

# UNOFFICIAL COPY

This instrument prepared by  
and please return to:  
Jennifer L. Worstell, Esq.  
100 West Monroe Street #1500  
Chicago, Illinois 60603



Doc#: 0618034089 Fee: \$50.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 06/29/2006 01:48 PM Pg: 1 of 14

COMMONLY KNOWN AS: 1314 Ridge, Evanston, Illinois  
P.I.N.: 11-18-325-009-0000

COMMONLY KNOWN AS: 1311 Asbury Avenue, Evanston, Illinois  
P.I.N.: 11-18-325-012-0000

COMMONLY KNOWN AS: 1321 Asbury Avenue, Evanston, Illinois  
P.I.N.: 11-18-325-016-0000

## SECOND LOAN MODIFICATION AGREEMENT

This instrument is a Second Loan Modification Agreement ("Second Modification") among The PrivateBank and Trust Company, an Illinois banking corporation ("Lender"), Asbury Ridge, LLC, an Illinois limited liability company ("Borrower"), Vladimir Novakovic and Manoocher Niazmand (collectively "Guarantors") and The PrivateBank and Trust Company, an Illinois banking corporation ("Lender").

### RECITALS:

A. Borrower holds fee simple title to certain real estate commonly known as 1314 Ridge, Evanston, Illinois, 1311 Asbury Avenue, Evanston, Illinois, and 1321 Asbury Avenue, Evanston, Illinois (collectively the "Real Estate"), which is legally described on Exhibit A attached hereto. Guarantors are affiliated with Borrower.

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B. On August 23, 2004, Borrower, Guarantors and Lender entered into a Construction Loan Agreement ("Loan Agreement"), pursuant to which Borrower executed and delivered to Lender a Promissory Note Evidencing a Non-Revolver Line of Credit in the amount of \$6,600,000 ("Note") which evidenced a loan in the amount of \$6,600,000 ("Loan"). The proceeds of the Loan were to be used to convert the 15,000 square-foot building, the 8,000 square-foot coach house and the vacant space comprising the Real Estate into seven (7) home sites for development ("Lots") and six (6) condominium units ("Units"). To secure the Note, Borrower and Guarantors executed and delivered to Lender the following documents (collectively "Security Documents"):

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage") executed by Borrower and covering the Real Estate, which was recorded with the Cook County Recorder of Deeds on September 21, 2005 as Document No. 0526434050;
2. Guaranties of Note, Mortgage, Loan Agreement and Other Undertakings of Guarantors executed by Guarantors (the "Guaranties");
3. an Environmental, ADA and ERISA Indemnification Agreement executed by Borrower and Guarantors;
4. UCC Financing Statements; and
5. other documents of a security, collateral and evidentiary nature.

C. On or about September 30, 2005, Borrower and Lender entered into a Loan Modification Agreement ("Modification") pursuant to which Lender agreed to extend the date for payment of the Loan from August 1, 2005 to August 1, 2006. The Modification was recorded with the Cook County Recorder of Deeds on March \_\_\_\_, 2006, as Document No. \_\_\_\_\_.

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D. The outstanding principal balance of the loan is \$5,519,789. Borrower has now requested Lender to increase the amount of the Loan from \$6,600,000 to \$7,075,000 ("Revised Loan"). Lender is agreeable to this request subject to the covenants, conditions and restrictions contained herein.

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

1. The Note is hereby modified and amended in its entirety by a Promissory Note Evidencing a Non-Revolver Line of Credit in the amount of \$7,075,000 ("Revised Note"), a copy of which is attached hereto as Exhibit B. The Security Documents are hereby modified and amended to secure the Revised Note and all references to the Note in the Security Documents are modified and amended to refer to the Revised Note in place of the Note. All amounts presently outstanding on the Note shall be deemed outstanding on the Revised Note. All interest charged on and all payments made on the Note previously are unchanged.

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

- (a) the Revised Note executed by Borrower;
- (b) Guaranties of Revised Note, Mortgage, Loan Agreement and Second Modification executed by Guarantors ("Revised Guaranties");
- (c) a title insurance policy or endorsement to Lender's current loan title insurance policy which increases the amount of title insurance from \$6,600,000 to \$7,075,000 and insures the Mortgage as modified by this Second Modification as a first lien on the Real Estate, subject only to such exceptions as Lender shall permit and as are permitted in the Loan Agreement;
- (d) updated certificates of insurance as required by the Mortgage, including fire, casualty, builder's risk, worker's compensation and comprehensive general public liability insurance;

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- (e) printout from Secretary of State's website showing good standing status of Borrower;
- (f) a Borrowing Resolution of Borrower;
- (g) certified copies of any real estate sale contracts for Units or Lots;
- (h) an updated Sworn Owner's Statement;
- (i) an updated Sworn Contractor's Statement;
- (j) an updated Construction Schedule;
- (k) an updated Construction Budget; and
- (l) a Loan Settlement Statement showing payment of Lender's fee in the amount of \$4,750 plus expenses as set forth in Section 6 hereof.

3. This Second 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 or 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, or the covenants, conditions and agreements therein contained or contained in the Note.

4. 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.

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

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6. Borrower hereby agrees to pay all of Lender's expenses arising out of and in connection with this Second Modification including, but not limited to, title insurance premiums, recording fees and attorneys' fees performed in the preparation of necessary documentation.

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

**8. 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 REVISED NOTE, THE MORTGAGE OR THIS SECOND MODIFICATION, OR ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH LENDER, BORROWER AND 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.**

9. Borrower and Guarantors hereby irrevocably submit to the jurisdiction of any state or federal court sitting in Chicago, Illinois over any action or proceeding based hereon and Borrower and Guarantors hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in such state or federal court. Borrower and Guarantors hereby irrevocably waive,

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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 at their addresses as specified in the records of Lender. Borrower and Guarantors 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 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 herein above 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 or Guarantors or their property in the courts of any other jurisdictions.

10. 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 any United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation: (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower and Guarantors covenant to Lender that if they become aware that they or any affiliate is identified on any Blocked Persons List, Borrower and Guarantors shall immediately notify Lender in writing of such information. Borrower and Guarantors further agree that in the event they or any affiliate is at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise

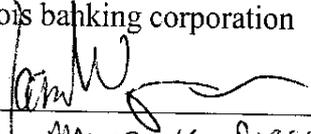
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permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating 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.

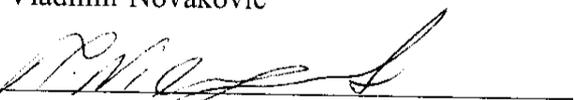
**IN WITNESS WHEREOF**, the parties hereto have executed this Second Modification on \_\_\_\_\_, 2006.

**LENDER:**

The PrivateBank and Trust Company, an Illinois banking corporation

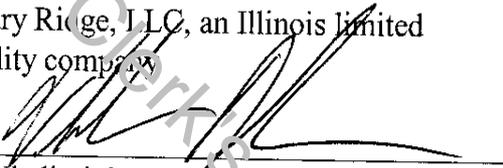
By:   
Its MANAGING DIRECTOR

**GUARANTORS:**

  
Vladimir Novakovic  
  
Manoocher Niazmand

**BORROWER:**

Asbury Ridge, LLC, an Illinois limited liability company

By:   
Vladimir Novakovic, Member

By: \_\_\_\_\_  
Daniel Herlo, Member

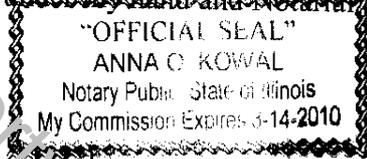
By:   
Manoocher Niazmand, Member

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

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that James Warner, Managing Director of The Private Bank and Trust 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 (s)he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal June 21, 2006.



Anna O. Kowal  
Notary Public

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

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Vladimir Novakovic, Daniel Hele and Manoocher Niazmand, the sole members of Asbury Ridge, LLC, an Illinois 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 they signed and delivered the said instrument as their 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.

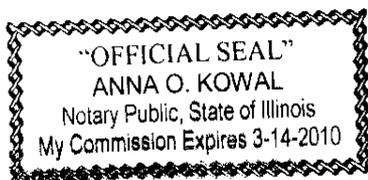
GIVEN under my hand and Notarial Seal June 21, 2006.

Anna O. Kowal  
Notary Public

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

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Manoocher Niazmand, 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 June 21, 2006.



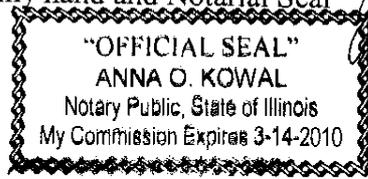
Anna O. Kowal  
Notary Public

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

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Vladimir Novakovic, 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 June 21, 2006.



Anna O. Kowal  
 Notary Public

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## EXHIBIT A

### LEGAL DESCRIPTION:

#### PARCEL 1:

LOTS 1, 2, 3, 4, 5 AND 6 IN BUELL'S SUBDIVISION OF LOTS 3, 4 AND 5 (EXCEPT PART TAKEN FOR DEMPSTER STREET) IN OWNER'S SUBDIVISION OF BLOCK 44 IN EVANSTON IN SECTION 13, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 1314 Ridge, Evanston, Illinois  
P.I.N.: 11-18-325-009-0000

#### PARCEL 2:

LOT 14 (EXCEPT THE SOUTH 33 FEET THEREOF) IN BLOCK 44 IN EVANSTON IN SECTION 13, TOWNSHIP 41 NORTH, RANGE 13 AND SECS 7, 18 AND 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 1311 Asbury Avenue, Evanston, Illinois  
P.I.N.: 11-18-325-012-0000

#### PARCEL 3:

LOTS 4 AND 5 TOGETHER WITH THAT PART OF LOT 1 LYING EAST OF AND ADJOINING SAID LOTS 4 AND 5 AND WEST OF THE EAST LINE OF LOT 2 EXTENDED SOUTH TO THE SOUTH LINE OF LOT 1 ALL IN SUBDIVISION OF LOT 1 AND 2 OF OWNER'S SUBDIVISION IN BLOCK 44 OF EVANSTON IN SECTION 13, TOWNSHIP 41 NORTH, RANGE 13 AND SECTIONS 7, 18 AND 19 TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 1321 Asbury Avenue, Evanston, Illinois  
P.I.N.: 11-18-325-016-000

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**EXHIBIT B**  
**PROMISSORY NOTE EVIDENCING A NON-REVOLVING LINE OF CREDIT**  
**("Revised Note")**

\$7,075,000

\_\_\_\_\_, 2006

**FOR VALUE RECEIVED** the undersigned, Asbury Ridge, LLC, an Illinois limited liability company ("Borrower"), promises to pay to the order of The PrivateBank and Trust Company, an Illinois banking corporation (said Bank and each successive owner and holder of this Note being hereinafter called "Holder"), the principal sum of Seven Million Seventy-Five Thousand (\$7,075,000) 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 April 1, 2006, and the first day of each succeeding month thereafter until all amounts due hereunder are paid, there shall be paid on account of this Note interest for the preceding month at a variable rate equal to the prime rate of interest announced and in effect from time to time at The PrivateBank and Trust Company plus one (1.0%) percent per annum. In no event shall the interest rate applicable to this Note be less than five and three-quarters (5.75%) percent ("Interest Rate Floor").

(b) On August 1, 2006, the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

Interest shall be calculated on the outstanding balance from time to time on the basis of a year having three hundred sixty (360) days and shall be paid for the actual days outstanding.

The prime rate of The PrivateBank and Trust Company is currently the highest prime rate of interest published in The Wall Street Journal. If this index is no longer available, Bank will chose a new index in compliance with applicable law and will notify Borrower of its choice. Borrower acknowledges that it is advised that said rate is not Bank's lowest or most favorable lending rate.

The balance due on account of 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 The PrivateBank and Trust Company, 10 N. Dearborn Street, Chicago, Illinois 60602.

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This Note is executed pursuant to a Second Loan Modification Agreement ("Second Modification") which replaces in its entirety that certain Promissory Note Evidencing a Non-Revolving Line of Credit in the amount of \$6,600,000 dated August 23, 2004 ("Original Note"). The Original Note was executed pursuant to a Construction Loan Agreement ("Loan Agreement") and is secured by a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage") which was recorded with the Cook County Recorder of Deeds on September 21, 2005 as Document No. 0526434050. The Loan Agreement and Mortgage are modified by a Loan Modification Agreement ("Modification") dated September 30, 2005 and recorded with the Cook County Recorder of Deeds on \_\_\_\_\_, 2005 as Document No. \_\_\_\_\_. 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 Second Modification, the Mortgage, Loan Agreement, Modification and other security documents ("Security Documents") are modified to secure this Note.

Amounts will be disbursed from time to time as provided in the Loan Agreement. However, this is not a revolving line of credit and amounts repaid shall not be available again for disbursement. In no event will the amount disbursed exceed the amount of \$7,075,000.

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

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 or fifteen (15) days in the payment of any other payment of monies required to be made hereunder when due in accordance with the terms hereof or upon the occurrence of any event of default ("Event of Default") under the Mortgage, Loan Agreement or Security Documents.

Under the provisions of the Mortgage, Loan Agreement and 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 Mortgage, Loan Agreement and 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 four (4.0%) percentage points to the interest rate then required to be paid, as above provided, on the principal balance.

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

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If this Note is placed in the hands of an attorney for collection or is collected through any legal proceeding, the undersigned promises to pay all costs incurred by Bank in connection therewith including, but not limited to, court costs, litigation expenses 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, 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 MORTGAGE, THE LOAN AGREEMENT OR ANY OF THE OTHER OBLIGATIONS, OR THE COLLATERAL SECURED BY THE SECURITY DOCUMENTS, OR ANY AGREEMENT, EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH HOLDER AND BORROWER ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER.**

Borrower hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Chicago, Illinois over any action or proceeding based hereon and Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such state or federal court. Borrower hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Borrower irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to 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 herein above 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.

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

Asbury Ridge, LLC, an Illinois limited liability company

By: \_\_\_\_\_  
Vladimir Novakovic, Member

By: \_\_\_\_\_  
Daniel Herlo, Member

By: \_\_\_\_\_  
Manoocher Niazmand, Member

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