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This instrument prepared by
and please return to:
Kimberly K. Enders, Esq.
Polsinelli Shalton Welte Suelthaus, PC
180 North Stetson Avenue, Suite 4525
Chicago, Illinois 60601



Doc#: 0625833164 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/15/2006 01:33 PM Pg: 1 of 19

8318623 ZC

✓ Cook Parcels: See Exhibit A attached hereto.
McHenry Parcels: See Exhibit B attached hereto.
Lake Parcels: See Exhibit C attached hereto.

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LOAN MODIFICATION AGREEMENT

This instrument is a Loan Modification Agreement ("Modification") among The PrivateBank and Trust Company, an Illinois banking corporation ("Lender"); Terrence H. Upton; The Upton Properties, Inc., an Illinois corporation; 3017 Route 120, LLC, an Illinois limited liability company; 1211 Chicago Ave., LLC, an Illinois limited liability company; and 2722 Green Bay Road, LLC, an Illinois limited liability company (collectively, "Borrowers").

RECITALS:

A. Borrowers hold fee simple title to certain real estate ("Real Estate") commonly known and legally described on Exhibits A, B and C attached hereto.

B. On November 22, 2005, Borrowers executed and delivered to Lender a Promissory Note the amount of Eleven Million (\$11,000,000.00) Dollars ("Note No. 1"), which evidenced a loan in the amount of Eleven Million (\$11,000,000.00) Dollars ("Loan"). To secure the Loan, Borrowers

BOX 333-CT

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executed and delivered to Lender the following documents and items ("Security Documents"):

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage") executed by Borrower covering the Real Estate, which Mortgage was recorded with the Cook County Recorder of Deeds on December 16, 2005 as Document No. 0535033049.

2. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage") executed by Borrower covering the Real Estate, which Mortgage was recorded with the McHenry County Recorder of Deeds on December 5, 2005 as Document No. 2005R0102253.

3. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage") executed by Borrower covering the Real Estate, which Mortgage was recorded with the Lake County Recorder of Deeds on December 9, 2005 as Document No. 5910643.

4. a Negative Pledge Agreement executed by Borrowers;

5. an Environmental, ADA and ERISA Indemnification Agreement executed by Borrowers;

6. UCC Financing Statement in connection with the Mortgages, and Authorization executed by Borrowers, which were filed and recorded.

C. Borrowers have requested Lender to make an additional loan in the amount of Three Million Six Hundred Thousand (\$3,600,000.00) Dollars ("Additional Loan") in order to provide additional funds for Borrowers' development project. 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:

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1. Lender hereby agrees to lend Borrower the Additional Loan. Concurrently herewith Borrowers will execute an additional Promissory Note in the amount of Three Million Six Hundred and Zero Hundredths (\$3,600,000.00) Dollars, a copy of which is attached hereto as Exhibit D ("Note No. 2"). The Revised Note evidences the outstanding principal balance of the Loan plus the Additional Loan.

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

- (a) Note No. 2 executed by Borrowers;
- (b) a title insurance policy or endorsement to its current title insurance policy which insures Mortgage No. 1, Mortgage No. 2 and Mortgage No.3 (collectively, "Mortgages") as modified by this Modification as a first lien on the Real Estate and increases the amount of title insurance by \$3,600,000.00, subject only to such exceptions as Lender shall permit;
- (c) updated certificates of insurance as required by Lender, if any;
- (d) payment of Lender's fees and costs as provided in Section 9 hereof;
- (e) organizational resolutions from Borrowers; and
- (f) Certificates of Good Standing or Secretary of State Website printouts from Borrowers.

6. This Modification shall constitute an amendment of the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Note ("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

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shall in any manner affect the lien or priority of the Mortgages, or the covenants, conditions and agreements therein contained or contained in Note No. 1 and Note No. 2.

7. 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.

8. Borrowers hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

9. Borrowers hereby agree to pay Lender a fee for the Additional Loan and this Modification in the amount of \$9,000.00 ("Additional Loan Fee") plus Lender's expenses arising out of and in connection with this Modification including, but not limited to, attorneys' fees, title insurance premiums and filing fees.

10. BORROWERS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MODIFICATION, NOTE NO. 1, NOTE NO. 2, THE LOAN DOCUMENTS OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER AND BORROWERS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWERS OR ANY OF THEM.

11. BORROWERS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWERS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD

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AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWERS 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. BORROWERS IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH BORROWERS, AT THEIR ADDRESSES AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF THE LENDER. BORROWERS 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.

BORROWERS 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 BORROWERS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

12. Borrowers warrant to Lender that neither Borrowers 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.

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Borrowers covenant to Lender that if they become aware that they or any affiliate is identified on any Blocked Persons List, Borrowers shall immediately notify Lender in writing of such information. Borrowers further agree that in the event they or any affiliate is at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in 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 Mortgages) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

Signature page follows

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

Sept. 7, _____, 2006.

LENDER:

The PrivateBank and Trust Company, an Illinois banking corporation

By: Martin Klauber
Its: Managing Director

Attest: [Signature]
Its: Private Bank Officer

BORROWERS:

[Signature]
Terrence H. Upton, individually

The Upton Properties, Inc., an Illinois corporation

By: [Signature]
Terry Upton, President

By: Jeanne A. Murphy
Jeanne A. Murphy, Secretary

3017 Route 120, LLC, an Illinois limited liability company

By: [Signature]
Terrence H. Upton, Manager

1211 Chicago Ave., LLC, an Illinois limited liability company

By: [Signature]
Terrence H. Upton, Manager

2722 Green Bay Road, LLC, an Illinois limited liability company

By: [Signature]
Terrence H. Upton, Manager

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STATE OF ILLINOIS)
) Lake) SS
COUNTY OF ~~COOK~~)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Martin Klauber, Managing Director of The PrivateBank 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal Sept. 7, 2006.

Christine Pemberton

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF Lake)



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Terrence H. Upton, individually, 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 Sept. 7, 2006.

Christine Pemberton

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF Lake)

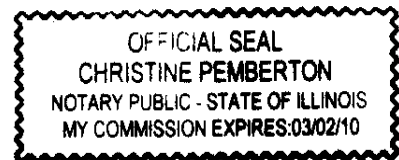


The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Terry Upton and Jeanne A. Murphy, President and Secretary, respectively, of The Upton Properties, Inc., also known as Upton Properties, Inc., an Illinois corporation, personally known to me to be the same persons whose names are 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 corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal Sept. 7, 2006.

Christine Pemberton

Notary Public



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STATE OF ILLINOIS)
)
COUNTY OF Lake) SS

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Terrence H. Upton, Manager of 1211 Chicago Ave., 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 Sept. 7, 2006.

Christine Pemberton
Notary Public

STATE OF ILLINOIS)
)
COUNTY OF Lake) SS



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Terrence H. Upton, Manager of 2722 Green Bay Road, 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 Sept. 7, 2006.

Christine Pemberton
Notary Public

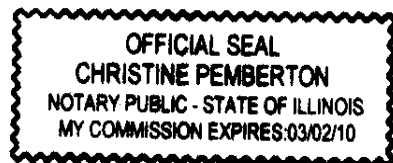
STATE OF ILLINOIS)
)
COUNTY OF Lake) SS



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Terrence H. Upton, Manager of 3017 Route 120, 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 Sept. 7, 2006.

Christine Pemberton
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION:

Parcel 1A:

Lot 1 in Levy's Plat of Consolidation of Lots 12 through 15 in Block 77 in Northwestern University Subdivision of the North 1/2 of the North 1/2 (East of Chicago Avenue) of Section 19, Township 41 North, Range 14 East of the Third Principal Meridian (except the 15-1/2 acres in the Northeast corner of said tract), in Cook County, Illinois

Parcel 1B:

Plat of Consolidation of Lots 16, 17, 18, 19, 20 and part of Lot 21 in Block 77 in Northwestern University in the North 1/2 of the North 1/2 of Section 19 Township 41 North, Range 14 East of the Third Principal Meridian, lying East of Chicago Avenue (except 15-1/2 acres in the Northeast corner thereof) in Cook County, Illinois

COMMONLY KNOWN AS: 1111 Chicago Avenue, Evanston, Illinois
 P.I.N.: 11-19-207-030-0000;
 11-19-207-031-0000;
 11-19-207-032-0000

Parcel 2:

The North 1/2 of Lot 15 and all of Lot 16, 17 and 18 in Block 76 in the City of Evanston in the North 1/2 of the North 1/2 of Section 19, Township 41 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

COMMONLY KNOWN AS: 1211 Chicago Avenue, Evanston, Illinois
 P.I.N.: 11-19-200-025-0000 and 11-19-200-026-0000

Parcel 3:

Jetco's Consolidation of Lots 1, 2, 3, 4, 5, 6 and 7 in Block 24 in Stewart's Resubdivision of Blocks 22, 24 and 26 in North Evanston, being a subdivision of Lots 11 to 16 and the West 4.3 acres of Lot 17 of George Smith's Subdivision of (except the North 240 acres) the South Section of Ouilmette Reservation, in Township 43 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois

COMMONLY KNOWN AS: 2722 Green Bay Road, Evanston, Illinois
 P.I.N.: 05-34-417-028-0000

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EXHIBIT B

LEGAL DESCRIPTION:

Parcel 1:

Lots 2, 3, 4 and 5 in Chicago Road Subdivision, being a subdivision of the Southwest Quarter of the Southwest Quarter of Section 25, Township 45 North, Range 8 East of the Third Principal Meridian, according to the Plat thereof recorded October 27, 1924 as Document No. 65665, in Book 4 of Plats, Page 115, in McHenry County, Illinois. Also

Parcel 2:

Lots 6 and 7 (except that part of the land deeded to the people of the State of Illinois, Department of Transportation, by Document No. 51R047982) in Chicago Road Subdivision, being a subdivision of the Southwest Quarter of the Southwest Quarter of Section 25, Township 45 North, Range 8 East of the Third Principal Meridian, according to the plat thereof recorded October 27, 1924 as Document No. 65665, in Book 4 of Plats, Page 115, in McHenry County, Illinois

Parcel 3:

All that part of Lots 40, 41 and 42 in Sunnyside Subdivision, according to the plat thereof recorded as Document 13880 and part of Lot 4 in Edgewater Subdivision, according to the plat thereof recorded as Document 48354 described as follows: Commencing at the most Southerly corner of Lot 1 in Block 1 of said Edgewater subdivision and running thence Northeasterly on the Southeasterly line thereof for a distance of 105 feet to a point on a line drawn 20 feet Southwesterly of and parallel to the Northeasterly lines of Lots 1 and 2 of Block 1 of said Edgewater Subdivision; thence Northwesterly on the last described parallel line for a distance of 72.63 feet to a point; thence Northeasterly on a line forming an angle of 90 degrees 44 minutes and 20 seconds to the right of a prolongation of the last described line, at the last described point, for a distance of 50 feet to a point; thence Northwesterly parallel to the Northeasterly lines of said Lots 1 and 2 for a distance of 10 feet to a point; thence Northeasterly for a distance of 9.89 feet along a line which would intersect the South line of the North 100 feet of said Lot 42 at a point 175.62 feet West of the East line thereof, for a Point of Beginning; thence continuing Northeasterly for a distance of 141.51 feet to a point on said line drawn 100 feet South of the North line of said Lot 42 and 175.62 feet West of the East line thereof; thence North parallel with the East line of said Lot 42, a distance of 15 feet to a point on a line drawn 05 feet South of and parallel with the North line of said Lot 42; thence East on the South line of the North 85 feet of said Lot 42, a distance of 65.62 feet to a point on the West line of the East 110 feet of said Lot 42; thence North on the last described line of a distance of 85 feet to a point on the North line of said Lot 42; thence West on the North line of said Lot 42 for a distance of 350 feet to a point, said point being 51.5 feet East of the Northwest corner of said Lot 42; thence South parallel with the West line of said Lot 42 for a distance of 152.85 feet to a point; thence West parallel with the North lines of Lots 40, 41 and 42 of said Sunnyside Subdivision for a distance of 124.5 feet to the Northeasterly line of Fox River Road, being also the Southwesterly line of Lot 40; thence Southeasterly for a distance of 10.7 feet along the Northeasterly line of said Fox River Road to an angle point therein; thence Southeasterly on the Northeasterly line of said Fox River Road to a point 23.83 feet Northwesterly of the most Southerly corner of Lot 4 in said Edgewater Subdivision; thence Northeasterly along a line drawn 23.03 feet Northwesterly of and parallel with

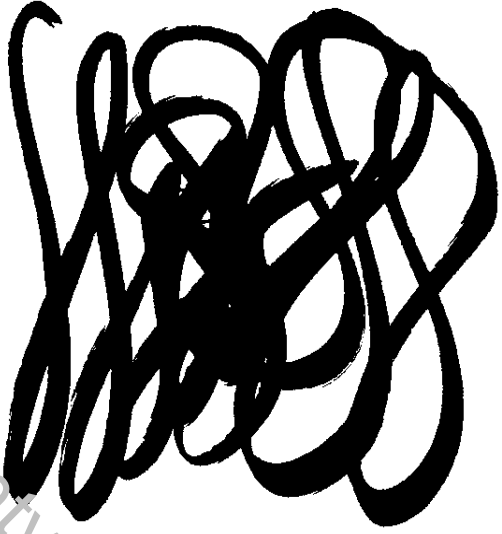
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EXHIBIT B

the Southeasterly line of said Lot 4 and said Southeasterly line extended, a distance of 168.34 feet; thence Southeasterly for a distance of 102.84 feet to the Point of Beginning.

COMMONLY KNOWN AS: 3017 W. Route 120, McHenry, Illinois
P.I.N.: 09-25-355-035; 09-25-355-036; 09-25-355-024; 09-36-101-026; 09-36-101-028

Property of Cook County Clerk's Office



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EXHIBIT C

LEGAL DESCRIPTION:

Parcel 1:

The East 283 of the West 595.81 feet of the South 343 feet of Lot 15 in School Trustee's Subdivision of the Southeast 1/4 of the Northwest 1/4 of Section 16, Township 46 North, Range 10, East of the Third Principal Meridian, in Lake County, Illinois.

COMMONLY KNOWN AS: 22666 W. Route 173, Antioch, Illinois
P.I.N. 02-16-100-013-0000

Parcel 2:

Parcel 2A:

That part of Lot 2 in Edwards' Subdivision, being a subdivision of part of the West 1/2 of the Northwest 1/4 of Section 16, Township 46 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded July 17, 1958, as Document 996591, in Book 1634 of Records, page 296, described as follows: Commencing at a point 425 feet West of the Southeast corner of said West 1/2 of the Northwest 1/4 of said Section 16; thence North and parallel to the Quarter Quarter section line, 346.9 feet; thence West on a line parallel to the Quarter section line, 190.0 feet; thence South on a line parallel to the Quarter Quarter section line, 126.9 feet; thence East on a line parallel to the Quarter section line, 60.0 feet; thence South on a line parallel to the Quarter Quarter section line, 120.0 feet; thence East on the Quarter section line, 130.0 feet to the point of beginning (excepting therefrom that part of Lot 2 in Edwards' Subdivision, being a subdivision of part of the West 1/2 of the Northwest 1/4 of Section 16, Township 46 North, Range 10, East of the Third Principal Meridian, according to the plat thereof, recorded July 17, 1958, as Document 996591, in Book 1634 of Records, page 296, described as follows: Commencing at a point 425 feet West of the Southeast corner of said West Half of the Northeast Quarter of said Section 16; thence North and parallel to the Quarter Quarter section line 346.9 feet; thence West on a line parallel to the Quarter section line 130 feet to the place of beginning; thence South on a line parallel to the Quarter Quarter section line 126.90 feet; thence West on a line parallel to the Quarter section line 60 feet; thence North on a line parallel to the Quarter Quarter section line 126.9 feet; thence East on a line parallel to the Quarter section line 60.00 feet to the point of beginning) in Lake County, Illinois

Parcel 2B:

Lot 1 in Edward's Subdivision, being a subdivision of part of the South 1/2 of the East 1/2 of the West 1/2 of the Northwest 1/4 of Section 16, Township 46 North, Range 10 East of the Third Principal Meridian, according to the plat thereof, recorded July 17, 1958 as Document 996591 in Book 1634 of Records, Page 296, in Lake County, Illinois

Parcel 2C:

Lot 2 in Edward's Subdivision, being a Subdivision of part of the West 1/2 of the Northwest 1/4 of Section 16, Township 46 North, Range 10 East of the Third Principal Meridian, according to

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EXHIBIT C

the plat thereof, recorded July 17, 1958 as Document 996591, in Book 1634 of Records, page 296 (exception therefrom that part thereof described as follows: Commencing at a point 425 feet West of the Southeast corner of said West 1/2 of the Northwest 1/4 of said Section 16; thence North and parallel to the Quarter Quarter section line, 346.9 feet; thence West on a line parallel to the Quarter section line 190.0 feet; thence South on a line parallel to the Quarter Quarter section line, 126.9 feet thence East on a line parallel to the Quarter section line, 60.0 feet; thence South on a line parallel to the Quarter Quarter section line, 220.0 feet; thence East on the Quarter section line, 130.0 feet to the point of beginning), in Lake County, Illinois

Parcel 2D:

The East 10 rods of the South 24 rods of Lot 4 and the East 10 rods of Lot 6, all in School Trustee's Subdivision of Section 16, Township 46 North, Range 10 East of the Third Principal Meridian, in Book 200 of Deeds, Page 33, in Lake County, Illinois

COMMONLY KNOWN AS: 22760-22848 W. Route 173, Antioch, Illinois
 P.I.N.: 02-16-105-005-0000; 02-16-105-003-0000; 02-16-105-001-0000; 02-16-100-016-0000; 02-16-100-013-0000

Parcel 3:

Parcel 3A: All that part of Lot 4 in School Trustee's Subdivision of Section 16, Township 46 North, Range 10, East of the Third Principal Meridian lying North of a line drawn parallel to and 1716.0 feet North of the South line of the Northwest 1/4 of said Section 16 all in Lake County, Illinois

Parcel 3B: All those parts of Lots 4, 5 and 6 in School Trustee's Subdivision of Section 16, Township 46 North, Range 10, East of the Third Principal Meridian, lying Northerly on the centerline of State Route 173 and South of a line drawn parallel to and 1716.0 feet North of the South line of the Northwest 1/4 of said Section 16 (except that part described as follows: commencing at the Southeast Corner of said Lot 6 and running thence West 615.0 feet; thence North 774.2 feet; thence East 450.0 feet; thence North 941.8 feet; thence East 165.0 feet to the East line said Lot 4 and thence South 1716.0 feet to the point of beginning) in Lake County, Illinois

COMMONLY KNOWN AS: 22950 W. Route 173, Antioch, Illinois
 P.I.N.: 02-16-100-018; 02-16-100-019; 02-16-100-020; 02-16-100-021

UNOFFICIAL COPY**EXHIBIT D****PROMISSORY NOTE**

("Note No. 2")

\$3,600,000.00

Sept. 7, 2006

FOR VALUE RECEIVED the undersigned, Terrence H. Upton; The Upton Properties, Inc., an Illinois corporation; 3017 Route 120, LLC, an Illinois limited liability company; 1211 Chicago Ave., LLC, an Illinois limited liability company; and 2722 Green Bay Road, LLC, an Illinois limited liability company (collectively, "Borrowers"), jointly and severally promise to pay to the order of The Private Bank and Trust Company (said Bank and each successive owner and holder of this Note being hereinafter called "Holder"), the principal sum of Three Million Six Hundred and 00/100 (\$3,600,000.00) Dollars, or so much thereof as may from time to time be outstanding hereunder, together with interest on the balance of principal from time to time remaining unpaid, in the amounts, at the rates and on the dates hereafter set forth.

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

(a) On November 1, 2006, and on the first day of each succeeding calendar month to and including the Maturity Date, as hereinafter defined, there shall be paid the amount of \$25,445.00, which shall be applied first to interest at the rate of seven (7.0%) percent per annum on the outstanding principal balance and the balance shall be applied to the principal balance.

(b) On September 1, 2011 ("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.

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 Private Bank and Trust Company, 70 West Madison Street, Suite 200, Chicago, Illinois 60602.

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.

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" of five (5%) percent of the amount so overdue to defray the expense incident to handling any such delinquent payment or payments.

This Note is executed pursuant to a Loan Modification Agreement executed concurrently herewith ("Modification"). This Note evidences an additional loan in the amount of Three Million Six Hundred Thousand and 00/100 (\$3,600,000.00) Dollars and is in addition to that certain Promissory Note in the amount of Eleven Million (\$11,000,000) Dollars ("Note No.1") made by

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EXHIBIT D

Borrowers on November 22, 2005. Note No. 1 is secured by three Real Estate Mortgages, Assignment of Rents, Security Agreement and UCC Fixture Filing (collectively, "Mortgages") executed on November 22, 2005 and recorded on December 16, 2005 with the Cook County Recorder of Deeds as Document No. 0535033049, and recorded on December 9, 2005 with the Lake County Recorder of Deeds as Document No. 5910643, and recorded on December 5, 2005 with the McHenry Recorder of Deeds as Document No. 2005 R 0102253. All interest rates applicable to and charged on Note No. 1 and all payments made on Note No. 1 are unchanged. Pursuant to the Modification, the Mortgages and other security documents ("Security Documents") are modified to secure this Note No. 2.

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

Under the provisions of the Mortgages and Security Documents, the unpaid balance hereunder may, at the option of the Holder, be accelerated and become due and payable forthwith upon the happening of certain events as set forth therein. The Mortgages 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%) percentage points to the interest rate then required to be paid, as above provided, on the principal balance.

Borrowers waive notice of default, presentment, notice of dishonor, protest and notice of protest.

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

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

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

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

BORROWERS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWERS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWERS 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. BORROWERS IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH BORROWERS AT THEIR ADDRESS AS SPECIFIED IN THE LOAN AGREEMENT OR OTHERWISE IN THE RECORDS OF THE HOLDER. BORROWERS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING, AFTER ANY RIGHTS OF APPEAL HAVE BEEN EXTINGUISHED, SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

Borrowers warrant to Holder that neither the Borrowers nor any Affiliate (as such term is defined below) 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. As used herein, the term "Affiliate" shall mean any person or entity that owns any equity interest in, has any control over or has any rights to participate in the management of any of the Borrowers, or any entity in which any of the Borrowers owns any equity interest, has any control over or has any rights to participate in the management of such entity.

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

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Time is of the essence of this Note No. 2 and each provision hereof.

Terrence H. Upton
The Upton Property Management, an Illinois corporation

By: Terry Upton, President

By: Jeanne A. Murphy, Secretary

3017 Route 120, LLC, an Illinois limited liability company

By: Terrence H. Upton, Manager

1211 Chicago Avenue, an Illinois limited liability company

By: Terrence H. Upton, Manager

2722 Green Bay Road, an Illinois limited liability company

By: Terrence H. Upton, Manager

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