

UNOFFICIAL COPY

Doc#: 1612746236 Fee: \$74.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/06/2016 10:22 AM Pg: 1 of 14

THIS DOCUMENT PREPARED
BY
AND AFTER RECORDING
RETURN
TO:

Christopher M. Novy
Rock Fusco, LLC
321N. Clark St., Suite 2200
Chicago, Illinois 60610

This space reserved for Recorder's use only

FIRST LOAN MODIFICATION AND CHANGE IN TERMS AGREEMENT

THIS FIRST LOAN MODIFICATION AND CHANGE IN TERMS AGREEMENT (this "Agreement") is made effective as of the 29th day of April, 2016, by and among 3939 KENNETH LLC, an Illinois limited liability company ("Borrower"); NIKOLA LUKIC, individually; and AMANDA LUKIC, individually (collectively referred to herein as the "Guarantors") (Borrower and Guarantors collectively herein are referred to as the "Obligor") and BEN FRANKLIN BANK OF ILLINOIS, a federal savings bank, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a construction loan ("Loan") to Borrower in the principal amount of SEVEN HUNDRED THOUSAND AND NO/100THS DOLLARS (\$700,000.00) as evidenced by a Promissory Note ("Note") dated February 26, 2016, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage Security Agreement and UCC Fixture Filing from Borrower to Lender dated February 26, 2016, and recorded against certain real property commonly known as 3939 N. Kenneth, Chicago, Illinois, recorded in the Office of the Cook County Recorder of Deeds on 03/02/2016, as document number 1606256085; (ii) that certain Assignment of Leases and Rents from Borrower to Lender dated February 26, 2016, recorded in the Office of the Cook County Recorder on 03/03/2016 as document number 1606356007; (iii) that certain Construction Loan Agreement; (iv) the personal guaranty of Nikola Lukic; the personal guaranty of Amenda Lukic; a UCC Financing

UNOFFICIAL COPY

Statement filed with the Illinois Secretary of State's Office (the Mortgage, the Assignment of Leases and Rents, the Construction Loan Agreement, the personal guaranties, the Security Agreements, and the UCC Financing Statement and any other document evidencing, securing and guarantying the Loan, in their original form, are sometimes collectively referred to herein as the "Loan Documents").

C. The construction of the single family residence requires additional resources and the Borrower is requesting that the Lender modify the original credit facility to extend additional credit in the amount of ONE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$100,000.00) and Lender is willing to modify the original credit facility to extend additional credit to the Borrower in the amount of ONE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$100,000.00), as set forth hereafter.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) Borrowers agreement to pay Lender a loan origination fee in the amount of one percent (1.00%) of the additional credit being requested, and all of Lender's reasonable attorneys fees and costs in connection with this Modification, (iv) the covenants and agreements contained herein, and (v) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Construction Loan:** As of the date of this Agreement, the Construction Loan is hereby increased by the sum of One Hundred Thousand and No/100ths Dollars to a total of EIGHT HUNDRED THOUSAND AND NO/100THS DOLLARS (\$800,000.00).

2. **Amendment of Note.** The Note shall be amended to adjust the principal balance and the monthly interest payment due under the Note. The Note shall be amended and restated by that certain Amended and Restated Promissory Note of even date herewith executed jointly and severally by Borrower in the form attached hereto as Exhibit "B" (the "Amended and Restated Note"). As of the date hereof, the Amended and Restated Note shall be substituted for and replace in its entirety the existing Note as evidence of the amounts due and owing to Lender, and the existing Note shall be canceled by Lender.

3. **Interest Payments.** The monthly payments due from Borrower to the Lender shall be as set forth in the Amended and Restated Note.

5. **Representations and Warranties of Borrowers and Guarantors.** Borrower and Guarantors hereby represent, covenant and warrant to Lender as follows:

(a) The representations and warranties in the Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Amended and Restated Note) under the Loan Documents and Borrower knows of no event or circumstance

UNOFFICIAL COPY

which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

(g) Borrower and each Guarantor, will produce to the Lender on an annual basis: (i) personal financial statements including current bank accounts; (ii) annual personal tax returns;

4. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

5. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower and Lender each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that

UNOFFICIAL COPY

they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Amended and Restated Note and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

UNOFFICIAL COPY

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

LENDER:

BEN FRANKLIN BANK OF ILLINOIS

By: 


Its: VIZE PRESIDENT

BORROWER :

3939 KENNETH LLC, an Illinois limited liability company


By: Its Managers


NIKOLA LUKIC

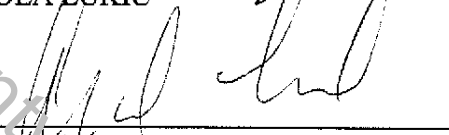


AMANDA LUKIC

GUARANTORS:



NIKOLA LUKIC



AMANDA LUKIC

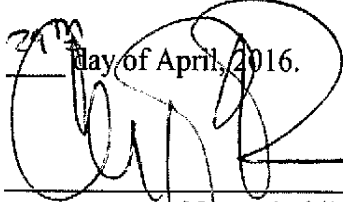
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Celso R. Rivera, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that NIKOLA LUKIC and AMANDA LUKIC, as Managers of 3939 KENNETH LLC, an Illinois limited liability company, personally know to me to be the same persons whose names are subscribed to the foregoing instrument as such Managers, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, in their capacity as Managers of 3939 KENNETH LLC, and as the free and voluntary act of said 3939 KENNETH LLC, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21st day of April, 2016.



Notary Public

My Commission Expires:

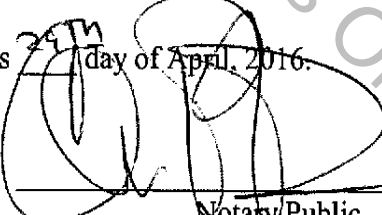
12/2/2019

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)



I, Celso R. Rivera, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that NIKOLA LUKIC, personally know 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 this 21st day of April, 2016.



Notary Public

My Commission Expires:

12/2/2019

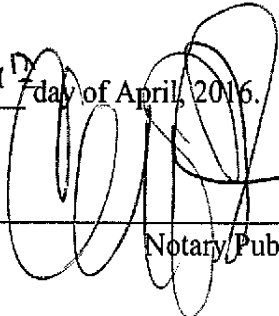


UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Celso R. Rivera, a Notary Public in and for said County in the State aforesaid, DO
HEREBY CERTIFY that AMANDA LUKIC, personally know 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,
for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29th day of April, 2016.



Notary Public

My Commission Expires:

12/2/2019



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH 10 FEET OF LOT 7 AND THE NORTH 37.5 FEET OF BLOCK 8 IN BLOCK 2 IN TREMAIN'S ADDITION TO IRVING PARK, A SUBDIVISION OF THE NORTHEAST 10 ACERS OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PIN: 13-22-104-006-0000

COMMONLY KNOWN AS: 3939 N. KENNETH AVENUE, CHICAGO, ILLINOIS 60641.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

AMENDED AND RESTATED PROMISSORY NOTE

Loan No. _____
\$800,000.00

April 29, 2016

1. FOR VALUE RECEIVED, the undersigned, 3939 KENNETH LLC, an Illinois limited liability company (hereinafter referred to as "Borrower"), promises to pay to the order of BEN FRANKLIN BANK OF ILLINOIS, a federal savings bank, its successors and assigns ("Lender" or "Holder"), in the manner provided herein the principal sum of EIGHT HUNDRED THOUSAND AND NO/100THS DOLLARS (\$800,000.00) together with interest prior to maturity on the balance of principal remaining from time to time unpaid at the respective rates set forth below and interest after maturity on such balances at the Default Rate specified in Section 5 hereof (in each case computed daily on the basis of an actual number of days/ 360 day year for each day all or any part of the principal balance hereof shall remain outstanding), principal and interest hereon being payable as hereinafter provided.

INTEREST CALCULATION METHOD. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in this Note.

2. Principal and interest upon this Note shall be paid as follows:

- (a) Commencing on the date hereof and on the first day of each and every month thereafter, with the first payment due May 26, 2016, Borrower shall pay to Lender interest only in arrears on the unpaid principal balance, at the rate of Prime (as defined hereinafter) plus one percentage point (P+1.0%) per annum, on the outstanding principal balance of the Loan, floating daily, rounded up to the nearest 1/8th of one percent.

Prime is defined as the highest prime lending rate as published from time to time in the money section of The Wall Street Journal. In the event The Wall Street Journal shall cease to publish such Prime Rate, the interest rate of the most comparable rate selected by Holder shall be an acceptable substitute therefore.

The Lender will adjust the required monthly payment by reviewing the Prime rate on a daily basis and adjusting the Borrower's payment accordingly for the payment due on the next month.

- (b) Notwithstanding anything to the contrary contained herein, the interest rate paid by Borrower to Lender prior to the Construction Loan Maturity Date

UNOFFICIAL COPY

shall not fall below Four and one quarter percent (4.25%) per annum (defined as the "Rate Floor").

- (c) The loan evidenced by this Note is payable in full, without notice or grace on February 26, 2017 (herein called the "Construction Maturity Date"). Notwithstanding anything to the contrary contained herein, the Borrower may extend the Construction Loan Maturity Date by a period of up to six (6) months, so long as there exists no uncured Event of Default, and upon the payment to the Lender of a non-refundable extension fee in the amount of one quarter percent (0.25%) of the then outstanding principal balance of the Loan.

3. If any monthly installment of interest or principal and interest or other amount payable under this Note or under the Mortgage or any other Loan Document is not received in full by Lender within ten (10) days after the installment or other amount is due, counting from and including the date such installment or other amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5%) of such installment or other amount due (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the loan evidenced by this Note (the "Loan") and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 5. Nothing in this Note shall be construed as an obligation on the part of Lender to accept, at any time, less than the full amount then due hereunder, or as a waiver or limitation of Lender's right to compel prompt performance.

4. Payments upon this Note shall be made (a) at such place as the Holder of this Note may from time to time in writing appoint, provided that in the absence of such appointment, such payments shall be made at the offices of Ben Franklin Bank of Illinois, 834 East Kensington Road, Arlington Heights, Illinois 60004, and (b) in lawful money of the United States of America which shall be in legal tender for public and private debts at the time of payment.

5. Borrower shall be in default upon the occurrence of any of the following events, circumstances or conditions ("Events of Default"), which is not cured within any applicable cure or grace:

- (a) Any default hereunder, including but not limited to the failure to make the required monthly payments required hereunder or in any other document securing the Promissory Note;
- (b) Any default under any of the Loan Documents (as hereinafter defined), securing this Promissory Note;

UNOFFICIAL COPY

- (c) Maturity of the indebtedness evidenced hereby whether by passage of time or otherwise;
- (d) The making or furnishing of any written representation, statement or warranty to Lender which is or becomes false or incorrect in any material respect by or on behalf of Borrower, or any one of them, or any co-signer, endorser, surety or guarantor of the Note or any other obligations Borrower has with Lender;
- (e) The death, dissolution or insolvency of, the appointment of a receiver by or on behalf of, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Borrower, or any one of them, or any co-signer, endorser, surety or guarantor of the Note or any other obligations Borrower has with Bank;
- (f) Any creditor attaches any of Borrower's property on or in which Lender has a lien or security interest. This includes a garnishment of any of the Borrower's or any one of their, accounts, including deposit accounts, with Lender;
- (g) Failure to obtain or maintain the insurance coverages required by Lender, or insurance as is customary and proper for any collateral (as herein defined);
- (h) Failure to pay or provide proof of payment of any tax, assessment, rent, insurance premium or escrow, escrow deficiency on or before its due date; and
- (i) A default by Borrower under the Construction Loan Agreement, as amended, any other loan agreement or obligation between Borrower and Lender;

and provided any monetary Events of Default as described in paragraphs 5 (a) and (c) hereinabove are not cured within ten (10) days after written notice from Lender of any non-monetary default as described in paragraphs 5 (b), (d)-(i) hereinabove are not cured within thirty (30) days after written notice from Lender, then and in any such event, the entire principal balance hereof, at Lender's sole option, shall thereafter bear interest at the rate of Five percent (5%) over the then current interest rate under this Note (herein called the "Default Rate") and at the election of the Holder hereof, and without notice, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall be and become at once due and payable at the place herein provided for payment.

6. This Note is given to evidence an actual loan in the above amount and is the Note referred to in and secured by:

- (a) A Mortgage and Security Agreement and UCC Fixture Filing (herein called the "Mortgage") dated February 26, 2016 and as modified by that certain Modification of Mortgage, dated as of the date hereof, on certain real estate owned by Borrower (the "Premises") in Cook County, Illinois;

UNOFFICIAL COPY

- (b) An Assignment of Leases and Rents between Lender and Borrower covering the Premises;
- (c) An Environmental and Personal Indemnity Agreement from Borrower and NIKOLA LUKIC, individually, and AMANDA LUKIC, individually (hereinafter collectively called the "Guarantors") to Lender bearing even date herewith;
- (d) UCC Financing Statement from Borrower;
- (e) A Guaranty from the Guarantors;
- (f) A Construction Loan and Security Agreement ("Loan Agreement") from Borrower to Lender dated February 26, 2016, and as modified;
- (g) That certain Loan Modification and Change in Terms Agreement dated of even date herewith increasing the loan amount by the sum of One Hundred Thousand Dollars (\$100,000.00)
- (h) Such other security instruments that are of even date herewith;

Reference is hereby made to the Mortgage, the Environmental and Personal Indemnity Agreement, the Guaranty, the Construction Loan Agreement, the Loan Modification Agreement, the Assignment of Leases and Rents and UCC Financing Statements, together with any other instrument now or hereafter given to secure the payment hereof and collectively referred to herein as the "Loan Documents", which are hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length.

7. At the election of the Holder hereof, and without notice, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall be and become at once due and payable at the place herein provided for payment, (a) in the case of default after the date payment of interest becomes due in accordance with the terms hereof, or (b) upon the occurrence of any Event of Default as defined in this Note or any default under any other Loan Document evidencing or securing this Note.

8. Borrower represents that the loan evidenced by this Note is a business loan within the purview and intent of the Illinois Interest Act (815 ILCS 205/4 et seq.), transacted solely for the purpose of carrying on or acquiring a business, as contemplated by said Act.

9. In the event that this Note is placed in the hands of an attorney-at-law for collection after maturity, or upon default, or in the event that proceedings at law, in equity, or bankruptcy, receivership or other legal proceedings are instituted in connection herewith, or in the event that this Note is placed in the hands of an attorney-at-law to enforce any of the rights or requirements contained herein or in the Mortgage or Assignment or other instruments given as security for, or related to, the indebtedness evidenced hereby, the Borrower hereby agrees to pay all reasonable costs of collecting or attempting to collect this Note, without limitation, reasonable attorneys' fees (whether or not suit is brought), in addition to all principal, interest and other amounts payable hereunder, all of which shall be secured by the Mortgage and Assignment.

UNOFFICIAL COPY

10. Funds representing the proceeds of the indebtedness evidenced hereby which are disbursed by mail, wire transfer or other delivery to the Borrower to escrows or otherwise for the benefit of the Borrower shall, for all purposes, be deemed outstanding hereunder and to have been received by the 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 wire transfer, mailing or delivery and until repaid, notwithstanding the fact that such funds may not at any time have been remitted by such escrows to the Borrower or for its benefit.

11. Loan Fees. In consideration of Lender's agreement to extend additional credit to the Borrower, the Borrower shall pay to Lender a non-refundable fee in the amount of One Thousand and 00/100 Dollars (\$1,000.00), which loan fee shall be due and payable in full as a condition precedent to disbursement of proceeds under this Note.

In addition, Borrower shall pay all of Lender's expenses, including reasonable attorneys fees in connection with the making of this Loan. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of this Note and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law.

12. Prepayment Premium. Prior to the Construction Maturity Date and so long as Borrower is not in default under the terms of the Note or any of the Loan Documents, privilege is reserved by Borrower to repay the principal balance of the Construction Loan, in whole or in part, with accrued interest thereon to date of payment on any installment which is then due, upon giving seven (7) days prior written notice to Lender of the intention to make such prepayment.

Borrower agrees to pay Lender the sum of \$150.00 for a release deed prepared by Lender. Borrower acknowledges that said fee is reasonable.

14. Borrower grants to Lender a contractual possessory security interest in, and hereby assigns, conveys, delivers, pledges, and transfers to Lender all of Borrower's (or any one of them) right, title and interest in and to, Borrower's (or any one of their) accounts with Lender (whether checking, savings, or some other account), including without limitation all accounts held jointly with someone else and all accounts Borrower, or any one of them may open in the future. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or set off all sums owing on this Note against any and all such accounts.

15. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, protest and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan, or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made.

UNOFFICIAL COPY

16. Borrower hereby: (a) waives protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor, (b) consents to any renewals and extensions for payment on this Note, regardless of the number of such renewals or extensions, (c) consents to Lender's release of any endorser, guarantor, surety, accommodation maker or any other co-signer, (d) consents to the release, substitution or impairment of any collateral, (e) consents that Borrower, or any Borrower herein, is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note, (f) consents to Lender's right of set-off as any right of set-off of any bank participating in the Loan, (g) consents to any and all sales, repurchases and participation of this Note to any person in any amounts and waive notice of such sales, repurchases or participation of this Note.

17. Consent to Jurisdiction. TO INDUCE LENDER TO ACCEPT THIS NOTE, BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS NOTE WILL BE LITIGATED IN COURTS HAVING SITUS IN LAKE COUNTY, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN LAKE COUNTY, ILLINOIS.

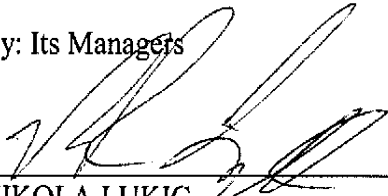
18. Waiver of Jury Trial. BORROWER AND LENDER (BY ACCEPTANCE OF THIS NOTE), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS NOTE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS NOTE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS NOTE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

IN WITNESS WHEREOF, the undersigned have executed this Note as of the date first above written.

BORROWER:

3939 KENNETH LLC, an
Illinois limited liability company

By: Its Managers



NIKOLA LUKIC



AMANDA LUKIC