



Doc#: 0919729059 Fee: \$84.00  
Eugene "Gene" Moore RHP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/16/2009 03:58 PM Pg. 1 of 2

**This instrument prepared by  
and please return to:**

**Polsinelli Shughart PC  
180 North Stetson Avenue, Suite 4525  
Chicago, Illinois 60601-6733  
Attention: Kimberly K. Enders, Esq.**

PARCEL NO. 1:  
P.I.N.: 16-08-227-001, 16-08-227-002  
COMMONLY KNOWN AS: 445-447 N. Waller Avenue, Chicago, Illinois

PARCEL NO.2:  
P.I.N.: 16-08-226-022  
COMMONLY KNOWN AS: 420 N. Waller Avenue, Chicago, Illinois

**THIRD LOAN MODIFICATION,  
CROSS-COLLATERALIZATION AND CROSS-DEFAULT AGREEMENT**

This instrument is a Third Loan Modification, Cross-Collateralization and Cross-Default Agreement ("Third Modification") among First Chicago Bank & Trust, an Illinois banking corporation ("Lender"), Lake and Waller, LLC, an Illinois limited liability company ("Borrower") and Brad Anthony, David Doig, Tom Fiddler and Michael Scott (collectively, "Guarantors").

**RECITALS:**

A. Borrower holds fee simple title to the real estate commonly known as 445-447 N. Waller Avenue, Chicago, Illinois, which is legally described on **Exhibit A** attached hereto ("Parcel No. 1").

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B. Borrower holds fee simple title to the real estate commonly known as 420 N. Waller Avenue, Chicago, Illinois, which is legally described on **Exhibit A** attached hereto (“Parcel No. 2”). Borrower is constructing a 15-unit residential condominium building on Parcel No. 2 (“Project”).

C. Parcel No. 1 and Parcel No. 2 are collectively referred to as the “Real Estate.”

D. Guarantors are affiliated with Borrower.

E. On November 1, 2007, Lender granted a loan to Borrower in the amount of Four Hundred Forty Thousand (\$440,000.00) Dollars (“445-447 Loan”), which is evidenced by a Promissory Note in the principal amount of Four Hundred Forty Thousand (\$440,000.00) Dollars (“445-447 Note”). Concurrently therewith, Borrower, Guarantors and other parties executed and delivered to Lender the following documents (collectively “445-447 Security Documents”):

1. a Mortgage covering Parcel No. 1, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934069 (“445-447 Mortgage”);

2. an Assignment of Rents and Lessor’s Interest in Leases covering Parcel No. 1, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934070 (“445-447 Assignment of Rents”);

3. a Financing Statement, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934071;

4. an Environmental Indemnity Agreement executed by Borrower and Guarantors;

5. a Guaranty executed by Brad Anthony (“445-447 Anthony Guaranty”);

6. a Guaranty executed by David Doig (“445-447 Doig Guaranty”);

7. a Guaranty executed by Tom Fiddler (“445-447 Fiddler Guaranty”);

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8. a Guaranty executed by Michael Scott (“445-447 Scott Guaranty”) together with the Guaranty executed by Brad Anthony (“445-447 Anthony Guaranty”), the Guaranty executed by David Doig (“445-447 Doig Guaranty”) and the Guaranty executed by Tom Fiddler (“445-447 Fiddler Guaranty”), (collectively, the “445-447 Guarantees”); and

9. a Security Agreement executed by Borrower.

F. On November 1, 2007, Lender granted a loan to Borrower in the amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars (“420 Loan”), which is evidenced by a Promissory Note in the principal amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars (“420 Note”). Concurrently therewith, Borrower, Guarantors and other parties executed and delivered to Lender the following documents (collectively “420 Security Documents”):

1. a Mortgage covering Parcel No. 2, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934066 (“420 Mortgage”);

2. an Assignment of Rents and Lessor’s Interest in Leases covering Parcel No. 1, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934067;

3. a Financing Statement, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934068;

4. an Environmental Indemnity Agreement executed by Borrower and Guarantors;

5. a Guaranty executed by Brad Anthony (“420 Anthony Guaranty”);

6. a Guaranty executed by David Doig (“420 Doig Guaranty”);

7. a Guaranty executed by Tom Fiddler (“420 Fiddler Guaranty”);

8. a Guaranty executed by Michael Scott (“420 Scott Guaranty”) together with the Guaranty executed by Brad Anthony (“420 Anthony Guaranty”), the Guaranty executed by

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David Doig (“420 Doig Guaranty”) and the Guaranty executed by Tom Fiddler (“420 Fiddler Guaranty”), (collectively, the “420 Guarantees”); and

9. a Security Agreement executed by Borrower.

G. The 445-447 Security Documents and the 420 Security Documents are collectively referred to as “Security Documents.” All of the collateral covered by the Security Documents is referred to as “Collateral.”

H. Borrower and the City of Chicago have executed a Redevelopment Agreement (“Redevelopment Agreement”) and Borrower is to be the beneficiary of a Tax Increment Financing Bond (“TIF Bond”) for the Madison/Austin Tax Increment Finance District in Chicago, Illinois, pursuant to which the City of Chicago will execute and deliver to Borrower a certain promissory note in the amount of \$1,310,000.00 (“TIF Note”) and the Assignment of the TIF Note.

I. On November 28, 2008, to take effect as of November 1, 2008, Borrower, Guarantors and Lender entered into a Loan Modification Agreement (“445-447 Modification”), pursuant to which Lender extended the maturity date of the Loan from November 1, 2008 until February 5, 2009. Pursuant to the 445-447 Modification, Borrower executed and delivered to Lender a Promissory Note in the amount of \$440,000.00 (“Revised 445-447 Note”), a copy of which was attached to the 445-447 Modification as Exhibit B; Guarantors executed and delivered to Lender a Revised Guaranty (“Revised 445-447 Guaranty”); Borrower assigned its interest in the TIF Bond to Lender pursuant to a Pledge Agreement and agreed to deliver the original TIF Note and an Allonge to the TIF Note and endorse the TIF Note, if issued, to Lender (“445-447 Assignment”); and the City of Chicago was requested to consent to the 445-447 Assignment. The 445-447 Modification was recorded on December 19, 2008 with the Cook County, Illinois Recorder of Deeds as Document No. 0835445098.

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J. On November 28, 2008, to take effect as of November 1, 2008, Borrower, Guarantors and Lender entered into a Loan Modification Agreement ("420 Modification"), pursuant to which Lender extended the maturity date of the Loan from November 1, 2008 until February 5, 2009. Pursuant to the 420 Modification, Borrower executed and delivered to Lender a Promissory Note in the amount of \$3,210,000.00 ("Revised 420 Note"), a copy of which was attached to the 420 Modification as Exhibit B; Guarantors executed and delivered to Lender a Revised Guaranty ("Revised 420 Guaranty"); Borrower assigned its interest in the TIF Bond to Lender pursuant to a Pledge Agreement and agreed to deliver the original TIF Note and an Allonge to the TIF Note and endorse the TIF Note, if issued, to Lender ("420 Assignment"); and the City of Chicago was requested to consent to the 420 Assignment. The 420 Modification was recorded on December 19, 2008 with the Cook County, Illinois Recorder of Deeds as Document No. 0835445099.

K. On March 9, 2009, to take effect as of February 5, 2009, Borrower, Guarantors and Lender entered into a Second Loan Modification Agreement ("Second 445-447 Modification"), pursuant to which Lender extended the maturity date of the 445-447 Loan from February 5, 2009 until May 5, 2009. The Second 445-447 Modification was recorded on April 9, 2009 with the Cook County, Illinois Recorder of Deeds as Document No. 0909929047.

L. The Second 445-447 Modification incorrectly states the recorded document numbers for the original 445-447 Mortgage and 445-447 Assignment of Rents. The Second 445-447 Modification is hereby revised to correct the recorded document number of the 445-447 Mortgage from 0730934070 to 0730936069 and of the 445-447 Assignment of Rents from 0730934071 to 0730934070.

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M. On March 9, 2009, to take effect as of February 5, 2009, Borrower, Guarantors and Lender entered into a Second Loan Modification Agreement (“Second 420 Modification”), pursuant to which Lender extended the maturity date of the 420 Loan from February 5, 2009 until May 5, 2009. The Second 420 Modification was recorded on March 26, 2009 with the Cook County, Illinois Recorder of Deeds as Document No. 0908545184.

N. Borrower has now requested Lender: (i) to extend the maturity date of the 445-447 Loan and the 420 Loan from May 5, 2009 until August 5, 2009; and (ii) to decrease the interest rate charged on the 445-447 Loan and the 420 Loan. Lender is agreeable to these requests subject to the covenants, conditions and restrictions contained herein, including modifying the 445-447 Mortgage and the 420 Mortgage and other Security Documents to cross-collateralize and cross-default the 445-447 Loan and the 420 Loan.

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

1. The 445-447 Revised Note is hereby modified and amended in its entirety by the Second Revised Promissory Note in the amount of Four Hundred Forty Thousand (\$440,000.00) Dollars executed concurrently herewith, a copy of which is attached as **Exhibit B** (“Second Revised 445-447 Note”). The Second Revised 445-447 Note evidences the outstanding principal balance of the 445-447 Loan.

2. The 420 Revised Note is hereby modified and amended in its entirety by the Second Revised Promissory Note in the amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars executed concurrently herewith, a copy of which is attached as **Exhibit C** (“Second Revised 420 Note”). The Second Revised 420 Note evidences the outstanding principal balance of the 420 Loan.

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3. The Security Documents are hereby modified and amended to secure the 445-447 Note and the Revised 445-447 Note as hereby modified by the Second Revised 445-447 Note and all references to the 445-447 Note and Revised 445-447 Note in the Security Documents are modified and amended to refer to the Second Revised 445-447 Note. All interest charged on and all payments made on the 445-447 Note and Revised 445-447 Note previously are unchanged.

4. The Security Documents are hereby modified and amended to secure the 420 Note and the Revised 420 Note as hereby modified by the Second Revised 420 Note and all references to the 420 Note and Revised 420 Note in the Security Documents are modified and amended to refer to the Second Revised 420 Note. All interest charged on and all payments made on the 420 Note and Revised 420 Note previously are unchanged.

5. Borrower hereby conveys, mortgages and grants Parcel No. 1 as security for the 420 Loan evidenced by the Second Revised 420 Note.

6. Borrower hereby conveys, mortgages and grants Parcel No. 2 as security for the 445-447 Loan evidenced by the Second Revised 445-447 Note.

7. Borrower and Guarantors herewith agree that the 445-447 Loan and the 420 Loan (collectively, the "Loans"), and all indebtedness due under the 445-447 Note and the 420 Note (collectively, the "Notes") and the 445-447 Mortgage and the 420 Mortgage (collectively, the "Mortgages"), are fully cross-collateralized, and all indebtedness due under any one or more of the Notes is secured by all of the Loan Documents (hereinafter defined) and the Collateral. Lender may, in its sole and absolute discretion, elect to enforce such remedies as are available to it under the terms of any or all of the Loan Documents. Borrower hereby grants a security interest in, assigns, mortgages and pledges to Lender each and every item of the Collateral as

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collateral security for the repayment of all of the Notes and the performance of the covenants and agreements under all of the Loan Documents.

8. Borrower and Guarantors herewith agree that any default or event of default that shall occur or that has occurred with respect to any of the Loans, or the Loan Documents, is hereby considered a default or an event of default with respect to all of the Loans. Such security interests, assignments, mortgages and pledges shall permit Lender to exercise any and all rights of enforcement and remedies afforded under any or all of the Loan Documents or otherwise as a “secured party” under the Illinois Uniform Commercial Code as in effect from time to time, together with any and all other rights and remedies otherwise provided and available to Lender at law or in equity as of the date of this Third Modification or the date of a default. Lender shall have the right to file, record or lodge with appropriate agencies of government or otherwise evidence of the security interests, assignments and pledges hereunder, including, without limitation, recording this Third Modification in the real estate records of Cook County, Illinois, and Borrower and Guarantors agree to promptly execute and deliver financing statements and such other documents and instruments from time to time as Lender shall require to evidence or perfect such security interest, assignments and pledges given hereunder.

9. 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) the Second Revised 445-447 Note in the amount of Four Hundred Forty Thousand (\$440,000.00) Dollars executed by Borrower;

(b) the Second Revised 440 Note in the amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars executed by Borrower;

(c) a Second Revised Guaranty executed by Guarantors;



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- (d) an Organizational Resolution of Borrower;
- (e) a Certification of No Change to Organizational Documents executed by Borrower's managing member;
- (f) an LLC File Detail Report printout from the Illinois Secretary of State's website showing the good standing status of Borrower;
- (g) if issued, the TIF Note and an Allonge endorsing the TIF Note to Lender;
- (h) a date down endorsement to Lender's loan title insurance policy;
- (i) updated financial statements of each of Guarantors; and
- (j) payment of Lender's costs set forth in Section 8 hereof.

Lender also requires current appraisals of the Real Estate and Borrower and Guarantors agree to pay the cost thereof. However, receipt of results of the appraisal is not a condition precedent to the effectiveness of this Third Modification.

10. 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 the Notes ("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 Mortgages as revised by this Third Modification, or the covenants, conditions and agreements therein contained or contained in the Notes.

11. 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.

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

13. Borrower hereby agrees to pay Lender's fee in the amount of \$4,400 when the 445-447 Loan is paid in full and \$32,100 when the 440 Loan is paid in full, but in each case no later than the Maturity Date of each of the Notes 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.

14. Guarantors hereby expressly acknowledge and confirm that by executing this Third Modification and the Second Revised Guaranty, 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.

**15. 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 NOTES, THE REVISED 445-447 NOTE, THE REVISED 440 NOTE, THE SECOND REVISED 445-447 NOTE, THE SECOND REVISED 440 NOTE, THIS THIRD MODIFICATION, THE SECOND 445-447 MODIFICATION, THE SECOND 440 MODIFICATION, THE 445-447 MODIFICATION, THE 440 MODIFICATION, THE MORTGAGES, THE SECURITY DOCUMENTS, OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED**

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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.

16 BORROWER AND GUARANTORS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER AND GUARANTORS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OF 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

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**ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.**

**BORROWER AND GUARANTORS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER AND GUARANTORS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS; PROVIDED, HOWEVER, UNLESS LENDER IS REQUIRED BY LAW TO INSTITUTE PROCEEDINGS IN ANY OTHER JURISDICTION, LENDER SHALL FIRST INSTITUTE PROCEEDINGS IN A STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS.**

17. 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

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event they or any affiliate are at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

*Signature page follows*

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

June 19, 2009 to take effect as of May 5, 2009.

**LENDER:**

First Chicago Bank & Trust, an Illinois banking corporation

By: [Signature]  
Its AVP

**BORROWER:**

Lake and Waller, LLC, an Illinois limited liability company

By: [Signature]  
David Doig, Manager

**GUARANTORS:**

[Signature]  
Brad Anthony

[Signature]  
David Doig

[Signature]  
Tom Fiddler

[Signature]  
Michael Scott

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

The undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that Sandy Duvick, Asst. Vice President First Chicago Bank & Trust, an Illinois banking corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (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 July 14, 2009.

[Signature]  
Notary Public



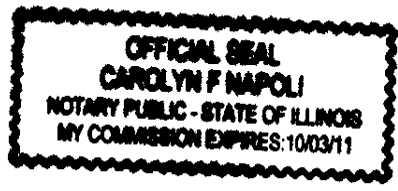
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STATE OF ILLINOIS        )  
  )        SS  
COUNTY OF C O O K        )

CAROLYN F. NAPOLI, a Notary Public in and for the State and County aforesaid, does hereby certify that David Doig, individually and as the Manager of Lake and Waller, 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 such limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal JUNE 19, 2009.

Carolyn F. Napoli  
Notary Public

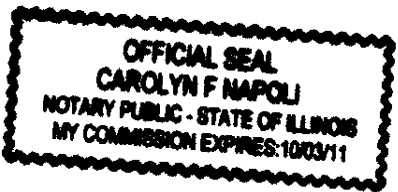


STATE OF ILLINOIS        )  
  )        SS  
COUNTY OF C O O K        )

CAROLYN F. NAPOLI, a Notary Public in and for the State and County aforesaid, does hereby certify that Brad Anthony, 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 19, 2009.

Carolyn F. Napoli  
Notary Public



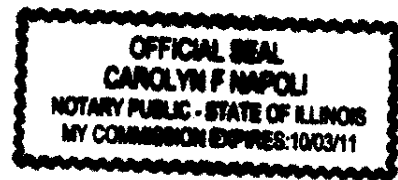
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STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF C O O K    )

CAROLYN F. NAPOLI, a Notary Public in and for the State and County aforesaid, does hereby certify that Tom Fiddler, 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 19, 2009.

Carolyn F. Napoli  
Notary Public

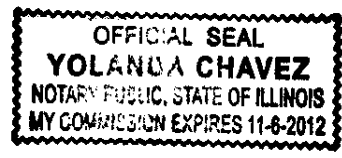


STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF C O O K    )

Yolanda Chavez, a Notary Public in and for the State and County aforesaid, does hereby certify that Michael Scott, 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 6-22-, 2009.

Yolanda Chavez  
Notary Public





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## EXHIBIT A

### LEGAL DESCRIPTION:

#### PARCEL NO. 1:

LOTS 6, 7, 8, 9 AND 10 IN WILLIAM H. ODIORNE'S SUBDIVISION OF BLOCK 8 IN AUSTINVILLE, BEING AUSTIN AND MERRICK'S SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 445-447 NORTH WALLER, CHICAGO, ILLINOIS 60644

PINs: 16-08-227-001, 16-08-227-002

#### PARCEL NO. 2:

THE EAST 50 FEET OF LOT 431 AND ALL OF LOT 432 (EXCEPT THE NORTH 170 FEET OF EACH LOT) IN AUSTIN'S RESUBDIVISION OF BLOCK 9 IN THAT PART OF AUSTINVILLE LYING IN THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13, COMPRISING THE WEST PART OF AUSTINVILLE, BEING AUSTIN AND MERRICK'S SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 8 AND THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 420 NORTH WALLER, CHICAGO, ILLINOIS 60644

PIN: 16-08-226-022

**UNOFFICIAL COPY****EXHIBIT B****PROMISSORY NOTE**  
**("Second Revised 445-447 Note")**

\$440,000.00

As of May 5, 2009

**FOR VALUE RECEIVED** the undersigned, Lake and Waller, LLC, an Illinois limited liability company ("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 Four Hundred Forty Thousand (\$440,000.00) 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 May 5, 2009 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 the rate of four percent (4.0%) per annum.

(b) On August 1, 2009 ("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 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.

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, Cross-Collateralization and Cross-Default Agreement ("Third Modification") executed concurrently herewith. This Note replaces that certain Promissory Note in the amount of Four Hundred Forty Thousand (\$440,000.00) Dollars ("Original Note") made by Borrower on November 1, 2007 which is secured by a Mortgage, which was recorded on November 5, 2007 with the Cook County Recorder of Deeds as Document No. 0730934069, an Assignment of Rents recorded as Document No. 0703934070 and other documents, all being executed and delivered concurrently therewith, and that certain Revised Promissory Note in the amount of Four Hundred Forty Thousand (\$440,000.00) Dollars ("Revised Note") made by Borrower on November 28, 2008 to

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EXHIBIT B

take effect as of November 1, 2008, pursuant to a Loan Modification Agreement recorded on December 19, 2008 as Document No. 0835445098 ("Modification"), and further modified by a Second Loan Modification Agreement executed on March 9, 2009 to take effect as of February 5, 2009 and recorded on March 26, 2009 as Document No. 0908545184 ("Second Modification"). All interest rates applicable to and charged on the Original Note and the Revised Note and all payments made on the Original Note and the Revised Note are unchanged. Pursuant to the Third Modification, the Second Modification, the Modification, the Mortgage and other security documents ("Security Documents") are modified to secure this Note.

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

Under the provisions of the Security Documents the unpaid balance hereunder may, at the option of 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.

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.

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## EXHIBIT B

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 ORIGINAL NOTE, THE REVISED NOTE, THE MODIFICATION, THE SECOND MODIFICATION, THE THIRD MODIFICATION, 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.**

**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.**

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EXHIBIT B

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.

Lake and Waller, LLC, an Illinois limited liability company

By: \_\_\_\_\_

David Dotg, Manager

COPY

**UNOFFICIAL COPY****EXHIBIT C****PROMISSORY NOTE**  
**("Second Revised 420 Note")**

\$3,210,000.00

As of May 5, 2009

**FOR VALUE RECEIVED** the undersigned, Lake and Waller, LLC, an Illinois limited liability company ("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 Two Hundred Ten Thousand (\$3,210,000.00) 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 May 5, 2009 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 the rate of four percent (4.0%) per annum.

(b) On August 5, 2009 ("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 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.

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, Cross-Collateralization and Cross-Default Agreement ("Third Modification") executed concurrently herewith. This Note replaces that certain Promissory Note in the amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars ("Original Note") made by Borrower on November 1, 2007 which is secured by a Mortgage which was recorded on November 5, 2007 with the Cook County Recorder of Deeds as Document No. 0730934066, an Assignment of Rents recorded as Document No. 0703934067 and other documents, all being executed and delivered concurrently therewith, and that certain Revised Promissory Note in the amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars ("Revised Note") made by Borrower on

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EXHIBIT C

November 28, 2008 to take effect as of November 1, 2008, pursuant to a Loan Modification Agreement recorded on December 19, 2008 as Document No. 0835445099 ("Modification"), and further modified by a Second Loan Modification Agreement executed on March 9, 2009 to take effect as of February 5, 2009 and recorded on March 26, 2009 as Document No. 0908545184 ("Second Modification"). All interest rates applicable to and charged on the Original Note and the Revised Note and all payments made on the Original Note and the Revised Note are unchanged. Pursuant to the Third Modification, the Second Modification, the Modification, the Mortgage and other security documents ("Security Documents") are modified to secure this Note.

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

Under the provisions of the Security Documents the unpaid balance hereunder may, at the option of 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.

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.

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EXHIBIT C

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.

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**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 ORIGINAL NOTE, THE REVISED NOTE, THE MODIFICATION, THE SECOND MODIFICATION, THE THIRD MODIFICATION, 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.**

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EXHIBIT C

## 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.

Lake and Waller, LLC, an Illinois limited liability company

By \_\_\_\_\_

David Dorig, Manager