



Doc#: 0920529074 Fee: \$70.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/24/2009 04:13 PM Pg: 1 of 18

This instrument prepared by
and please return to:

Polsinelli Shughart PC
180 North Stetson Avenue, Suite #4525
Chicago, Illinois 60601-6733
Attention: Kimberly K. Enders, Esq.

P.I.N.: 17-17-211-041-1001
COMMONLY KNOWN AS: 1031 W. Monroe, Unit 1, Chicago, IL

NINTH LOAN MODIFICATION AGREEMENT

This instrument is a Ninth Loan Modification Agreement ("**Ninth Modification**") among **FIRST CHICAGO BANK & TRUST**, as successor to Labe Bank, an Illinois banking corporation ("**Lender**"), **MONROE PARTNERS 2, LLC**, an Illinois limited liability company ("**Borrower**"), **1031 WEST MONROE HOLDINGS, INC.**, an Illinois corporation ("**Assuming Party**"), and **STEVEN CIACCIO** ("**Guarantor**").

RECITALS:

A. Borrower held fee simple title to the real estate commonly known as 1031 W. Monroe, Unit 1, Chicago, Illinois, which is legally described on Exhibit A attached hereto ("**Real Estate**"), and has conveyed the Real Estate to Assuming Party. Guarantor is the sole member and manager of Borrower and the sole shareholder and officer of Assuming Party.

UNOFFICIAL COPY

B. On March 2, 2005, Borrower, Guarantor and Lender entered into a Construction Loan Agreement ("**Loan Agreement**") pursuant to which Lender granted a loan to Borrower in the amount of \$1,387,000.00 ("**Loan**"), which is evidenced by a Promissory Note in the principal amount of \$1,387,000.00 ("**Original Note**"). The proceeds of the Loan were used to construct a four-unit condominium building (the "**Project**"). Three of the four units of the Project have been sold. Concurrently therewith, Borrower and Guarantor executed and delivered to Lender the following documents (collectively "**Security Documents**"):

1. a Construction Mortgage, which was recorded with the Cook County, Illinois Recorder of Deeds on March 5, 2005 as Document No. 0506733188 ("**Mortgage**") executed by Borrower, which covered the Real Estate and other property that has been released;
2. a Guaranty of Note, Mortgage and Other Undertakings executed by Guarantor ("**Original Guaranty**");
3. an Environmental Indemnity Agreement executed by Borrower and Guarantor;
4. an Assignment of Rents recorded on March 8, 2005 as Document No. 0606733189 executed by Borrower.

C. On January 24, 2006, Borrower and Lender entered into a Change in Terms Agreement ("**Modification**"), pursuant to which Lender revised the interest rate applicable to the Loan.

D. On March 1, 2006, Borrower and Lender entered into a Change in Terms Agreement ("**Second Modification**"), pursuant to which Lender extended the maturity date of the Loan from March 1, 2006 to September 1, 2006, and increased the Loan to the amount of \$1,571,173.00 ("**Additional Loan**"), and Borrower and Lender entered into a Modification of

UNOFFICIAL COPY

Mortgage (“**Modification of Mortgage**”), pursuant to which the Mortgage was revised to secure the Additional Loan. The Modification of Mortgage was recorded on April 12, 2006 as Document No. 0610247232.

E. On September 6, 2006, Borrower and Lender entered into a Change in Terms Agreement (“**Third Modification**”), pursuant to which Lender extended the maturity date of the Loan from September 1, 2006 to March 1, 2007, and increased the Loan, after certain repayments had occurred, to the amount of \$1,163,199.00 (“**Second Additional Loan**”).

F. On March 1, 2007, Borrower and Lender entered into a Change in Terms Agreement (“**Fourth Modification**”), pursuant to which Lender extended the maturity date of the Loan from March 1, 2007 to September 1, 2007.

G. On September 1, 2007, Borrower and Lender entered into a Change in Terms Agreement (“**Fifth Modification**”), pursuant to which Lender extended the maturity date of the Loan from September 1, 2007 to December 1, 2007, and Lender modified the interest rate applicable to the Loan.

H. On December 1, 2007, Borrower and Lender entered into a Change in Terms Agreement (“**Sixth Modification**”), pursuant to which Lender extended the maturity date of the Loan from December 1, 2007 to March 1, 2008.

I. On March 1, 2008, Borrower and Lender entered into a Change in Terms Agreement (“**Seventh Modification**”), pursuant to which Lender extended the maturity date of the Loan from March 1, 2008 to March 1, 2009.

UNOFFICIAL COPY

J. On June 19, 2008, Borrower executed and delivered to Lender a Change in Terms Agreement (“**Eighth Modification**”), which increased the amount of the Loan, after previous repayments, to the amount of \$460,976.00 (“**Third Additional Loan**”).

K. As of April 14, 2009, the Loan was in default because the Loan had matured on March 1, 2009 and principal in the amount of \$460,976.00 had not been paid, Borrower had conveyed the Real Estate to Assuming Party without notifying Lender and obtaining Lender’s consent thereto, the interest payments due since January 1, 2009 had not been paid, real estate taxes due had not been paid and there were insufficient funds on deposit to pay real estate taxes soon to become due (collectively “**Borrower’s Defaults**”). The total outstanding principal balance of the Loan was \$460,976.00; the total accrued and unpaid interest thereon was \$6,343.93; total late charges were \$1,299.10; Lender’s charges were \$86.00; thus, the total amount due under the Loan Documents as of such date was \$468,705.03.

L. Lender has sent notice of the Borrower’s Defaults to Borrower, Assuming Party and Guarantor, and Borrower, Assuming Party and Guarantor acknowledge receipt thereof.

M. In order to provide Borrower and Assuming Party additional time to sell or refinance the Real Estate and also avoid the financial hardship and damage to reputation that would result from the Borrower’s Defaults, Borrower, Assuming Party and Guarantor have requested that the parties resolve Borrower’s Defaults by Assuming Party’s conveyance of the Real Estate legally described on **Exhibit A** and other property to Lender in lieu of foreclosure in consideration of Lender’s forbearance from seeking its remedies pursuant to the terms of the Mortgage and Lender’s grant of an additional loan in the amount of \$19,024.00 (“**Fourth Additional Loan**”), which will be used to pay part of the delinquent real estate taxes, Lender’s

UNOFFICIAL COPY

adjustment of the repayment terms of the Loan and Loan Agreement and other consideration. The conveyance documents will be held in escrow for a period of time to allow Borrower, Assuming Party and Guarantor time to sell or refinance the Real Estate. Lender is agreeable to these requests subject to the covenants, conditions and restrictions contained herein and a Forbearance and Deed in Lieu of Foreclosure Agreement (“**Forbearance Agreement**”) among the parties, which provides for, among other things, a conveyance of record title to Lender, an extension of the maturity date of the Loan, the Additional Loan and a forbearance of Borrower’s Defaults.

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

1. The Original Note is hereby modified and amended in its entirety by the Revised Promissory Note in the amount of Four Hundred Eighty Thousand (\$480,000.00) Dollars, executed concurrently herewith, a copy of which is attached hereto as **Exhibit B** (“**Revised Note**”).

2. The parties are executing the Forbearance Agreement concurrently herewith and Assuming Party is delivering a deed to the Real Estate (“**Deed**”) to Lender’s attorney or Title Insurer concurrently herewith.

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

- (a) the Forbearance Agreement and the documents required therein;
- (b) the Revised Note in the amount of \$480,000.00;
- (c) a Revised Guaranty of Ninth Modification, Revised Note, Mortgage, Loan Agreement and Other Undertakings executed by Guarantor (“**Revised Guaranty**”);

UNOFFICIAL COPY

(d) a title insurance policy or endorsement to its current title insurance policy which insures the Mortgage as modified by this Ninth Modification as a first lien on the Real Estate and increases the amount of title insurance by the Fourth Additional Loan amount, subject only to such exceptions as Lender shall permit;

(e) updated certificates of insurance as required by the Mortgagee, if any;

(f) payment of Lender's fees and costs as provided in Section 6 hereof;

(g) an organizational resolution from Borrower;

(h) a Certificate of Good Standing or Secretary of State Website printout from Borrower;

(i) a Certification of No Change to the organizational documents of Borrower;

(j) a resolution of Assuming Party;

(k) a Certificate of Good Standing of Assuming Party;

(l) articles of incorporation of Assuming Party;

(m) a legal opinion of Borrower's and Assuming Party's counsel; and

(n) an Escrow Agreement covering the Deed and closing documents.

4. This Ninth 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 Revised Note ("**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 remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the

UNOFFICIAL COPY

Mortgage as revised by this Ninth Modification, or the covenants, conditions and agreements therein contained or contained in 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, Assuming Party and Guarantor hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

7. Borrower, Assuming Party and Guarantor hereby agree to pay Lender's expenses arising out of and in connection with this Ninth Modification including, but not limited to, attorneys' fees, title insurance premiums and filing fees.

8. Guarantor hereby expressly acknowledges and confirms that by executing this Ninth Modification and the Revised Guaranty, 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 Guarantor and without such action releasing, modifying, or affecting the obligations of Guarantor or affecting the security heretofore granted to Lender.

9. BORROWER, ASSUMING PARTY AND GUARANTOR 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 THE REVISED NOTE, THIS NINTH MODIFICATION, THE MORTGAGE, THE LOAN AGREEMENT, THE SECURITY DOCUMENTS, OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN

UNOFFICIAL COPY

CONJUNCTION HEREWITH OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER, BORROWER AND ASSUMING PARTY OR GUARANTOR ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER AND ASSUMING PARTY OR GUARANTOR, OR ANY OF THEM.

10. BORROWER AND ASSUMING PARTY AND GUARANTOR HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER AND ASSUMING PARTY AND GUARANTOR 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 ASSUMING PARTY AND GUARANTOR 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 ASSUMING PARTY AND GUARANTOR 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 BORROWER AND ASSUMING PARTY AND GUARANTOR AT THEIR ADDRESSES AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF LENDER. BORROWER AND ASSUMING PARTY AND GUARANTOR AGREE THAT A FINAL JUDGMENT IN

UNOFFICIAL COPY

ANY SUCH ACTION OR PROCEEDING, AFTER ALL APPEAL RIGHTS ARE EXHAUSTED, SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

BORROWER AND ASSUMING PARTY AND GUARANTOR 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 AND ASSUMING PARTY AND GUARANTOR OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS; PROVIDED, HOWEVER, UNLESS LENDER IS REQUIRED BY LAW TO INSTITUTE PROCEEDINGS IN ANY OTHER JURISDICTION, LENDER SHALL FIRST INSTITUTE PROCEEDINGS IN A STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS.

11. Borrower and Assuming Party and Guarantor warrant to Lender that none of Borrower and Assuming Party or Guarantor or 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,

UNOFFICIAL COPY

2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower, Assuming Party and Guarantor covenant to Lender that if they become aware that they or any affiliate are identified on any Blocked Persons List, Borrower, Assuming Party and Guarantor shall immediately notify Lender in writing of such information. Borrower, Assuming Party and Guarantor further agree that in the event they or any affiliate are 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 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

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Ninth Modification ~~on~~

AA of March 1, 2009.

LENDER:

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

By: [Signature]
Its Vice President

BORROWER:

Monroe Partners 2, LLC., an Illinois limited liability company

By: [Signature]
Steven Ciaccio, Manager

ASSUMING PARTY:

1031 West Monroe Holdings, Inc., an Illinois corporation

By: [Signature]
Steven Ciaccio, President

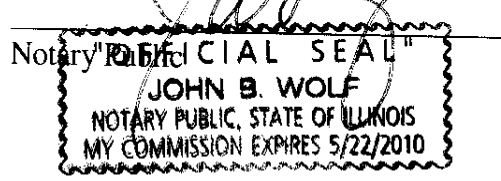
GUARANTOR:

[Signature]
Steven E. Ciaccio

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Steven Ciaccio, individually, and as Manager of Monroe Partners 2, LLC, an Illinois limited liability company, and as President of 1031 West Monroe Holdings, Inc., an Illinois corporation, 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 corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 6-30 2009 [Signature]



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

UNIT NUMBER 1, IN THE 1031 WEST MONROE CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

THE EAST 25.58 FEET OF THE NORTH 116.67 FEET OF THAT PART OF LOTS 6 AND 7 (EXCEPT THE SOUTH 12.00 FEET OF SAID LOTS) TAKEN AS A SINGLE TRACT IN ASSESSOR'S DIVISION OF SUB-LOT 1 OF LOT 1 IN BLOCK 13 OF CANAL TRUSTEE'S SUBDIVISION OF THE WEST 1/2 AND THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17 IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AND

THE EAST 26.64 FEET OF AFORESAID TRACT EXCEPTING THEREFROM THE NORTH 116.67 FEET THEREOF.

WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0624828026 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE (EXCLUSIVE) RIGHT TO THE USE OF PARKING SPACE P-1, A LIMITED COMMON ELEMENT AS DELINEATED ON THE SURVEY ATTACHED TO THE DECLARATION, AFORESAID, RECORDED AS DOCUMENT NUMBER 0624819196.

PARCEL 3:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN DECLARATION OF EASEMENT RECORDED FEBRUARY 23, 2005 AS DOCUMENT NUMBER 0505439109.

Commonly known as: 1031 W. Monroe, Unit 1

Chicago, IL

PIN: 17-17-211-041-1001

UNOFFICIAL COPY**EXHIBIT B****PROMISSORY NOTE**

\$480,000.00

_____, 2009

FOR VALUE RECEIVED the undersigned, **MONROE PARTNERS 2, LLC**, an Illinois limited liability company ("**Borrower**"), **1031 WEST MONROE HOLDINGS, INC.**, an Illinois corporation ("**Assuming Party**"), jointly and severally promise 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 Four Hundred Eighty Thousand (\$480,000.00) 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.

The rate of interest payable on this Note will change from time to time as hereafter provided. Monthly payments on account of this Note shall be adjusted from time to time as the rate of interest changes. Payments on account of this Note shall be made as follows:

(a) On July 5, 2009, and on the first day of each succeeding calendar month to and including the Maturity Date hereinafter defined, there shall be paid interest only, in arrears, on the outstanding principal balance at a rate equal to the prime rate of interest in effect from time to time at First Chicago Bank & Trust per annum.

(b) On March 5, 2010 ("**Maturity Date**"), the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

(c) On the date of final payment of this Note, but in no event later than the Maturity Date, there shall be paid the amount of \$9,600.00 as for Holder's fee for the Ninth Modification.

The prime rate of First Chicago Bank & Trust is currently the highest prime rate of interest published in The Wall Street Journal. If this index is no longer available, the Bank will choose a new index in compliance with applicable law and will notify Borrower and Assuming Party of its choice. Borrower and Assuming Party acknowledge that they are advised that said rate is not Bank's lowest or most favorable lending rate.

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

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.

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.

UNOFFICIAL COPY

EXHIBIT B

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 ten (10.0%) 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 Ninth Loan Modification Agreement ("**Ninth Modification**") and a Forbearance and Deed in Lieu of Foreclosure Agreement ("**Forbearance Agreement**") executed and delivered concurrently herewith. The Ninth Modification modifies a Promissory Note executed by Borrower in the amount of One Million Three Hundred Eighty-Seven Thousand (\$1,387,000.00) Dollars ("**Original Note**"), which Original Note evidenced a loan in the amount of One Million Three Hundred Eighty-Seven Thousand (\$1,387,000.00) Dollars ("**Loan**"), and is secured by an instrument entitled "Construction Mortgage" ("**Original Mortgage**"), which Original Mortgage was executed by Borrower on March 2, 2005 and recorded with the Cook County, Illinois Recorder of Deeds on March 8, 2005 as Document No. 056733188. The Original Note was modified and amended to revise the interest rate applicable to the Original Note pursuant to a Change in Terms Agreement executed and delivered on January 24, 2006 ("**Modification**"). On March 1, 2006, Borrower and Holder entered into a Change in Terms Agreement ("**Second Modification**"), pursuant to which Holder extended the maturity date of the Loan until September 1, 2006 and increased the amount of the Loan to \$1,571,173.00 ("**Additional Loan**"). Concurrent with the Second Modification, Borrower and Holder entered into a Modification of Mortgage which was recorded on April 12, 2006 as Document No. 0610247232 ("**Modification of Mortgage**"). On September 6, 2006, Borrower and Holder entered into a Change in Terms Agreement ("**Third Modification**"), pursuant to which Holder extended the maturity date of the Loan until March 1, 2007, and increased the amount of the Loan, after certain repayments had occurred, to \$1,163,199.00 ("**Second Additional Loan**"). On March 1, 2007, Borrower and Holder entered into a Change in Terms Agreement ("**Fourth Modification**"), pursuant to which Holder extended the maturity date of the Loan until September 1, 2007. On September 1, 2007, Borrower and Holder entered into a Change in Terms Agreement ("**Fifth Modification**"), pursuant to which Holder extended the maturity date of the Loan until December 1, 2007. On December 1, 2007, Borrower and Holder entered into a Change in Terms Agreement ("**Sixth Modification**"), pursuant to which Holder extended the maturity date of the Loan until March 1, 2008. On March 1, 2008, Borrower and Holder entered into a Change in Terms Agreement ("**Seventh Modification**"), pursuant to which Holder extended the maturity date of the Loan until March 1, 2009. On June 19, 2008, Borrower and Holder entered into a Change in Terms Agreement ("**Eighth Modification**") pursuant to which Holder increased the amount of the Loan, after previous repayments, to the amount of \$460,976.00 ("**Third Additional Loan**"). 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 Ninth Modification and the Forbearance Agreement, the Mortgage and other security documents (collectively "**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

UNOFFICIAL COPY

EXHIBIT B

upon the occurrence of any “**Event of Default**” under the Mortgage or the other Security Documents.

Under the provisions of the Mortgage and 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 Mortgage and 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.

Borrower and Assuming Party 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 expense and reasonable 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, secondly to interest and Late Charges and the balance to principal.

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 Borrower and Assuming Party, endorser or guarantor of this Note, and Borrower and Assuming Party 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.

Funds representing the proceeds of the indebtedness evidenced herein which are disbursed by Holder by mail, wire transfer or other delivery to Borrower and Assuming Party, Escrowees or otherwise for the benefit of Borrower and Assuming Party shall, for all purposes, be deemed outstanding hereunder and received by Borrower and Assuming Party 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

UNOFFICIAL COPY
EXHIBIT B

Holder, notwithstanding the fact that such funds may not at any time have been remitted by such Escrowees to the Borrower and Assuming Party.

BORROWER AND ASSUMING PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE 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 MORTGAGE, THE FORBEARANCE AGREEMENT, THE MODIFICATION, THE SECOND MODIFICATION, THE MODIFICATION OF MORTGAGE, THE THIRD MODIFICATION, THE FOURTH MODIFICATION, THE FIFTH MODIFICATION, THE SIXTH MODIFICATION, THE SEVENTH MODIFICATION, THE EIGHTH MODIFICATION, THE NINTH MODIFICATION 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 AND ASSUMING PARTY ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER AND ASSUMING PARTY.

BORROWER AND ASSUMING PARTY 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 ASSUMING PARTY 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 ASSUMING PARTY 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 ASSUMING PARTY 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 AND ASSUMING PARTY AT THEIR ADDRESS AS SPECIFIED IN THE RECORDS OF THE HOLDER. BORROWER AND ASSUMING PARTY AGREE 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.

BORROWER AND ASSUMING PARTY AGREE 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 AND ASSUMING PARTY OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

UNOFFICIAL COPY

EXHIBIT B

Borrower and Assuming Party warrant to Holder that neither Borrower and Assuming Party 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 and Assuming Party covenant to Holder that if it becomes aware that any one of them or any affiliate is identified on any Blocked Persons List, the Borrower and Assuming Party shall immediately notify the Holder in writing of such information. Borrower and Assuming Party further agree 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

UNOFFICIAL COPY

EXHIBIT B

Time is of the essence of this Note and each provision hereof.

Monroe Partners 2, LLC, an Illinois limited liability company

By: _____
Steven Ciaccio, Manager

1031 West Monroe Holdings, Inc., an Illinois corporation

By: _____
Steven E. Ciaccio, President

COPY

Property of Cook County Clerk's Office