

This instrument prepared by  
and please return to:

Polsinelli Shalton Flanigan Suelthaus PC  
180 N. Stetson, Suite 4525  
Chicago, Illinois 60601-6733  
Attention: Kimberly K. Enders, Esq.



Doc#: 0810709102 Fee: \$68.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 04/16/2008 03:28 PM Pg: 1 of 17

Property of Cook County Clerk's Office

P.I.N.: 17-17-205-020-0000  
COMMONLY KNOWN AS: 1010 West Monroe Street, Chicago, Illinois 60607

**LOAN MODIFICATION AGREEMENT**

This instrument is a Loan Modification Agreement ("Modification") among First Chicago Bank & Trust, an Illinois banking corporation ("Lender"), UP Properties, LLC, an Illinois limited liability company ("Borrower") and Phillip Ciaccio and Pete Vitogiannis (collectively, "Guarantors").

**RECITALS:**

A. Borrower holds fee simple title to certain real estate commonly known as 1004 W. Monroe, Chicago, Illinois, which is legally described on Exhibit A attached hereto. Borrower is constructing a 4-unit multi-use building ("Building") on the Real Estate which will contain 3 residential dwelling units ("Units") and one commercial unit (the "Commercial Space"), and has submitted the Real Estate to the Illinois Condominium Act. Borrower intends to sell the Units to third-party buyers and lease the Commercial Space to third-party lessors (the "Project").

B. Guarantors are members of Borrower.

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C. On January 11, 2006, Borrower, Guarantors and Lender entered into a Construction Loan Agreement ("Loan Agreement") pursuant to which Lender granted a loan to Borrower in the amount of One Million One Hundred Ninety-Five Thousand (\$1,195,000.00) Dollars ("Loan"), which is evidenced by a Promissory Note in the amount of One Million One Hundred Ninety-Five Thousand (\$1,195,000.00) Dollars ("Note"). Concurrently therewith, Borrower and Guarantors executed and delivered to Lender the following documents (collectively "Security Documents"):

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing Mortgage dated January 11, 2007, and recorded with the Cook County Recorder of Deeds on March 12, 2007 as Document No. 0707160064 ("Mortgage");
2. four (4) Real Estate Mortgages, Assignments of Rents, Security Agreements and UCC Fixture Filings covering certain parcels adjacent to the real Estate and commonly known as 1006, 1010, 1012 and 1014 W. Monroe, Chicago, Illinois ("Additional Parcels") each of which is also owned by Borrower, which mortgages are also dated January 11, 2007 and recorded on March 12, 2007, in the Cook County Recorder of Deeds as Document Nos. 0707160066, 0707160065, 0707160063 and 0707160062;
3. a Guaranty of Note, Mortgage and Other Undertakings executed by Guarantors ("Guaranty");
4. a UCC Financing Statement authorized by Borrower;
5. an Environmental, ADA and ERISA Indemnification Agreement executed by Borrower and Guarantors;
6. an Assignment of Project Documents executed by Borrower;
7. a Certification of No Management Agreement executed by Borrower;

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8. a General Contractor's Lien Subordination Agreement executed by Borrower's general contractor;
9. an Assignment and Pledge of Real Estate Contracts and Earnest Money Deposits executed by Borrower; and
10. such other documents as were required by Lender.

D. Borrower has requested Lender to (1) extend the maturity date of the Loan from May 5, 2008 to May 5, 2013, and (2) increase the amount of the Loan by Two Hundred Ninety-Three Thousand Dollars (\$293,000.00) for a total credit facility in the amount of \$1,488,000.00 ("Revised Loan") to provide additional funds to complete construction and pay operating expenses. Lender is agreeable to these requests subject to the covenants, conditions and restrictions contained herein.

**NOW, THEREFORE**, in consideration of good and valuable consideration, the parties agree as follows:

1. The Note is hereby modified and amended in its entirety by a Promissory Note in the amount of One Million Four Hundred Eighty-Eight Thousand (\$1,488,000.00) Dollars, executed concurrently herewith, a copy of which is attached hereto as Exhibit B ("Revised Note"). The Revised Note evidences the outstanding principal balance of the Revised Loan. The Security Documents are hereby modified and amended to secure the Revised Note, and all references to the Note in the Security Documents are modified and amended to refer to the Revised Note in place thereof. All amounts presently outstanding on the Note shall be deemed outstanding on the Revised Note. All interest charged on and all payments made on the Note previously are unchanged.

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2. Pursuant to the Loan Agreement, Lender established a Construction Escrow (as defined therein). Lender and Borrower anticipate that an additional \$293,000.00 will be required to pay for outstanding hard and soft costs of the Project and Lender will make \$293,000.00 of the Revised Loan available for such costs.

3. This Modification shall be effective upon Lender's receipt of this Modification executed by the parties hereto and the following documents and items:

- (a) the Revised Note in the amount of \$1,488,000.00;
- (b) a Guaranty of Revised Note, Mortgage, Modification and Other Undertakings executed by Guarantors;
- (c) a title insurance policy or endorsement to its current title insurance policy which insures the Mortgage as modified by this Modification as a first lien on the Real Estate and increases the amount of title insurance by \$293,000.00, subject only to such exceptions as Lender shall permit;
- (d) updated certificates of insurance as required by the Mortgage, if any;
- (e) payment of Lender's fees and costs as provided in Section 8 hereof;
- (f) an organizational resolution of Borrower; and
- (g) a Certificate of Good Standing from Borrower or current LLC File Detail Report printed out from the Secretary of State of Illinois Website;

4. This Modification shall constitute an amendment of the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Note or Revised Note (collectively, the "Loan Documents") reference is made to the Loan Documents aforesaid, such reference shall be deemed a reference to such Loan Documents as hereby modified and amended. All other provisions of the Loan Documents

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remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Mortgage, the mortgages on the Additional Parcels or other Security Documents, or the covenants, conditions and agreements therein contained or contained in the Note or the Revised Note.

5. In the event of conflict between any of the provisions of the Loan Documents and this instrument, the provisions of this instrument shall override and control.

6. Borrower and Guarantors hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

7. Borrower hereby agrees to pay Lender a fee for the revising the Loan and this Modification in the amount of \$1,465.00 plus Lender's expenses arising out of and in connection with this Modification including, but not limited to, attorneys' fees, title insurance premiums and filing fees.

8. Guarantors acknowledge and agree that the Guaranty is replaced in its entirety by the Revised Guaranty. Guarantors hereby expressly acknowledge and confirm that by executing this Modification, Lender has not waived, altered or modified Lender's rights under any of the Loan Documents to amend, extend, renew or modify or otherwise deal with the obligations of the parties hereto or any of the security given to Lender in connection therewith without the consent of Guarantors and without such action releasing, modifying, or affecting the obligations of Guarantors or affecting the security heretofore granted to Lender.

**9. BORROWER AND GUARANTORS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MODIFICATION,**

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THE NOTE, THE REVISED NOTE, THE LOAN AGREEMENT, THE MORTGAGE, THE LOAN DOCUMENTS OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER AND BORROWER AND GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER, GUARANTORS OR ANY OF THEM.

10. BORROWER AND GUARANTORS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER AND GUARANTORS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER AND GUARANTORS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER AND GUARANTORS IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH BORROWER OR GUARANTORS, AT THEIR ADDRESSES AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF THE LENDER. BORROWER AND GUARANTORS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE

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**CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.**

**BORROWER AND GUARANTORS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER, GUARANTORS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.**

11. Borrowers and Guarantors warrant to Lender that none of Borrower nor Guarantors nor any affiliate is identified in any list of known or suspected terrorists published by any United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation: (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower and Guarantors covenant to Lender that if they become aware that they or any affiliate is identified on any Blocked Persons List, Borrower and Guarantors shall immediately notify Lender in writing of such information. Borrower and Guarantors further agree that in the event they or any affiliate is at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in

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order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

*Signature Page Follows*



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IN WITNESS WHEREOF, the parties hereto have executed this Modification as of \_\_\_\_\_, 2008.

**LENDER:**

First Chicago Bank & Trust, as successor to Labe Bank, an Illinois banking corporation

By: [Signature]  
Its VICE PRESIDENT

**BORROWER:**

UP Properties, LLC, an Illinois limited liability company

By: [Signature]  
Phillip Ciaccio, Manager

By: [Signature]  
Pete Vitogiannis, Manager

**GUARANTORS:**

[Signature]  
Phillip Ciaccio

[Signature]  
Pete Vitogiannis

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK         )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that DAN ROBINSON, VICE President of First Chicago Bank & Trust, as successor to Labe Bank, 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 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 MARCH 31, 2008.

[Signature]  
Notary Public



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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Phillip Ciaccio, individually and as Manager of UP Properties, LLC, an Illinois limited liability company, 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 the said instrument as her own 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 MARCH 31, 2008.

K Villanueva  
Notary Public

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF C O O K     )



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Pete Vitogiannis, Manager of UP Properties, an Illinois limited liability company, 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 own 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 MARCH 31, 2008.

K Villanueva  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION:

LOT 55 IN SUBDIVISION OF BLOCK 1 IN CANAL TRUSTEE'S SUBDIVISION OF THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 AND OF BLOCK 5 OF DUNCAN'S ADDITION TO CHICAGO, A SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1010 W. Monroe Street, Chicago, Illinois  
P.I.N.: 17-17-205-020-0000

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## EXHIBIT A

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COMMONLY KNOWN AS: 1010 W. Monroe Street, Chicago, Illinois  
P.I.N.: 17-17-205-020-0000

**UNOFFICIAL COPY****EXHIBIT B****PROMISSORY NOTE**  
**("Revised Note")**

\$1,488,000.00

\_\_\_\_\_, 2008

**FOR VALUE RECEIVED** the undersigned, UP Properties, LLC, an Illinois limited liability company ("Borrower"), promises to pay to the order of First Chicago Bank & Trust, an Illinois banking corporation (said Bank and each successive owner and holder of this Note being hereinafter called "Holder"), the principal sum of One Million Four Hundred Eighty-Eight Thousand (\$1,488,000.00) Dollars, or so much thereof as may from time to time be outstanding hereunder, together with interest on the balance of principal from time to time remaining unpaid, in the amounts, at the rates and on the dates hereafter set forth.

(a) On June 1, 2008, and continuing on the first day of each succeeding month to and including May 1, 2010, there shall be paid on account of this Note interest only on the outstanding principal balance of the Note at a rate equal to six (6%) percent per annum.

(b) On June 1, 2010, and continuing on the first day of each succeeding month to and including the Maturity Date, there shall be paid on account of this Note principal and interest in the amount of \$ \_\_\_\_\_; which amount shall be applied first to interest at a rate of six (6%) percent per annum and the balance to principal.

(c) On May 5, 2013 ("Maturity Date"), the principal outstanding balance together with all accrued interest and all other amounts due hereunder shall be paid.

Interest shall be calculated on the basis of a calendar year having 360 days and shall be paid for the actual days outstanding.

This Note may be prepaid, in whole or in part, on fifteen (15) days' written notice, which notice shall be irrevocable. In the event a prepayment is made on account of this Note in excess of the monthly payment because this Note is repaid by placing a lien on the Premises (as defined in the Mortgage hereafter described), there shall be paid on the prepayment date the principal payment ("Prepayment Amount"), accrued interest and all other sums due hereunder, and if prepayment is made at any time during the period from the date of disbursement until May 31, 2009, there shall also be paid a prepayment premium in an amount equal to three (3.0%) percent of the Prepayment Amount, and if prepayment is made at any time during the period from June 1, 2009 to May 31, 2010, there shall also be paid a prepayment premium in an amount equal to two (2.0%) percent of the Prepayment Amount, and if prepayment is made at any time during the period from June 1, 2010 until May 31, 2011, there shall also be paid a prepayment premium in an amount equal to one (1.0%) percent of the Prepayment Amount. In the event of any other prepayment, this Note may be prepaid, without premium or penalty, in whole or in part, and all accrued interest hereon shall be payable and shall be paid on the date of prepayment.

Payment upon this Note shall be made in lawful money of the United States at such place as the Holder of this Note may from time to time in writing appoint and in the absence of such appointment, shall be made at the offices of First Chicago Bank & Trust, 1145 North Arlington Heights Road, Itasca, Illinois 60143.

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Without limiting the provisions of the succeeding paragraphs, in the event any payment of interest is not paid within ten (10) days after the date the same is due, the undersigned promises to pay a late charge ("Late Charge") of five (5.0%) percent of the amount so overdue to defray the expense incident to handling any such delinquent payment or payments.

This Note is executed pursuant to a Loan Modification Agreement ("Modification") executed concurrently herewith, which modifies a Construction Loan Agreement dated January 11, 2007 and executed by Holder and Borrower ("Loan Agreement"). This Note replaces that certain Promissory Note in the amount of One Million One Hundred Ninety-Five Thousand Dollars (\$1,195,000.00) Dollars ("Original Note") made by Borrower on January 11, 2007. The Original Note is secured by an instrument entitled "Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing" executed on January 11, 2007 and recorded on March 12, 2007 with the Cook County, Illinois Recorder of Deeds as Document No. 0707160064 and certain other Real Estate Mortgages, Assignments of Rents, Security Agreements and UCC Fixture Filings covering the parcels adjacent to the Real Estate and also owned by Borrower. Amounts outstanding pursuant to the Original Note shall be outstanding under this Note. All interest rates applicable to and charged on the Original Note and all payments made on the Original Note are unchanged. Pursuant to the Modification, the Mortgage, the Loan Agreement and other security documents (collectively the "Security Documents") are modified to secure this Note.

At the election of the Holder hereof, without notice, the principal sum remaining unpaid hereon, together with accrued interest, shall be and become at once due and payable in the case of default in the payment of principal or interest when due in accordance with the terms hereof or upon the occurrence of any "Event of Default" under the Security Documents.

Under the provisions of the Security Documents, the unpaid balance hereunder may, at the option of the Holder, be accelerated and become due and payable forthwith upon the happening of certain events as set forth therein. The Security Documents are, by this reference, incorporated herein in their entirety and notice is given of such possibility of acceleration.

The principal hereof, including each installment of principal, shall bear interest after the occurrence of an event of default, not cured within the applicable cure period, at the annual rate (herein called the "Default Rate") determined by adding three (3.0%) percentage points to the interest rate then required to be paid, as above provided, on the principal balance.

No failure on the part of Holder or any holder hereof to exercise any right or remedy hereunder, whether before or after the occurrence of an event of default, shall constitute a waiver thereof, and no waiver of any past default shall constitute a waiver of any future default or of any other default. No failure to accelerate, nor acceptance of a past-due installment, nor indulgence granted shall be construed to be a waiver of the right to insist upon prompt payment and to impose the late payment penalty and the default rate, retroactively or prospectively, or shall be deemed a waiver of any right of acceleration or any other right which Holder may have, whether by law or agreement or otherwise. None of the foregoing shall operate to release, change or effect the liability of any Borrower, endorser or guarantor of this Note, and Borrower and each endorser and guarantor hereby expressly waive the benefit of any statute or rule of law or equity which would produce a result contrary to or in conflict with the foregoing.



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Borrower waives notice of default, presentment, notice of dishonor, protest and notice of protest.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceeding, the undersigned promise to pay all costs incurred by Bank in connection therewith including, but not limited to, court costs, litigation expenses and attorneys' fees.

Payments received on account of this Note shall be applied first to the payment of any amounts due pursuant to the next preceding paragraph, second to interest and Late Charges and the balance to principal.

Funds representing the proceeds of the indebtedness evidenced herein which are disbursed by Holder by mail, wire transfer or other delivery to Borrower, escrowees or otherwise for the benefit of Borrower shall, for all purposes, be deemed outstanding hereunder and received by Borrower as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such mailing, wire transfer or other delivery until repaid to Holder, notwithstanding the fact that such funds may not at any time have been remitted by escrowees to Borrower.

**BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES IRREVOCABLY THE RIGHT IT MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE ORIGINAL NOTE, THE MODIFICATION, THE MORTGAGE, THE LOAN AGREEMENT OR ANY OF THE OTHER OBLIGATIONS, OR THE COLLATERAL SECURED BY THE SECURITY DOCUMENTS, OR ANY AGREEMENT, EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH HOLDER AND BORROWER ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER.**

**BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH BORROWER AT ITS ADDRESS AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF THE HOLDER. BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.**

**UNOFFICIAL COPY****EXHIBIT B**

**BORROWER AGREES NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST HOLDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF HOLDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF HOLDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.**

Borrower warrants to Holder that neither the Borrower nor any affiliate is identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower covenants to Holder that if it becomes aware that it or any affiliate is identified on any Blocked Persons List, the Borrower shall immediately notify the Holder in writing of such information. Borrower further agrees that in the event it or any affiliate is at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Holder to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, the Holder may immediately contact the Office of Foreign Assets Control and any other government agency the Holder deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Holder will forbear enforcement of its rights and remedies during such time as (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List and (2) the Holder determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of the Holder and encumbering, any part of the Premises (as defined in the Mortgages) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

*Signature page follows*



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~~EXHIBIT~~

Time is of the essence of this Modification and each provision hereof and of the Mortgage and Security Documents.

UP Properties, LLC, an Illinois limited liability company

By: \_\_\_\_\_  
Phillip C. [unclear] Manager

By: \_\_\_\_\_  
[unclear] Vitogiannis, Manager

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