

UNOFFICIAL COPY

This instrument prepared by
and please return to:

Polsinelli Shalton Flanigan Suelthaus PC
180 North Stetson Avenue, Suite 4525
Chicago, Illinois 60601
Attn: Kimberly K. Enders, Esq.



Doc#: 0836610044 Fee: \$84.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/31/2008 01:37 PM Pg: 1 of 25

PARCEL NO. 1:
P.I.N.: 15-01-203-001, 16-01-203-002
COMMONLY KNOWN AS: 2625 W. North Avenue, Chicago, Illinois 60647

PARCEL NO. 2:
P.I.N.: 10-21-332-048
COMMONLY KNOWN AS: 5414 Oakton, Merton Grove, Illinois 60053

THIRD LOAN MODIFICATION AGREEMENT

This instrument is a Third Loan Modification Agreement ("Third Modification") among First Chicago Bank & Trust, an Illinois banking corporation ("Lender"), Shangri-La Developers, Inc., an Illinois corporation ("Borrower"), and Tsultim G. Ngabtak, Tenma Tsering, Wangdu Tsering, Lobsang Yangphel, Tamdin Dolma, Kelsang Draggio, Tashi Keyzom, Tsetan W. Lungkara and Ngawang Y. Lungkara (collectively, "Guarantors").

RECITALS:

A. Borrower holds fee simple title to certain real estate legally described on **Exhibit A-1** hereto and commonly known as 2625 W. North Avenue, Chicago, Illinois ("Real Estate").

UNOFFICIAL COPY

B. Tenma Tsering and Tsultim G. Ngabtak hold fee simple title to certain real estate legally described on **Exhibit A-2** hereto and commonly known as 5414 Oakton, Morton Grove, Illinois (“Additional Real Estate”).

C. Lobsang Yangphel and Dolma Yangphel and hold fee simple title to certain real estate commonly known as 1411 W. Touhy, Unit B, Chicago, Illinois, Kelsang Draggo and Keyzom Draggo (together with Lobsang Yangphel and Dolma Yangphel, the “Second Additional Mortgagors”) hold fee simple title to certain real estate commonly known as 9244 N. Tripp, Skokie, Illinois, and legally described on **Exhibit A-3** hereto (“Second Additional Real Estate”).

D. Wangdu Tsering holds fee simple title to certain real estate commonly known as 5950 N. Kenmore Avenue, Unit 202, Chicago, Illinois 600660 and Tsetan Lungkara and Ngawang Y. Lungkara (together with Wangdu Tsering, “Third Additional Mortgagors”) hold fee simple title to certain real estate commonly known as 5025 W. Suffield Court, Unit A, Skokie, Illinois (collectively, “Third Additional Real Estate”).

E. On January 16, 2007, Borrower executed and delivered to Mortgagee a Promissory Note in the amount of Seven Hundred Sixty Thousand Dollars (\$760,000.00) (“Note No. 1”), the proceeds of which were used to acquire the Real Estate. Note No. 1 is secured by a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing covering the Real Estate and the Additional Real Estate, dated January 16, 2007 and recorded with the Cook County, Illinois Recorder of Deeds on January 22, 2007 as Document No. 0702240080 (“Mortgage”). Guarantors executed and delivered to Lender a Guaranty of Note, Mortgage and Other Undertakings (“Guaranty”).

UNOFFICIAL COPY

F. On March 22, 2007, Borrower, Guarantors and Lender entered into a Construction Loan Agreement (“Loan Agreement”) pursuant to which Lender made an additional loan to Borrower in the amount of Three Million Twenty-Six Thousand Six Hundred Thirty-Seven Dollars (\$3,026,637.00). Concurrently therewith, Borrower executed and delivered to Lender a Promissory Note in the amount of Three Million Twenty-Six Thousand Six Hundred Thirty-Seven Dollars (\$3,026,637.00) (“Note No. 2”), the additional proceeds of which were used to construct eight (8) residential condominium units and two (2) commercial/retail units (“Units”) on the Real Estate (the “Project”). Note No. 2 replaced and restated Note No. 1 and included all amounts outstanding on Note No. 1. Concurrently therewith, Borrower and Guarantors executed and delivered to Lender the following documents (collectively “Security Documents”):

1. a Modification of Mortgage (“Modification”), which Modification was recorded with the Cook County, Illinois Recorder of Deeds on April 24, 2007 as Document No. 0711433196;
2. a Revised Guaranty of Note, Mortgage, Loan Agreement and other Undertakings executed by Guarantors (“Revised Guaranty”);
3. an Assignment of Project Documents executed by Borrower;
4. an assignment of Real Estate Sale Contracts executed by Borrower;
5. a Tax and Insurance Escrow Waiver Agreement executed by Borrower and Lender;
6. a Certification of No Property Manager executed by Borrower; and
7. a Construction Loan Escrow Trust and Disbursement Agreement executed by Borrower’s Contractor.

UNOFFICIAL COPY

G. As of October 1, 2008, Borrower and Guarantors entered into a Second Loan Modification Agreement ("Second Modification"), pursuant to which Lender extended the maturity date from October 1, 2008 until December 5, 2008. Under the provisions of the Second Modification, the Second Additional Mortgagors granted a Junior Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Junior Mortgage") covering the Second Additional Real Estate as additional collateral for the Loan. The Second Modification was recorded on December 11, 2008 as Document No. 0834618012 and the Junior Mortgage was recorded on _____ as Document No. _____.

H. Borrower and Guarantors (collectively, "Debtor Parties") acknowledge, and have notified Lender, that the Project is not yet completed and that it will require funds in excess of the amount of \$776,669.00 to pay the construction costs of the Project and interest accrued and anticipated to be due on the Loan; that therefore the Project is "Out of Balance" as that term is defined in the Loan Agreement. Borrower and Guarantors have advised Lender that they do not have the funds to invest in the Project and as a result Borrower and Guarantors acknowledge that the Loan is in default ("Borrower Defaults").

I. The Loan matured on October 1, 2008. Borrower has now requested Lender to increase the Loan by the amount of Four Hundred Thirty-Five Thousand (\$435,000.00) Dollars ("Additional Loan") and to extend the maturity date of the Loan from December 5, 2008 until June 5, 2009. Lender is agreeable to this request, subject to the covenants, conditions and restrictions contained herein, including but not limited to an increase in the rate of interest applicable to the Loan and to a junior mortgage covering the Third Additional Real Estate.

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

UNOFFICIAL COPY

1. Borrower has executed concurrently herewith a Second Revised Promissory Note in the amount of Three Million Ninety-One Thousand Thirty-Nine (\$3,091,039.00) Dollars (“Note No. 3”), a copy of which is attached hereto as **Exhibit B**. The Additional Loan proceeds shall be used to pay additional costs as follows:

(a) construction costs to complete two residential Units that are currently under contract for sale;

(b) construction costs to complete one model residential Unit; and

(c) the balance of the Additional Loan proceeds shall be disbursed in Lender’s sole discretion.

2. The Security Documents are hereby modified and amended to secure Note No. 3 and all references to the Note in the Security Documents are modified and amended to refer to Note No. 3 in place of the Note as hereby modified. All interest charged on and all payments made on Note No. 1 and Note No. 2 previously are unchanged.

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

(a) Note No. 3;

(b) a Junior Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing (“Junior Mortgage”) covering the Third Additional Real Estate executed by Ngawang Y. Lungkara, Tsetan W. Lungkara, and Wangdu Tsering;

(c) a Second Revised Guaranty executed by Guarantors;

(d) a Corporate Resolution of Borrower;

(e) a Corporation File Detail Report of Borrower from Secretary of State of Illinois Website;

UNOFFICIAL COPY

(f) copies of all amendments to Borrower's Articles of Incorporation and Bylaws or Certification of No Change to Corporate Documents of Borrower;

(g) proof of payment of 2007 2nd installment of real estate taxes for the Real Estate;

(h) a date down endorsement to Lender's loan title insurance policy; and

(i) payment of the fees and costs set forth in Section 7 hereof.

4. This Third 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 Note No. 3 and the Security Documents ("Loan Documents") reference is made to the Loan Documents aforesaid, such reference shall be deemed a reference to such Loan Documents as hereby modified and amended. All other provisions of the Loan Documents remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Mortgage as revised by this Third Modification, or the covenants, conditions and agreements therein contained or contained in Note No. 1 or Note No. 2.

5. In the event of conflict between any of the provisions of the Loan Documents and this instrument, the provisions of this instrument shall override and control.

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

7. Borrower hereby agrees to pay Lender's a fee in the amount of \$4,350.00 ("Loan Fee") for this Third Modification and all of Lender's expenses arising out of and in connection with this Third Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees. The Loan Fee must be paid on the date on which the Loan is paid in full but in no event later than the Maturity Date.

UNOFFICIAL COPY

8. As an inducement to Lender to enter in this Third Modification, the Debtor Parties each acknowledge and agree that:

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

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

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

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

(e) the right of Lender to demand immediate payment and performance of the obligations of the Debtor Parties pursuant to any of the Loan Documents or this Third Modification;

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

(g) the conduct of the Lender in administering the financial arrangements between Lender and the Debtor Parties under any of the Loan Documents or this Third Modification; and

(h) any legal fees and expenses incurred by Lender and charged to the Debtor Parties pursuant to this Third Modification and/or any of the Loan Documents.

UNOFFICIAL COPY

9. 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.

10. Guarantors hereby expressly acknowledge and confirm that by executing this Third 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.

11. 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 NOTE NO. 3, NOTE NO. 2, THE NOTE, THIS THIRD MODIFICATION, THE SECOND MODIFICATION, THE MODIFICATION, THE MORTGAGE, THE JUNIOR MORTGAGE, THE LOAN AGREEMENT, THE SECURITY DOCUMENTS, OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER, BORROWER AND/OR GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER OR GUARANTORS, OR ANY OF THEM.

12. BORROWER AND GUARANTORS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE COURT SITTING IN COOK COUNTY,

UNOFFICIAL COPY

ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER AND GUARANTORS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER AND GUARANTORS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER AND GUARANTORS IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO BORROWER AND GUARANTORS AT THEIR ADDRESSES AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF LENDER. BORROWER AND GUARANTORS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING, AFTER ALL APPEAL RIGHTS ARE EXHAUSTED, SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

BORROWER AND GUARANTORS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF LENDER TO BRING

UNOFFICIAL COPY

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

13. Borrower and Guarantors warrant to Lender that neither Borrower nor Guarantors nor any affiliate is identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower and Guarantors covenant to Lender that if they become aware that they or any affiliate are identified on any Blocked Persons List, Borrower and Guarantors shall immediately notify Lender in writing of such information. Borrower and Guarantors further agree that in the event they or any affiliate are at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith

UNOFFICIAL COPY

by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

Signature page follows

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Third Modification on
November 21st 2008.

LENDER:

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

By: [Signature]
Its AVP

BORROWER:

Shangri-La Developers, Inc., an Illinois
corporation

By: [Signature]
Its [Signature]

Attest: _____
Its _____

GUARANTORS:

[Signature]
Tsultim G. Ngabtak

[Signature]
Tenma Tsering

[Signature]
Wangdu Tsering

[Signature]
Lobsang Yangphel

[Signature]
Tamdin Dolma

[Signature]
Kelsang Draggo

[Signature]
Tashi Kezom

[Signature]
Tsetan W. Lungkara

[Signature]
Ngawang Y. Lungkara

UNOFFICIAL COPY

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 Tsultim G. Ngabtak, President, and _____, Secretary, of Shangri-La Developers, 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 November 21, 2008.
Sonia Rodriguez

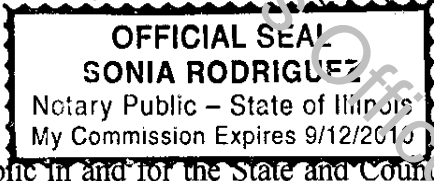
STATE OF ILLINOIS)
)
) SS
COUNTY OF C O O K)



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Alexander Durd, President, and _____, Secretary, of First Chicago Bank & Trust, an Illinois banking 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 November 21, 2008.
Sonia Rodriguez

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



Sonia Rodriguez, a Notary Public in and for the State and County aforesaid, does hereby certify that Tsultim G. Ngabtak, 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 November 21, 2008.
Sonia Rodriguez



UNOFFICIAL COPY

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 Tenma Tsering, 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 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 11/21/08, 2008.

[Signature]
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 Wangdu Tsering, 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 4/21/08, 2008.

[Signature]
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 Lobsang Yangphel, 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 11/21/08, 2008.

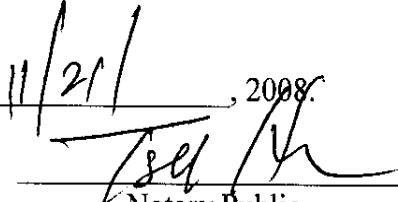
[Signature]
Notary Public



UNOFFICIAL COPY

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 Tamdin Dolma, 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 she signed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

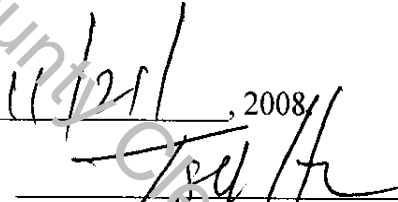
GIVEN under my hand and Notarial Seal 11/21, 2008.


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 Kelsang Draggo, 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.

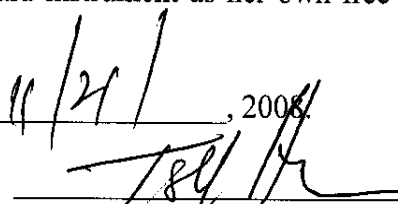
GIVEN under my hand and Notarial Seal 11/21, 2008.


Notary Public

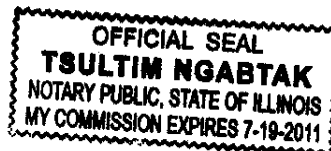
STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Tashi Keyzom, 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 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 11/21, 2008.


Notary Public

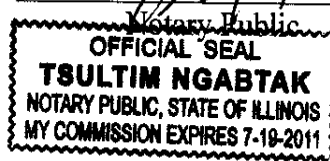


UNOFFICIAL COPY

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 Tsetan W. Lungkara, 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 11/21/08, 2008.



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 Ngawang Y. Lungkara, 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 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 11/21/08, 2008.

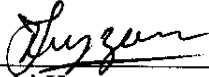


UNOFFICIAL COPY

ACKNOWLEDGED AND AGREED:



Tamdin Dohma

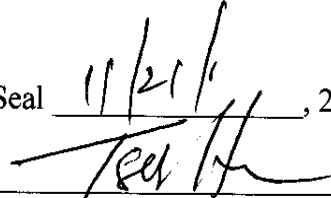


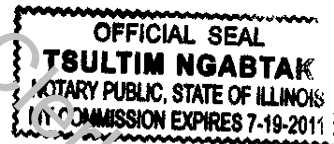
Tashi Keyson

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Tsultim Ngabtak, a Notary Public in and for the State and County aforesaid, does hereby certify that Tamdin Dohma, 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 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 11/21/, 2008.

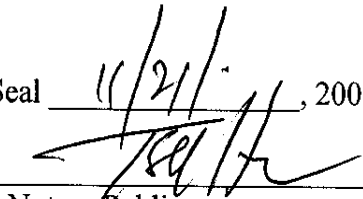


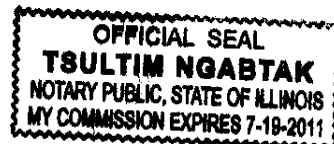
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Tsultim Ngabtak, a Notary Public in and for the State and County aforesaid, does hereby certify that Tashi Keyson, 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 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 11/21/, 2008.



Notary Public

UNOFFICIAL COPY

EXHIBIT A-1

LEGAL DESCRIPTION:

LOT ONE (EXCEPT THAT PART TAKEN FOR STREET) IN A. A. WELLS' RESUBDIVISION OF LOTS 44, 45, 46, 47 AND 48 IN BLOCK ONE (1) IN H. M. THOMPSON'S SUBDIVISION OF THE NORTHWEST QUARTER (1/4) OF THE NORTHEAST QUARTER (1/4) OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LOTS 2 AND 3 (EXCEPT THE NORTH 17 FEET THE ROOF TAKEN FOR WIDENING NORTH AVENUE) IN A. A. WELLS' RESUBDIVISION OF LOTS 44, 45, 46, 47 AND 48 IN BLOCK ONE (1) IN H. M. THOMPSON'S SUBDIVISION OF THE NORTHWEST QUARTER (1/4) OF THE NORTHEAST QUARTER (1/4) OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS. 2625 W. NORTH AVENUE, CHICAGO, ILLINOIS
60647

P.I.N.: 16-01-203-001, 16-01-203-002

UNOFFICIAL COPY

EXHIBIT A-2

LEGAL DESCRIPTION:

LOT 31 AND THE WEST 16.672 FEET OF LOT 32 IN OAKTON LONG AVENUE SUBDIVISION OF THE EAST 2 ACRES OF LOT 22 AND LOT 23 IN OWNER'S SUBDIVISION OF THE WEST ½ OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO THE EAST 5.0 FEET OF LOT 37 IN OLIVER SALINGER AND COMPANY'S THIRD OAKTON STREET SUBDIVISION OF PART OF LOT 22 IN OWNER'S SUBDIVISION OF THE WEST ½ OF THE SOUTHWEST ¼ SECTION 21, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 5414 OAKTON, MORTON GROVE, ILLINOIS 60053
P.I.N.: 10-21-332-048

UNOFFICIAL COPY**Exhibit A-3**TOUHY PARCEL:

PARCEL 1:

THAT SOUTH 19.42 FEET OF THE NORTH 54.17 FEET OF THE EAST 53.66 FEET OF THE WEST 368.30 FEET OF THE NORTH 1/2 OF BLOCK 13 IN ROGERS PARK, BEING A SUBDIVISION OF THE NORTH EAST 1/4 AND THAT PART OF THE NORTH WEST 1/4 LYING EAST OF RIDGE ROAD IN SECTION 31, ALSO THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 32, ALSO ALL OF SECTION 30 LYING SOUTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST 7.92 FEET OF THE WEST 377.28 FEET OF THE SOUTH 28.0 FEET OF THE NORTH 1/2 OF BLOCK 13 IN ROGERS PARK, BEING A SUBDIVISION OF THE NORTH EAST 1/4 AND THAT PART OF THE NORTH WEST 1/4 LYING EAST OF RIDGE ROAD IN SECTION 31, ALSO THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 32, ALSO ALL OF SECTION 30, LYING SOUTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

(A) EASEMENT FOR INGRESS AND EGRESS AS CONTAINED IN DECLARATION OF EASEMENT RECORDED JANUARY 2, 1974 AS DOCUMENT NO. 22584808 OVER AND ACROSS THE SOUTH 3 FEET OF THE EAST 53.66 FEET OF THE WEST 368.30 FEET (EXCEPT THE NORTH 1231.85 FEET AND EXCEPT THE SOUTH 28.0 FEET THEREOF) OF THE NORTH 1/2 OF BLOCK 13 IN ROGERS PARK, BEING A SUBDIVISION OF THE NORTH EAST 1/4 AND THAT PART OF THE NORTH WEST 1/4 LYING EAST OF RIDGE ROAD IN SECTION 31, ALSO THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 32, ALSO ALL OF SECTION 30 LYING SOUTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

(B) EASEMENT FOR REFUSE AS CONTAINED IN DECLARATION OF EASEMENT RECORDED JANUARY 2, 1974 AS DOCUMENT NO. 22584799 OVER AND ACROSS THE EAST 2.0 FEET OF THE WEST 296.08 FEET OF THE NORTH 20.0 FEET OF THE SOUTH 28.0 FEET OF THE NORTH 1/2 OF BLOCK 13 IN ROGERS PARK BEING A SUBDIVISION OF THE NORTH EAST 1/4 AND THAT PART OF THE NORTH WEST 1/4 LYING EAST OF RIDGE ROAD IN SECTION 31, ALSO THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 32, ALSO ALL OF SECTION 30 LYING SOUTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

(C) EASEMENT FOR REFUSE AS CONTAINED IN DECLARATION OF EASEMENT RECORDED JANUARY 2, 1974 AS DOCUMENT NO. 22584800 OVER AND ACROSS THE EAST 2.0 FEET OF THE WEST 298.0 FEET OF THE NORTH 20 FEET OF THE SOUTH 28.0 FEET OF THE NORTH 1/2 OF BLOCK 13 IN ROGERS PARK BEING A SUBDIVISION OF THE NORTH EAST 1/4 AND THAT PART OF THE NORTH WEST 1/4 LYING EAST OF RIDGE ROAD IN SECTION 31, ALSO THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 32, ALSO ALL OF SECTION 30, LYING SOUTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN PLAT RECORDED JANUARY 18, 1962 AS DOCUMENT NO. 18379782, IN COOK COUNTY, ILLINOIS.

P.I.N.: 11-32-101-048-0000, 11-32-101-094-0000
COMMONLY KNOWN AS: 1411 W. Touhy, Unit B, Chicago, Illinois 60626

TRIPP PARCEL:

LOTS 30 AND 31 IN BLOCK 2 IN ROTH AND GORDENS TERMINAL SUBDIVISION NO-2, BEING A SUBDIVISION OF THE SOUTH HALF OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 (EXCEPT THE WEST 5 ACRES THEREOF) OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 10-15-225-021
COMMONLY KNOWN AS: 9244 N. Tripp, Skokie, Illinois 60076

UNOFFICIAL COPY

EXHIBIT B

PROMISSORY NOTE

("Note No. 3")

\$3,091,039.00

_____, 2008

FOR VALUE RECEIVED the undersigned, Shangri-La Developers, Inc., an Illinois corporation ("Borrower"), promises to pay to the order of First Chicago Bank & Trust, an Illinois banking corporation (said Bank and each successive owner and holder of this Note being hereinafter called "Holder"), the principal sum of Three Million Ninety-One Thousand Thirty-Nine (\$3,091,039.00) Dollars, or so much thereof as may from time to time be outstanding hereunder, together with interest on the balance of principal from time to time remaining unpaid, in the amounts, at the rates and on the dates hereafter set forth.

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

(a) On November 5, 2008 and on the fifth 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 rate equal to the greater of (i) six and one-half percent (6.5%) or (ii) the prime rate of interest announced and in effect from time to time at First Chicago Bank & Trust as it varies plus two percent (2.0%) per annum. The rate of interest shall change each time the prime rate is changed.

(b) On June 5, 2009 ("Maturity Date"), the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

The prime rate of First Chicago Bank & Trust is currently the highest prime rate of interest published in The Wall Street Journal. If this index is no longer available, Bank will choose 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.

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

This Note may be prepaid, in whole or in part, without premium or penalty, in whole or in part, and all accrued interest hereon shall be payable and shall be paid on the date of prepayment.

Payment upon this Note shall be made in lawful money of the United States at such place as the Holder of this Note may from time to time in writing appoint and in the absence of such appointment, shall be made at the offices of First Chicago Bank & Trust, 1145 North Arlington Heights Road, Itasca, Illinois 60143.

UNOFFICIAL COPY

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

This Note is executed pursuant to a Third Loan Modification Agreement ("Third Modification") executed concurrently herewith, which modifies a Construction Loan Agreement dated March 22, 2007 ("Loan Agreement"). This Note replaces that certain Promissory Note in the amount of Three Million Twenty-Six Thousand Six Hundred Thirty-Seven (\$3,026,637.00) Dollars ("Note No. 2") made by Borrower on March 22, 2007 which replaces that certain Promissory Note in the amount of Seven Hundred Sixty Thousand (\$760,000.00) Dollars ("Original Note"). The Original Note is secured by a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage") executed on January 16, 2007 and recorded with the Cook County Recorder of Deeds on January 22, 2007 as Document No. 0702240080, which was modified by a Modification of Mortgage recorded with the Cook County Recorder of Deeds on April 24, 2007 as Document No. 0711433196 which was modified by a Second Loan Modification Agreement dated as of October 1, 2008 ("Second Modification").

At the election of the Holder hereof, without notice, the principal sum remaining unpaid hereon, together with accrued interest shall be and become at once due and payable in the case of default for five (5) days in the payment of principal or interest when due in accordance with the terms hereof or upon the occurrence of any "Event of Default" under the Security Documents.

Under the provisions of the Security Documents the unpaid balance hereunder may, at the option of the Holder, be accelerated and become due and payable forthwith upon the happening of certain events as set forth therein. The Security Documents are, by this reference, incorporated herein in their entirety and notice is given of such possibility of acceleration.

The principal hereof, including each installment of principal, shall bear interest after the occurrence of an event of default, not cured within the applicable cure period, at the annual rate (herein called the "Default Rate") determined by adding three (3.0%) percentage points to the interest rate then required to be paid, as above provided, on the principal balance.

No failure on the part of Bank or any holder hereof to exercise any right or remedy hereunder, whether before or after the occurrence of an event of default, shall constitute a waiver thereof, and no waiver of any past default shall constitute a waiver of any future default or of any other default. No failure to accelerate, nor acceptance of a past-due installment, nor indulgence granted shall be construed to be a waiver of the right to insist upon prompt payment and to impose the late payment penalty and the default rate, retroactively or prospectively, or shall be deemed a waiver of any right of acceleration or any other right which Bank may have, whether by law or agreement or otherwise. None of the foregoing shall operate to release, change or effect the liability of Borrower, or any endorser or guarantor of this Note, and Borrower and each endorser or guarantor hereby expressly waive the benefit of any statute or rule of law or equity which would produce a result contrary to or in conflict with the foregoing.

UNOFFICIAL COPY

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

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

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

Funds representing the proceeds of the indebtedness evidenced herein which are disbursed by Holder by mail, wire transfer or other delivery to Borrower, escrowees or otherwise for the benefit of Borrower shall, for all purposes, be deemed outstanding hereunder and received by Borrower as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such mailing, wire transfer or other delivery until repaid to Holder, notwithstanding the fact that such funds may not at any time have been remitted by escrowees to Borrower.

BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES IRREVOCABLY THE RIGHT IT MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, NOTE NO. 1, NOTE NO. 2, THE THIRD MODIFICATION, SECOND MODIFICATION, THE MODIFICATION, THE LOAN AGREEMENT, THE MORTGAGE OR ANY OF THE OTHER OBLIGATIONS, OR THE COLLATERAL SECURED BY THE SECURITY DOCUMENTS, OR ANY AGREEMENT, EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH HOLDER AND BORROWERS 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.

UNOFFICIAL COPY

BORROWER AGREES NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST HOLDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF HOLDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF HOLDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

Borrower warrants to Holder that neither Borrower nor any affiliate are identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower covenants to Holder that if it becomes aware that it or any affiliate is identified on any Blocked Persons List, Borrower shall immediately notify Holder in writing of such information. Borrower further agrees that in the event it or any affiliate are 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 Security Document or otherwise permitted by law. In addition, Holder may immediately contact the Office of Foreign Assets Control and any other government agency the Holder deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Holder will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Holder determines, in its sole and absolute discretion, that 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 collateral (as defined in the Security Documents) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Security Documents.

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

Shangri-La Developers, Inc.

By: _____

Its: _____

COPY