



1026431024

Doc#: 1026431024 Fee: \$78.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/21/2010 11:33 AM Pg: 1 of 22

This instrument prepared by
and please return to:

Polsinelli Shughart PC
161 North Clark Street, Suite 4200
Chicago, Illinois 60601-3316
Attention: Kimberly K. Enders, Esq.
Loan No. 112009484

P.I.N.: See Exhibit A attached hereto.
COMMONLY KNOWN AS: See Exhibit A attached hereto.

SIXTH LOAN MODIFICATION AGREEMENT

This instrument is a Sixth Loan Modification Agreement ("**Sixth Modification**") among First Chicago Bank & Trust, as successor to Labe Bank, an Illinois banking corporation ("**Lender**"), 2923-2925 North Lincoln LLC, an Illinois limited liability company ("**Borrower**"), and Steven Golovan, John Lally, Daniel Boyd and Piaras Jordan (collectively, "**Guarantors**").

RECITALS:

A. Borrower holds fee simple title to the real estate commonly known as 2921 2927 North Lincoln Avenue, Chicago, Illinois, which is legally described on Exhibit A attached hereto ("**Real Estate**"). Guarantors are affiliated with Borrower.

B. On August 24, 2006, Borrower, Guarantors and Lender entered into a Construction Loan Agreement pursuant to which Lender granted a loan to Borrower in the amount of \$6,338,000.00 ("**Loan**"), which is evidenced by a Promissory Note in the principal

UNOFFICIAL COPY

amount of \$6,338,000.00 ("Note"). Concurrently therewith, Borrower and Guarantor 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, which was recorded with the Cook County, Illinois Recorder of Deeds on September 15, 2006 as Document No. 0625853123 ("Mortgage");
 2. Guaranties of Loan Agreement, Note, Mortgage and Other Undertakings executed by Guarantors (collectively, "Guaranties");
 3. a UCC Financing Statement authorized by Borrower and filed with the Secretary of State of Illinois;
 4. an Environmental, ADA and ERISA Indemnification Agreement executed by Borrower and Guarantors;
 5. a letter agreement waiving the real estate tax and insurance escrow requirement executed by Borrower and Lender;
 6. an Assignment of Project Documents executed by Borrower;
 7. an Assignment and Pledge of Earnest Money and Real Estate Sale Contracts executed by Borrower;
 8. a General Contractor's Lien Subordination Agreement executed by Castlebar Enterprises, Inc., Borrower's general contractor, and recorded on September 15, 2006 with the Cook County, Illinois Recorder of Deeds as Document No. 0625853122;
 9. a Certification of No Management Agreement executed by Borrower; and
 10. a Loan Settlement Statement executed by Borrower.
- C. As of March 1, 2008, Borrower, Guarantors and Lender entered into a Loan Modification Agreement ("Modification") pursuant to which Lender extended the maturity date

UNOFFICIAL COPY

of the Loan from March 1, 2008 until September 5, 2008. The Modification was recorded with the Cook County Recorder of Deeds on April 16, 2008 as Document No. 0810709104.

D. On October 28, 2008, Borrower, Guarantors and Lender entered into a Second Loan Modification Agreement ("**Second Modification**") pursuant to which Lender extended the maturity date of the Loan from September 5, 2008 until December 5, 2008. The Second Modification was recorded with the Cook County Recorder of Deeds on November 18, 2008 as Document No. 0832318090.

E. On January 29, 2009, to be effective December 5, 2008, Borrower, Guarantors and Lender entered into a Third Loan Modification Agreement ("**Third Modification**") pursuant to which Lender extended the maturity date of the Loan from December 5, 2008 to December 5, 2009 and revised the interest rate applicable to the Loan. Borrower executed and delivered a Promissory Note in the amount of \$2,352,112.00 ("**Revised Note**"), a copy of which was attached to the Third Modification as Exhibit B. Guarantors executed and delivered revised Guaranties of the Revised Note ("**Revised Guaranties**"). The Third Modification was recorded with the Cook County Recorder of Deeds on February 13, 2009 as Document No. 0904419042.

F. On September 30, 2009, to be effective August 1, 2009, Borrower, Guarantors and Lender entered into a Fourth Loan Modification Agreement ("**Fourth Modification**") pursuant to which Lender revised the interest rate applicable to the Loan. Borrower executed and delivered a Promissory Note in the amount of \$1,897,137.78 ("**Second Revised Note**"), a copy of which was attached to the Fourth Modification as Exhibit B. Guarantors executed and delivered revised Guaranties of the Second Revised Note ("**Second Revised Guaranties**"). Borrower executed and delivered to Lender a Lock Box Agreement covering rent checks for the Real Estate in form and content approved by Lender ("**Lock Box Agreement**"), pursuant to

UNOFFICIAL COPY

which Borrower directed its tenants to send their monthly payments to Lender directly. The Fourth Modification was recorded with the Cook County Recorder of Deeds on October 27, 2009 as Document No. 0930031069.

G. On December 29, 2009, to be effective December 5, 2009, Borrower, Guarantors and Lender entered into a Fifth Loan Modification Agreement ("**Fifth Modification**"), pursuant to which Lender extended the maturity date of the Loan from December 5, 2009 until June 5, 2010. The Fifth Modification was recorded with the Cook County Recorder of Deeds on January 26, 2010 as Document No. 1002629101.

H. Borrower again has requested that Lender extend the maturity date of the Loan from June 5, 2010 until October 5, 2010. Lender is agreeable to this request subject to the covenants, conditions and restrictions contained herein, including but not limited to a continuation of the Lockbox Agreement and an increase in the rate of interest charged on the Loan from 3.5% to 5.0%.

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

1. The Second Revised Note is hereby modified and amended in its entirety by the Promissory Note in the amount of One Million Eight Hundred Ninety-Seven Thousand One Hundred Thirty-Eight (\$1,897,138.00) Dollars, executed concurrently herewith, a copy of which is attached as **Exhibit B** ("**Third Revised Note**"). The Third Revised Note evidences the outstanding principal balance of the Loan. The Security Documents are hereby modified and amended to secure the Third Revised Note as hereby modified and all references are modified and amended to refer to the Third Revised Note in place of the Second Revised Note, the Revised Note and Note. All amounts presently outstanding on the Second Revised Note, the

UNOFFICIAL COPY

Revised Note and the Note shall be deemed outstanding on the Third Revised Note. All interest charged on and all payments made on the Note, the Revised Note and the Second Revised Note previously are unchanged.

2. Lender hereby agrees to extend the maturity date of the Loan from June 5, 2010 to October 5, 2010. Payments of interest must be paid on the fifth day of each month until the Third Revised Note is paid in full.

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

- (a) the Third Revised Note in the amount of \$1,897,138.00;
- (b) a Third Revised Guaranty of Sixth Modification, Third Revised Note, Loan Agreement, Mortgage and Other Undertakings executed by each of the Guarantors ("Third Revised Guaranties");
- (c) evidence of paid real estate taxes for the Real Estate;
- (b) an Organizational Resolution of Borrower;
- (c) an LLC File Detail Report of Borrower from the Secretary of State of Illinois Website;
- (d) Certification of No Change to Organizational Documents of Borrower;
- (e) an Organizational Resolution of Stillpoint Development Group, L.L.C., an Illinois limited liability company, a manager of Borrower ("Manager");
- (f) an LLC File Detail Report of Manager from the Secretary of State of Illinois Website;

UNOFFICIAL COPY

- (g) a Certification of No Change to the Organizational Documents of
 Manager;
- (h) a date down endorsement to Lender's loan title insurance policy;
 and
- (i) payment of all accrued interest and the fees and costs set forth in
 Section 7 hereof.

4. This Sixth 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 ("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 Mortgage as revised by this Sixth Modification, or the covenants, conditions and agreements therein contained or contained in the Note, in the Revised Note, in the Second Revised Note or the Third 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 of \$1,000.00, together with all of Lender's expenses arising out of and in connection with this Sixth Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees.

UNOFFICIAL COPY

8. Borrower and Guarantors hereby acknowledge that real estate taxes applicable to the Real Estate have not been paid when due and such failure to pay is a default of the Loan Documents.

9. As an inducement to Lender to enter in this Sixth Modification, Borrower and Guarantors each acknowledge and agree that:

(a) the Lender has fully performed all of its obligations under the Loan Documents recited herein and otherwise between the parties hereto;

(b) each of Borrower and Guarantors waives and affirmatively agrees not to allege, assert or otherwise pursue any claim, defense, affirmative defense, counterclaim, cause of action, setoff or other right which any of them may have, or claim to have, as of the date hereof, against Lender, whether known or unknown, including, but not limited to, any contest of:

(i) the existence and materiality of the defaults stated herein;

(ii) the enforceability, applicability or validity of any provision of any of the Loan Documents, except as modified by this Sixth Modification, or the enforcement or validity of the terms and provisions of this Sixth Modification;

(iii) the right of Lender to demand immediate payment and performance of the obligations of Borrowers pursuant to any of the Loan Documents or this Sixth Modification;

(iv) the existence, validity, enforceability or perfection of security interests granted to Lender in any of the collateral securing any of the obligations under the Loan Documents or this Sixth Modification, whether real or personal property, tangible or intangible, or any right or other interest, now or hereafter arising;

UNOFFICIAL COPY

(v) the conduct of the Lender in administering the financial arrangements between Lender and Borrowers under any of the Loan Documents or this Sixth Modification; and

(vi) any legal fees and expenses incurred by Lender and charged to Borrower and Guarantors pursuant to any of the Loan Documents.

(c) Guarantors are the sole members or members of members of Borrower.

10. Borrower and Guarantors agree that in the event of a sale of the Real Estate, the net proceeds of sale will be applied to the Loan as provided in the Third Revised Note and the balance shall be applied to other obligations of Borrower or Guarantors as determined in Lender's sole discretion.

11. Guarantors hereby expressly acknowledge and confirm that by executing this Sixth Modification and their Third Revised Guaranties, 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.

12. **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 THE NOTE, THE REVISED NOTE, THE SECOND REVISED**

UNOFFICIAL COPY

NOTE, THE THIRD REVISED NOTE, THIS SIXTH MODIFICATION, THE FIFTH MODIFICATION, THE FOURTH MODIFICATION, THE THIRD MODIFICATION, THE SECOND MODIFICATION, THE MODIFICATION, THE MORTGAGE, THE LOAN AGREEMENT, THE SECURITY 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, BORROWER AND/OR GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER OR GUARANTORS, OR ANY OF THEM.

13. BORROWER AND GUARANTORS 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 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 BORROWER AND GUARANTORS

UNOFFICIAL COPY

AT THEIR ADDRESSES AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF LENDER. BORROWER AND GUARANTORS AGREE THAT A FINAL JUDGMENT IN 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 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 AND GUARANTORS 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.

14. Borrower and Guarantors warrant to Lender that neither Borrower nor Guarantors 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

UNOFFICIAL COPY

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 are 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 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 Sixth Modification on _____, 2010, to be effective June 5, 2010.

LENDER:

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

By: _____
Its _____

BORROWER:

2923-2925 North Lincoln LLC, an Illinois limited liability company

By: Steven Golovan
Steven Golovan, manager

By: Stillpoint Development Group, L.L.C.,
an Illinois limited liability company,
manager

By: Daniel Boyd
Daniel Boyd, manager

By: Piaras Jordan
Piaras Jordan, manager

GUARANTORS:

Steven Golovan
Steven Golovan

John Lally
John Lally

Daniel Boyd
Daniel Boyd

Piaras Jordan
Piaras Jordan

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Lauren S. Teer, VP President of First Chicago Bank & Trust, as successor to Labe Bank, an Illinois banking 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 banking corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal September 3rd, 2010.

Chris Hanson
Notary Public



STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Steven Golovan, individually and as Manager of 2923-2925 North Lincoln 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 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 August 30, 2010.

Staci M Mohan
Notary Public



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Daniel Boyd, individually and as manager of Stillpoint Development Group, L.L.C., 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 September 3rd, 2010.

Chris Hanson
Notary Public

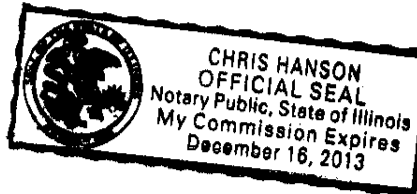


STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Piaras Jordan, individually and as manager of Stillpoint Development Group, L.L.C., 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 September 3rd, 2010.

Chris Hanson
Notary Public

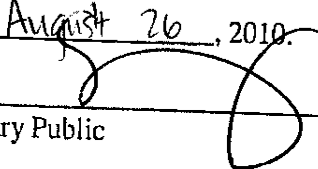


UNOFFICIAL COPY

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that John Lally, 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, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal August 26, 2010.



 Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION:**

PARCEL 1:

LOT 18 IN GROSS AND COUNSELMAN'S SUBDIVISION OF BLOCK 9 IN THE SUBDIVISION OF THAT PART LYING NORTH EAST OF THE CENTER OF LINCOLN AVENUE OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

UNITS P-1 AND P-11 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN 2921 N. LINCOLN CONDOMINIUM AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NO. 0807916063, IN THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 18.58 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 30.19 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 19, 20 AND 21, TAKEN AS A SINGLE TRACT, IN GROSS AND COUNSELMAN'S SUBDIVISION OF BLOCK 9 IN THE SUBDIVISION OF THAT PART LYING NORTHEAST OF THE CENTER OF LINCOLN AVENUE OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID TRACT, BEING A POINT ON THE NORTHEASTERLY LINE OF LINCOLN AVENUE DISTANCE 187.5 FEET NORTHWESTERLY FROM ITS INTERSECTION WITH THE WEST LINE OF LAKEWOOD AVENUE; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 9.13 FEET; THENCE NORTHEASTERLY ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 01 MINUTES 39 SECONDS MEASURED CLOCKWISE, NORTHWESTERLY TO NORTHEASTERLY FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 0.55 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A 4 STORY BRICK BUILDING COMMONLY KNOWN AS 2921 NORTH LINCOLN AVENUE IN CHICAGO, BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES; ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE NORTHWESTERLY, A DISTANCE OF 7.54 FEET; NORTHEASTERLY, A DISTANCE OF 0.91 FEET; NORTHWESTERLY, A DISTANCE OF 1.47 FEET; SOUTHWESTERLY, A DISTANCE OF 0.91 FEET; NORTHWESTERLY, A DISTANCE OF 3.87 FEET; NORTHEASTERLY, A DISTANCE OF 0.90 FEET; NORTHWESTERLY, A DISTANCE OF

UNOFFICIAL COPY

EXHIBIT A

5.38 FEET; SOUTHWESTERLY, A DISTANCE OF 0.55 FEET; NORTHWESTERLY, A DISTANCE OF 3.86 FEET; NORTHEASTERLY, A DISTANCE OF 0.57 FEET; NORTHWESTERLY, A DISTANCE OF 1.13 FEET; SOUTHWESTERLY, A DISTANCE OF 0.54 FEET; NORTHWESTERLY, A DISTANCE OF 9.86 FEET; NORTHEASTERLY, A DISTANCE OF 0.57 FEET; NORTHWESTERLY, A DISTANCE OF 1.28 FEET; NORTHEASTERLY, A DISTANCE OF 0.64 FEET; NORTHWESTERLY, A DISTANCE OF 1.32 FEET; SOUTHWESTERLY, A DISTANCE OF 0.62 FEET; NORTHWESTERLY, A DISTANCE OF 0.53 FEET; SOUTHWESTERLY, A DISTANCE OF 0.57 FEET; NORTHWESTERLY, A DISTANCE OF 9.58 FEET; NORTHEASTERLY, A DISTANCE OF 0.56 FEET; NORTHWESTERLY, A DISTANCE OF 3.12 FEET; SOUTHWESTERLY, A DISTANCE OF 0.60 FEET; NORTHWESTERLY, A DISTANCE OF 9.96 FEET; NORTHEASTERLY, A DISTANCE OF 7.42 FEET; NORTHWESTERLY, A DISTANCE OF 2.08 FEET; SOUTHWESTERLY, A DISTANCE OF 0.44 FEET; NORTHWESTERLY, A DISTANCE OF 3.29 FEET; NORTHEASTERLY, A DISTANCE OF 1.16 FEET; NORTHWESTERLY, A DISTANCE OF 0.77 FEET; NORTHEASTERLY, A DISTANCE OF 42.64 FEET; SOUTHEASTERLY, A DISTANCE OF 8.00 FEET; SOUTHWESTERLY, A DISTANCE OF 3.94 FEET; NORTHWESTERLY, A DISTANCE OF 0.25 FEET; SOUTHWESTERLY, A DISTANCE OF 4.40 FEET; SOUTHEASTERLY, A DISTANCE OF 13.03 FEET; SOUTHWESTERLY, A DISTANCE OF 0.47 FEET; SOUTHEASTERLY, A DISTANCE OF 13.71 FEET; NORTHEASTERLY, A DISTANCE OF 0.30 FEET; SOUTHEASTERLY, A DISTANCE OF 3.20 FEET; SOUTHWESTERLY, A DISTANCE OF 0.64 FEET; SOUTHEASTERLY, A DISTANCE OF 1.03 FEET; SOUTHWESTERLY, A DISTANCE OF 4.61 FEET; SOUTHEASTERLY, A DISTANCE OF 23.32 FEET; SOUTHWESTERLY, A DISTANCE OF 19.60 FEET; NORTHWESTERLY, A DISTANCE OF 2.70 FEET; SOUTHWESTERLY, A DISTANCE OF 16.63 FEET; NORTHWESTERLY, A DISTANCE OF 0.33 FEET; SOUTHWESTERLY A DISTANCE OF 0.88 FEET TO THE POINT OF BEGINNING.

COMMONLY KNOWN AS: 2921-2927 North Lincoln Avenue, Chicago, Illinois

P.I.N.:

14-29-118-014-0000; 14-29-118-015-0000; 14-29-118-016-0000;
 14-29-118-063-0000; 14-29-118-064-0000; 14-29-118-066-1010;
 14-29-118-066-1020; 14-29-118-065-0000

UNOFFICIAL COPY

EXHIBIT B

PROMISSORY NOTE (“Third Revised Note”)

\$1,897,138.00

As of June 5, 2010

FOR VALUE RECEIVED the undersigned, 2923-2925 North Lincoln LLC, an Illinois limited liability company (“**Borrower**”), promises to pay to the order of First Chicago Bank & Trust, as successor to Labe Bank, 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 Eight Hundred Ninety-Seven Thousand One Hundred Thirty-Eight (\$1,897,138.00) 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.

Payments on account of this Note shall be made as follows:

(a) On June 5, 2010, and continuing on the fifth day of each succeeding month until all amounts are paid, there shall be paid on account of this Note interest only on the outstanding principal balance of the Note at a rate equal to five percent (5.0%) per annum, based on a year having 360 days.

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

Interest shall be calculated on the basis of a year having 360 days and paid based on the actual days outstanding. Borrower acknowledges that the calculation method results in a higher effective interest rate than the numeric rate stated in subparagraph (a) above and Borrower agrees to this calculation method.

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.

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 percent (5.0%) 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 Sixth Loan Modification Agreement (“**Sixth Modification**”) executed concurrently herewith, which modifies a Construction Loan Agreement dated August 24, 2006 and executed by Holder and Borrower (“**Loan Agreement**”). This Note replaces that certain Promissory Note in the amount of Six Million Three Hundred Thirty-Eight Thousand (\$6,338,000.00) Dollars (“**Original Note**”) made by Borrower on August 24, 2006.

UNOFFICIAL COPY

EXHIBIT B

The Loan Agreement was modified by a Loan Modification Agreement executed by Holder and Borrower as of March 1, 2006 and recorded with the Cook County, Illinois Recorder of Deeds on April 16, 2008 as Document No. 0810709104 ("**Modification**"), a Second Loan Modification Agreement executed by Holder and Borrower on October 28, 2008 and recorded with the Cook County, Illinois Recorder of Deeds on November 18, 2008 as Document No. 0832318090 ("**Second Modification**"), a Third Loan Modification Agreement executed by Holder and Borrower on January 29, 2009 to be effective December 5, 2008, and recorded with the Cook County, Illinois Recorder of Deeds on February 13, 2009 as Document No. 0904419042 ("**Third Modification**"), pursuant to which Borrower executed and delivered to Holder a Revised Promissory Note dated January 29, 2009 in the amount of \$2,352,812.00 ("**Revised Note**"), a Fourth Loan Modification Agreement executed by Holder and Borrower on September 30, 2009, to be effective August 1, 2009 and recorded with the Cook County, Illinois Recorder of Deeds on October 27, 2009 as Document No. 0930031069 ("**Fourth Modification**"), pursuant to which Borrower executed and delivered to Holder a Second Revised Promissory Note dated September 30, 2009 in the amount of \$1,897,137.78 ("**Second Revised Note**"), and a Fifth Loan Modification Agreement executed by Holder and Borrower on December 29, 2009 to be effective December 5, 2009 and recorded with the Cook County, Illinois Recorder of Deeds on January 26, 2010 as Document No. 1002629101 ("**Fifth Modification**"). The Original Note, Revised Note, Second Revised Note and this Note are secured by a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing dated August 24, 2006 and recorded with the Cook County, Illinois Recorder of Deeds on September 15, 2006 as Document No. 0625853123 ("**Mortgage**"), and other security documents. Amounts outstanding pursuant to the Original Note, Revised Note and Second Revised Note shall be outstanding under this Note. All interest rates applicable to and charged on the Original Note and Revised Note and all payments made on the Original Note and Revised Note are unchanged. Pursuant to the Sixth Modification, the Fifth Modification, the Fourth Modification, the Third Modification, the Modification, the Second 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 for five (5) days 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 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 Bank 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

UNOFFICIAL COPY**EXHIBIT B**

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 Bank may have, whether by law or agreement or otherwise. None of the foregoing shall operate to release, change or affect the liability of Borrower, or any endorser or guarantor of this Note, and Borrower and each endorser or guarantor hereby expressly waives the benefit of any statute or rule of law or equity which would produce a result contrary to or in conflict with the foregoing.

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 SECOND REVISED NOTE, THE REVISED NOTE, THE ORIGINAL NOTE, THE SIXTH MODIFICATION, THE FIFTH MODIFICATION, THE FOURTH MODIFICATION, THE THIRD MODIFICATION, THE SECOND MODIFICATION, THE MODIFICATION, THE LOAN AGREEMENT, THE MORTGAGE 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

UNOFFICIAL COPY**EXHIBIT B**

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 IN THE RECORDS OF 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.

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 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 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, Borrower shall immediately notify 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) Holder determines, in its sole and absolute discretion, that

UNOFFICIAL COPY

EXHIBIT B

such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Holder 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.

Time is of the essence of this Note and each provision hereof and of the Sixth Modification, Loan Agreement, Mortgage, and Security Documents.

2923-2925 North Lincoln LLC, an Illinois limited liability company

By: Steven Golovan, manager

By: Stillpoint Development Group, L.L.C., an Illinois limited liability company, manager

By: Daniel Boyd, manager

By: Paras Jordan, manager

Property of Cook County Clerk's Office