

# UNOFFICIAL COPY



This instrument prepared by  
and please return to:

**Polsinelli Shughart PC**  
161 N. Clark Street, Suite 4200  
Chicago, Illinois 60601  
Attention: Kimberly K. Enders, Esq.

Doc#: 0934844053 Fee: \$72.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 12/14/2009 12:42 PM Pg: 1 of 19

Loan No. 0112012779

P.I.N.: 17-06-234-018-0000  
COMMONLY KNOWN AS: 1746 West Division Street, Chicago, IL 60622

## SECOND LOAN MODIFICATION AGREEMENT

This instrument is a Second Loan Modification Agreement ("**Second Modification**") among First Chicago Bank & Trust, an Illinois banking corporation ("**Lender**"), CB Holdings of Illinois, LLC, an Illinois limited liability company ("**Borrower**"), and Steven Ciaccio and Phillip Ciaccio (collectively, "**Guarantors**").

### RECITALS:

A. Borrower holds fee simple title to the real estate commonly known as 1746 West Division Street, Chicago, Illinois, which is legally described on Exhibit A attached hereto ("**Real Estate**"). Guarantors are affiliated with Borrower.

B. On May 8, 2007, Lender granted a loan to Borrower in the amount of Nine Hundred Fifty Thousand Three Hundred Thirty-Five (\$950,335.00) Dollars ("**Loan**"), which is evidenced by a Promissory Note in the principal amount of Nine Hundred Fifty Thousand Three Hundred

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Thirty-Five (\$950,335.00) Dollars (“**Note**”). Concurrently therewith, Borrower and Guarantors executed and delivered to Lender the following documents (collectively “**Security Documents**”):

1. a Construction Loan Agreement;
2. a Construction Mortgage which was recorded on May 17, 2007 with the Cook County, Illinois Recorder of Deeds as Document No. 0713757141 (“**Mortgage**”);
3. an Assignment of Rents recorded on May 17, 2007 with the Cook County, Illinois Recorder of Deeds as Document No. 0713757142 (“**Assignment**”);
4. a Commercial Guaranty executed by each of the Guarantors;
5. a UCC Financing Statement authorized by Borrower and filed with the Secretary of State of Illinois;
6. a Hazardous Substances Certificate and Indemnity Agreement executed by Borrower;
7. a Disbursement Request and Authorization executed by Borrower;
8. a Limited Liability Company Resolution to Borrower Grant Collateral executed by Borrower;
9. a Loan Settlement Statement executed by Borrower; and
10. such other documents and items as were requested by Lender.

C. On March 13, 2008, Borrower and Lender entered into a Change In Terms Agreement pursuant to which Lender (i) amended the rate of interest charged on the Loan, (ii) increased the amount of the Loan by \$249,665.00 (“**Additional Loan**”) and (iii) extended the maturity date of the loan until March 8, 2013. Borrower executed and delivered to Lender the Change In Terms Agreement pursuant to which Borrower acknowledged that the aggregate amount of the Loan is \$1,200,000.00 (“**Change In Terms Agreement**”) and a Modification of

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Mortgage, which was recorded with the Cook County, Illinois Recorder of Deeds on March 27, 2008 as Document No. 0808755054 ("**Modification**").

D. The outstanding principal balance of the Loan as of July 8, 2009 was \$1,177,905.74, interest outstanding (not calculated at the default rate) was \$22,832.64 and other charges outstanding were \$16,014.62. Borrower has now requested Lender to modify the repayment terms to require interest only payments from July 8, 2009 until July 8, 2010 and to reduce the interest rate charged on the Loan. Lender is agreeable to this request, subject to the covenants, conditions and restrictions contained herein.

E. Borrower has also requested that Lender forbear enforcing its rights until March 31, 2010 in connection with a loan made on November 27, 2007 to Borrower in the original principal amount of \$1,600,000.00 ("**955 W. Monroe, Unit C-1 Loan**"), secured by property commonly known as 955 W. Monroe, Units 3D and C-1, Chicago, Illinois and legally described in **Exhibit B** hereto ("**955 W. Monroe, Unit C-1 Property**"). Lender is agreeable to this request subject to the covenants, conditions and restrictions contained herein and in a Forbearance and Deed In Lieu Of Foreclosure Agreement ("**Forbearance Agreement**"), providing for the conveyance of the 955 W. Monroe, Units 3D and C-1 Property to be held in escrow during the term of forbearance.

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

1. Borrower and Guarantors acknowledge and agree that the Loan is in default because Borrower has not made principal and interest payments since April 8, 2009 and there is presently outstanding \$1,176,147.55 principal, \$52,417.61 interest, \$6,088.64 late charges and \$1,078.50 Lender's costs plus a prepayment premium. The Loan has been accelerated and all

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amounts are presently due. Borrower agrees to pay \$31,150.00, or such lesser amount as is acceptable to Lender, on or before November 30, 2009, which will be applied to amounts outstanding on the Loan after the interest rate reduction is affected. Borrower also agrees that in the event it sells the property commonly known as 103 S. Morgan / 955 W. Monroe Unit 4D, Chicago, IL ("**Unit 4D Property**"), it will pay all proceeds in excess of the amount necessary to pay the liens and closing costs of the sale of the Unit 4D Property to Lender which Lender will apply to this Loan, and its failure to do so will be an additional default of this Loan.

2. The Note and the Change In Terms Agreement are hereby modified and amended in their entirety by the Revised Promissory Note in the amount of One Million One Hundred Seventy Six Thousand One Hundred Forty-Seven Dollars and Fifty-Five Cents (\$1,176,147.55), executed concurrently herewith, a copy of which is attached as **Exhibit C** ("**Revised Note**"). The Revised Note evidences the outstanding principal balance of the Loan as of July 8, 2009, the date on which the interest rate reduction shall be effective. The Security Documents are hereby modified and amended to secure the Revised Note as hereby modified and all references are modified and amended to refer to the Revised Note in place of the Note and Change In Terms Agreement. All amounts presently outstanding on the Note and the Change In Terms Agreement shall be deemed outstanding on the Revised Note. All interest charged on and all payments made on the Note and the Change In Terms Agreement previously are unchanged. All accrued interest must be paid on the date of execution of this Second Modification. Interest must continue to be paid on the first day of each month until the Note is paid in full.

3. Lender agrees to forebear enforcement of the 955 W. Monroe, Unit C-1 Loan until March 31, 2010 and Borrower agrees to convey the 955 W. Monroe, Unit C-1 Property pursuant to a Deed In Lieu of Foreclosure to be held in escrow on the terms set forth in the

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Forbearance Agreement executed concurrently herewith. The intent of the parties hereto is for Lender to accept and the Borrower to convey title to the 955 W. Monroe, Unit C-1 Property in exchange for a Covenant Not to Sue Borrower and Guarantors in connection with the 955 W. Monroe, Unit C-1 Loan provided the terms of the Forbearance Agreement are fulfilled.

4. The Mortgage is hereby revised to change the Maximum Lien amount from \$950,335.50 to \$1,900,670.00.

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

- (a) the Revised Note in the amount of \$1,176,147.55;
- (b) a Revised Guaranty of Second Modification, Revised Note, Mortgage and Other Undertakings executed by Guarantors (“**Revised Guaranty**”);
- (c) an Organizational Resolution of Borrower;
- (d) a Certification of No Change to Organizational Documents executed by Borrower's Managers;
- (e) an LLC File Detail Report printout from the Illinois Secretary of State's website showing the good standing status of Borrower;
- (f) payment of the costs set forth in Section 9 hereof and all accrued interest;
- (g) a date down endorsement to Lender's loan title insurance policy covering the Real Estate.

6. This Second Modification shall constitute an amendment of the Note, the Change In Terms Agreement, the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Note, the Change In Terms Agreement and the Revised Note (collectively, “**Loan Documents**”) reference is made to the

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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 Second Modification, or the covenants, conditions and agreements therein contained or contained in the Note, the Change In Terms Agreement or the Revised Note.

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

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

9. Borrower hereby agrees to pay all of Lender's expenses arising out of and in connection with this Second Modification including, but not limited to, attorneys' fees but not in excess of \$ \_\_\_\_\_, title insurance premiums and recording fees. In the event Borrower does not pay these expenses concurrently herewith, the amount of the expenses shall be added to the outstanding balance of the Loan.

10. Guarantors hereby expressly acknowledge and confirm that by executing this Second Modification and the 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. Guarantors expressly acknowledge that their obligations remain in full force and effect.

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11. As an inducement to Lender to enter in this Second Modification, Borrower and Guarantors 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 Borrower and Guarantors 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:

- (i) the existence and materiality of the defaults stated herein;
- (ii) the enforceability, applicability or validity of any provision of any of the Loan Documents, except as modified by this Second Modification, or the enforcement or validity of the terms and provisions of this Second Modification;
- (iii) the right of Lender to demand immediate payment and performance of the obligations of Borrower and Guarantors pursuant to any of the Loan Documents or this Second Modification including the payment of default interest and the prepayment premium;
- (iv) 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 Second Modification, whether real or personal property, tangible or intangible, or any right or other interest, now or hereafter arising;
- (v) the conduct of the Lender in administering the financial arrangements between Lender and Borrowers under any of the Loan Documents or this Second Modification;
- (vi) any legal fees and expenses incurred by Lender and charged to Borrower and Guarantors pursuant to any of the Loan Documents; and

(c) Guarantors are the sole members of Borrower.

**12. 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,**

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OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THE CHANGE IN TERMS AGREEMENT, THE REVISED NOTE, THIS SECOND MODIFICATION, THE MORTGAGE, THE ASSIGNMENT, THE CHANGE IN TERMS AGREEMENT, THE MODIFICATION, 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.

13. 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 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



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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 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.

14. 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

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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 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 Second Modification on November 27, 2009, as of July 8, 2009.

**LENDER:**

First Chicago Bank & Trust, an Illinois banking corporation

By: [Signature]  
Its [Signature]  
Lawrence S. Teer

**BORROWER:**

CB Holdings of Illinois, LLC, an Illinois limited liability company

By: [Signature]  
Phillip Ciaccio, Manager  
By: [Signature]  
Steven Ciaccio, Manager

**GUARANTORS:**

[Signature]  
Phillip Ciaccio  
[Signature]  
Steven Ciaccio

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 Lawrence S. Teer, VP of 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 November 27, 2009.

[Signature]  
JOHN B. [Signature]  
NOTARY PUBLIC  
MY COM. EXPIRES [Signature]  
Notary Public  
ILLINOIS  
2010

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STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK     )     SS

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Phillip Ciaccio, individually and as Manager of CB Holdings of Illinois, 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 she signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 11.27, 2009.

Notary Public [Signature]  
JOHN B. WOLF  
NOTARY PUBLIC, STATE OF ILLINOIS  
COMMISSION EXPIRES 02/28/2010

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK     )     SS

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Steven Ciaccio, individually and as Manager of CB Holdings of Illinois, 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 she signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 11.27, 2009.

Notary Public [Signature]  
JOHN B. WOLF  
NOTARY PUBLIC, STATE OF ILLINOIS  
COMMISSION EXPIRES 02/28/2010

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## EXHIBIT A

### LEGAL DESCRIPTION:

LOT 24 IN BLOCK 4 IN SPEAR'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE  
NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE  
THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 1746 West Division Street, Chicago, IL 60622  
P.I.N.: 17-06-234-018-0000

Property of Cook County Clerk's Office

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## EXHIBIT B

### LEGAL DESCRIPTION:

UNIT NO. C-1 IN 955 WEST MONROE CONDOMINIUMS AS DELINEATED ON THE SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE: PARTS OF LOTS 15 AND 16 IN BLOCK 7 IN DUNCAN'S ADDITION TO CHICAGO, A SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 29 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED JULY 26, 2007 AS DOCUMENT NUMBER 0720710202, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 955 W. Monroe, Unit C-1, Chicago, IL

P.I.N.: 1617-17-212-014-0000

Property of Cook County Clerk's Office

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## EXHIBIT C

### PROMISSORY NOTE (“Revised Note”)

\$1,176,147.55

As of July 8, 2009

FOR VALUE RECEIVED the undersigned, CB Holdings of Illinois, 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 One Million One Hundred Seventy Six Thousand One Hundred Forty-Seven Dollars and Fifty-Five Cents (\$1,176,147.55), 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.

(a) On August 8, 2009, and continuing on the eighth (8<sup>th</sup>) day of each succeeding month to until July 8, 2010, there shall be paid on account of this Note interest only at a rate equal to three and a quarter (3.25%) percent per annum.

(b) On August 8, 2010, and continuing on the eighth (8<sup>th</sup>) day of each succeeding month until all amounts due hereunder are paid, there shall be paid on account of this Note the amount of \$6,876.00, which will be applied first to interest at the rate of five (5.0%) percent per annum, and the balance, if any, to principal.

(c) On March 8, 2013 (“**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, 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 Second Loan Modification Agreement (“**Second Modification**”) executed concurrently herewith. This Note replaces that certain Promissory Note in the amount of Nine Hundred Fifty Thousand Three Hundred Thirty-Five (\$950,355.00) Dollars (“**Original Note**”) made by Borrower on May 8, 2007, which Original Note was modified by a Change In Terms Agreement between Borrower and Holder dated March 13, 2008 (“**Change In Terms Agreement**”) which increased the amount of the Note to One Million Two

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## EXHIBIT C

Hundred Thousand (\$1,200,000.00) Dollars. The Original Note and this Note are secured by a Mortgage dated July 29, 2008 recorded with the Cook County, Illinois Recorder of Deeds on December 2, 2008 as Document No. 0833742020 ("**Mortgage**"), an Assignment of Rents dated July 29, 2008 and recorded with the Cook County, Illinois Recorder of Deeds on December 2, 2008 as Document No. 0833742021 ("**Assignment of Rents**") and other security documents. Pursuant to the Change In Terms Agreement, Borrower executed a Modification of Mortgage which was recorded with the Cook County, Illinois Recorder of Deeds on March 26, 2008 as Document No. 0808755054 ("**Modification**"). Amounts outstanding pursuant to the Original Note shall be outstanding under this Note. All interest rates applicable to and charged on the Original Note and all payments made on the Original Note are unchanged. Pursuant to the Second Modification, the Mortgage, Assignment of Rents, Change In Terms Agreement, Modification and other security documents (collectively the "**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 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 waives 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.



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## EXHIBIT C

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

**BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH 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,**

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## EXHIBIT C

**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 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 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 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 is at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Holder to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, the Holder may immediately contact the Office of Foreign Assets Control and any other government agency the Holder deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Holder will forbear enforcement of its rights and remedies during such time as: (1) the person ("**Person**") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) 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 Holder 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

## EXHIBIT C

Time is of the essence of this Note and each provision hereof and of the Second Modification, the Mortgage, the Assignment of Rents and the Security Documents.

CB Holdings of Illinois, LLC, an Illinois limited liability company

By: \_\_\_\_\_  
Steven [redacted] Manager and member

By: \_\_\_\_\_  
Phillip [redacted] Manager and member

being all of the members of the company

**COPY**

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