINE PARALLEL TO AND 33 FEET EAST OF THE WEST LINE OF THE EAST 1/2 OF THE SAID SOUTHEAST 1/4, THE SAID LINE BEING ALSO THE EAST LINE OF LAWNDALE AVENUE; THENCE NORTH 540.31 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS

PARCEL 2:

THAT PART OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WEST LINE OF THE SAID EAST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 WITH A LINE PARALLEL TO AND 690.31 FEET SOUTH OF THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35 AFORESAID; THENCE EAST ON THE LAST DESCRIBED LINE 292.36 FEET; THENCE SOUTHEAST ON A STRAIGHT LINE 77.55 FEET TO A POINT IN A LINE PARALLEL TO AND 20 FEET WEST OF THE EAST LINE OF THE NORTHWEST 1/4 OF SECTION 35 AFORESAID, SAID POINT BEING 565.11 FEET NORTH OF THE SOUTH LINE OF THE SAID NORTHWEST 1/4; THENCE NORTH 41.61 FEET TO A POINT OF CURVE IN THE SOUTHERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO AND ILLINOIS WESTERN RAILROAD COMPANY; THENCE NORTHWESTERLY ALONG THE

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SOUTHERLY LINE OF THE RIGHT OF WAY OF SAID CHICAGO AND ILLINOIS WESTERN RAILROAD COMPANY ON A CURVE TANGENT TO THE WEST LINE OF THE RIGHT OF WAY OF THE ILLINOIS NORTHERN RAILWAY AND CONVEX TO THE NORTHEAST WITH A RADIUS OF 573.7 FEET TO A POINT IN THE WEST LINE OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35 AFORESAID; THENCE SOUTH ON THE LAST DESCRIBED LINE 477.71 FEET TO THE POINT OF BEGINNING, (EXCEPT THAT PART LYING EASTERLY OF A LINE 75 FEET WESTERLY OF MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE EAST LINE OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 35) AND

EXCEPT FROM AFORESAID PARCELS 1 AND 2 TAKEN AS A TRACT:

THAT PART OF THE NORTH 690.31 FEET OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF THE WEST 33 FEET OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 WITH THE SOUTH LINE OF THE NORTH 690.31 FEET AFORESAID; THENCE NORTH ALONG SAID EAST LINE 151.70 FEET; THENCE NORTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 45 DEGREES TO THE RIGHT WITH THE LAST DESCRIBED COURSE EXTENDED FOR A DISTANCE OF 4.95 FEET; THENCE EAST ALONG A LINE AT RIGHT ANGLES TO THE WEST LINE OF THE EAST 1/2 OF SAID SOUTHEAST 1/4 OF THE NORTHWEST 1/4 FOR A DISTANCE OF 282.76 FEET; THENCE NORTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 9 DEGREES 24 MINUTES 02 SECONDS TO THE LEFT WITH THE LAST DESCRIBED COURSE EXTENDED FOR A DISTANCE OF 108.66 FEET; THENCE SOUTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 65 DEGREES 16 MINUTES 03 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED COURSE EXTENDED FOR A DISTANCE OF 91.53 FEET TO A POINT IN THE SOUTH LINE OF THE NORTH 595 FEET OF SAID SOUTHEAST 1/4 OF THE NORTHWEST 1/4; THENCE EAST ON SAID SOUTH LINE OF THE NORTH 595 FEET FOR A DISTANCE OF 20.48 FEET; THENCE SOUTHEASTERLY FOR A DISTANCE OF 94.63 FEET TO A POINT IN THE WEST LINE OF THE EAST 75 FEET OF SAID SOUTHEAST 1/4 OF THE NORTHWEST 1/4, SAID POINT BEING 80 FEET NORTH OF THE SOUTH LINE OF THE NORTH 690.31 FEET AFORESAID (AS MEASURED IN SAID WEST LINE OF THE EAST 75 FEET); THENCE SOUTH IN SAID WEST LINE OF THE EAST 75 FEET FOR A DISTANCE OF 80 FEET TO THE SOUTH LINE OF THE NORTH 690.31 FEET AFORESAID; THENCE WEST ON SAID SOUTH LINE OF THE NORTH 690.31 FEET FOR A DISTANCE OF 558.82 FEET TO THE PLACE OF BEGINNING), IN COOK COUNTY, ILLINOIS

Property Address: 3307 South Lawndale, Chicago, IL 60632
P.I.N. 16-35-122-028-0000

UNOFFICIAL COPY**EXHIBIT "B"****TO SECOND MORTGAGE MODIFICATION AGREEMENT****SECOND RESTATED SECURED PROMISSORY NOTE**

\$1,360,000.00

December 19, 2005
Chicago, Illinois

FOR VALUE RECEIVED, the undersigned, **Daniel Eberhardt**, an Illinois resident, ("Borrower"), hereby promises to pay to the order of **LaSalle Bank National Association** ("Lender"), with an office and place of business located at 135 S. LaSalle, Chicago, IL 60603, or any successor holder of this Note (the "Note"), at Lender's principal place of business, or such other place or places as Lender from time to time may designate in writing, the principal sum of **ONE MILLION THREE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS** (\$1,360,000.00), in lawful money of the United States of America, together with interest calculated in arrears at the rate of six point six (6.6%) percent (the "Interest Rate") on the unpaid principal balance hereof from time to time outstanding in installments of principal and interest as follows:

- (a) Equal monthly payments of principal in the amount of Five Thousand Two Hundred Seventy and No/100 (\$5,270.00) Dollars commencing on January 1, 2006 and continuing on the first day of each month thereafter (each a "Payment Date"), and
- (b) Monthly payments of interest calculated at the Interest Rate on the then outstanding principal balance hereof on each Payment Date; and
- (c) A final payment of the remaining principal balance hereof together with accrued interest on September 30, 2010 (the "Maturity Date").

This Note is executed and delivered by Borrower to Lender in connection with that certain Mortgage as hereafter defined (the "Mortgage"). Unless otherwise defined herein or the context otherwise requires, capitalized terms used in this Note have the meanings in the Mortgage. All interest due hereunder shall be computed for the actual number of days elapsed on the basis of a year consisting of three hundred sixty (360) days. Monthly interest installments will change to reflect changes in the Interest Rate, and changes in the principal balance from time to time as provided herein. To the extent the term "prime lending rate" is used herein, Borrower acknowledges and agrees that the term is not intended to reflect nor does said term imply that said rate of interest is a preferred rate of interest or one offered by Lender to only its most credit-worthy customers.

Receipt of a check shall not constitute payment hereunder until such check is fully and finally honored by the bank upon which it is drawn, and any wire transfer of funds shall not constitute

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payment until actually credited to such bank account of Lender as Lender may from time to time designate. If Lender receives any payment due hereunder more than five (5) days after the due date thereof, then, upon Lender's request, all payments thereafter shall be made by wire transfer, cashier's or certified check.

1. Security for Note. The payment of this Note is secured by all security interests, liens, pledges, assignments and encumbrances concurrently herewith and/or from time to time hereafter granted by or for Borrower or any other party to Lender in connection with this Note, including, but not limited to, the liens evidenced by that certain Mortgage and Security Agreement dated January 5, 2004 executed by Daniel Eberhardt and Maria Eberhardt and as amended by that certain Mortgage Modification Agreement dated September 20, 2005 and that certain Second Mortgage Modification Agreement of even date herewith, encumbering the property and improvements located at 3307 S. Lawndale, Chicago, IL 60623 (the "Premises") in favor of Lender to secure payment of the Note (the "Mortgage"), that certain Assignment of Leases and Rents dated January 5, 2004 executed by Daniel Eberhardt and Maria Eberhardt and Lender (the "Assignment"), that certain Guaranty dated January 5, 2004 executed by MRC Polymers, Inc. (the "Guaranty"), that certain Environmental Indemnity Agreement dated January 5, 2004 executed by Daniel Eberhardt and Maria Eberhardt and Lender (the "Indemnity Agreement") and such other instruments, documents and agreements evidencing and/or securing the payment of this Note as Borrower or any other person executes and delivers to Lender now and from time to time hereafter. (The Note and Mortgage and all other documents as described in the preceding sentence are herein collectively referred to as the "Loan Documents".) The Premises, and all other property, rights and assets pledged or given to secure this Note under the Loan Documents are herein referred to as the "Mortgaged Property". The terms and provisions of the Mortgage and the Loan Documents are incorporated herein by this reference thereto as if fully set forth herein including but not limited to the right to accelerate the full amount due hereunder in the event of the occurrence of a Prohibited Transaction as defined in the Mortgage.

2. Acceleration on Default; Waivers. If any payment due under this Note or any other monies owing from Borrower to Lender hereunder or under the Financing Agreements is not paid when due or if a Default or Event of Default occurs under any of the Financing Agreements (after the expiration of any applicable grace or cure periods specifically provided for therein) (collectively referred to herein as a "Default"), then all indebtedness evidenced by this Note, together with all other monies owing hereunder by Borrower to Lender, will, at the option of Lender, be immediately due and payable in full. The acceptance by Lender of any payment, partial or otherwise, made hereunder after the time when it becomes due as herein set forth will not establish a custom or constitute a waiver by Lender of any right to enforce prompt payment thereof or a waiver of any other Default or the same Default on another occasion. BORROWER HEREBY WAIVES THE APPLICATION OF ANY AND ALL OF ITS RIGHTS AND POWERS UNDER ALL STATUTES OF LIMITATION AND SIMILAR STATUTES AND LAWS AS TO THIS NOTE. DEMAND, PRESENTMENT FOR PAYMENT, PROTEST AND NOTICE OF NON-PAYMENT AND PROTEST HEREBY ARE WAIVED BY BORROWER AND EVERY ENDORSER AND/OR GUARANTOR HEREOF.

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3. Default Rate of Interest. Upon Default, including failure to pay upon the Maturity Date, Lender, at its option, may also, if permitted under applicable law increase the applicable Interest Rate on this Note four (4) percentage points (the "Default Rate").

4. Late Payment Provision. If payment is ten (10) days or more late, Borrower will be charged five percent (5%) of the regularly scheduled payment or Twenty Five (\$25.00) Dollars, whichever is greater.

5. Application of Payments. Unless otherwise agreed to, in writing, or otherwise required by applicable law, payments will be applied first to accrued, unpaid interest, then to principal, and any remaining amount to any unpaid collection costs, late charges and other charges; provided, however, upon delinquency or other Default, Lender reserves the right to apply payments among principal, interest, late charges, collection costs and other charges at its discretion. All prepayments shall be applied to the indebtedness owing hereunder in such order and manner as Lender may from time to time determine in its sole discretion.

6. Fees and Expenses. If Lender employs counsel for advice with respect to the Financing Agreements to respond to any request of Borrower, including but not limited to, a request for a consent, waiver, amendment or interpretation of the Financing Agreements or to intervene, file a petition, answer, motion or other pleading in any suit or proceeding (bankruptcy or otherwise) relating to the Financing Agreements, or to attempt to collect this Note or said other monies from, or to enforce the Financing Agreements, against Borrower or any other party, then, in any such event, to the extent permitted by law all of the reasonable attorneys' paralegal fees, and expenses arising from such services, and all expenses, court costs and charges relating thereto, shall be an additional liability owing hereunder by Borrower to Lender, and bearing interest at the Default Rate, until paid in full to Lender and shall be secured by the lien evidenced by the Financing Agreements.

7. Interest Limitation. All agreements between Borrower and Lender expressly are limited so that in no contingency or event whatsoever, whether by reason of disbursement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid by Borrower to Lender for the use, detention or forbearance of the amounts to be disbursed hereunder exceed the highest lawful rate of interest permissible under the law which a court of competent jurisdiction, by a final non-appealable order, determines is applicable hereto ("Highest Lawful Rate"). If fulfillment of any provision herein contained at the time performance of such provision becomes due involves exceeding the Highest Lawful Rate, then ipso facto, the obligation to fulfill the same shall be reduced to such Highest Lawful Rate. If by any circumstance Lender shall ever receive as interest an amount which would exceed the Highest Lawful Rate, the amount which may be deemed excessive interest shall be applied to the principal and not to interest, or, if such excessive interest exceeds the unpaid principal under this Note, such excess shall be refunded to Borrower. All interest paid or agreed to be paid to Lender under this Note or any instrument executed in connection with this Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal (including the period of any renewal or extension of this Note) so that the interest on this Note for such full period shall not exceed interest computed at the Highest Lawful Rate. It is Lender's intention that the performance of any provision herein never result in any payments due

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or paid which involve exceeding the Highest Lawful Rate. The terms and provisions of this Paragraph shall control all other terms and provisions contained herein and in the other Financing Agreements.

8. Waivers; Continued Liability. It is agreed that the granting to Borrower or any other party of an extension or extensions of time for the payment of any sum or sums due under this Note or the other Financing Agreements or for the performance of any term, provision, covenant or agreement of this Note or the other Financing Agreements, or the taking or releasing of security or Collateral for the payment of this Note or the exercising or failure to exercise of any right or power under this Note or the other Financing Agreements, shall not in any way release or affect the liability of Borrower evidenced by this Note.

9. Amendments and Modifications. This Note may not be amended or modified, nor shall any revision hereof be effective, except by an instrument in writing expressing such intention executed by Lender and directed to Borrower.

10. Choice of Law, Submission to Jurisdiction, Waiver of Venue and Consent to Service. THIS NOTE SHALL BE CONSTRUED IN ALL RESPECTS IN ACCORDANCE WITH AND GOVERNED BY THE LAWS AND DECISIONS (WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAW PRINCIPLES THEREOF) OF THE STATE OF ILLINOIS. THE BORROWER (A) HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY ILLINOIS STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE, AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH ILLINOIS STATE OR FEDERAL COURT, AND (B) AGREES NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST THE LENDER OR THE DIRECTORS, OFFICERS, OR EMPLOYEES OF LENDER OR PROPERTY OF THE LENDER, ARISING OUT OF OR RELATING TO THIS NOTE, IN ANY COURT OTHER THAN AS HEREINABOVE SPECIFIED IN THIS SECTION. THE BORROWER HEREBY IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY ACTION OR PROCEEDING (WHETHER BROUGHT BY THE BORROWER, THE LENDER OR OTHERWISE) IN ANY COURT HEREINABOVE SPECIFIED AS WELL AS ANY RIGHT IT MAY NOW OR HEREAFTER HAVE TO REMOVE ANY SUCH ACTION OR PROCEEDING, ONCE COMMENCED, TO ANOTHER COURT ON THE GROUNDS OF FORUM NON CONVENIENS OR OTHERWISE. THE BORROWER AGREES THAT A FINAL JUDGMENT (FOLLOWING THE FINAL RESOLUTION OF ANY APPEAL THEREFROM) IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. PERSONAL SERVICE OF ANY KIND AND ALL PROCESS IS HEREBY WAIVED BY BORROWER, AND BORROWER CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE PROPERLY MADE IF MAILED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, DIRECTED TO THE BORROWER AT THE ADDRESS APPEARING ON THE RECORDS OF THE LENDER IN THE MANNER PROVIDED BY APPLICABLE STATUTE, LAW, RULE OF COURT, OR OTHERWISE.

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11. Jury Waiver. THE UNDERSIGNED AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE UNDERSIGNED AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS NOTE OR ANY OTHER FINANCING AGREEMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER FINANCING AGREEMENTS.

12. Binding Effect. Wherever the term "Borrower" is used in this Note, the term shall include (unless otherwise expressly indicated) all of Borrower's successors, and assigns, as the case may be. This Note shall be binding upon Borrower and shall inure to the benefit of Lender and its successors and assigns.

13. Severability. Any provision of this Note which is unenforceable or contrary to applicable law, the inclusion of which would affect the validity, legality or enforcement of this Note, shall be of no effect, to the extent of such prohibition or invalidity, and in such case all the remaining terms and provisions of this Note shall be fully effective, the same as though no such invalid provision had ever been included in this Note.

14. No Novation. This Note is in substitution and replacement for, but not in payment of, that certain Restated Secured Promissory Note dated as of September 20, 2005 in the original principal amount of \$1,265,000.00 executed by Daniel Eberhardt in favor of Lender (the "Existing Note"). The indebtedness evidenced by the Existing Note is continuing indebtedness, and nothing herein shall be deemed to constitute a payment, settlement or novation of the Existing Note, or release or otherwise adversely affect any lien, mortgage, or security interest securing such indebtedness or any rights of the Lender against any party. All amounts outstanding under the Existing Note shall be automatically transferred to, and shall be deemed to be outstanding under this Note.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Note as of the day and year first above written.

Daniel Eberhardt


