

UNOFFICIAL COPY

0010359929

1977/0131 90 001 Page 1 of 14

2001-05-01 15:06:55

Cook County Recorder 47.50

PREPARED BY AND WHEN  
RECORDED RETURN TO:



Michael A. Moynihan  
Pedersen & Houpt, P.C.  
161 North Clark Street  
Suite 3100  
Chicago, Illinois 60605

6700 864 3488

LEASE

THIS LEASE (this "Lease"), dated as of April 12, 2001 (the "Effective Date"), is made by and between Cosmopolitan Bank and Trust not personally but as Trustee under a Trust Agreement dated June 16, 2000 and known as Trust No. 31105 ("Landlord") and 1526 South Wabash, L.L.C., an Illinois limited liability company ("Tenant").

1. Description of Leased Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord approximately 280 square feet of land owned by Landlord, which land is legally described on Exhibit A attached hereto and incorporated herein by reference (the "Leased Premises").

2. Term. The term (the "Term") of this Lease is ninety nine (99) years. The Term shall commence on the Effective Date of this Lease (the "Commencement Date") and shall expire on the ninety ninth (99th) anniversary of the Commencement Date (the "Lease Expiration Date"). Landlord hereby agrees to deliver possession of the Leased Premises to Tenant on the Commencement Date, free, clear and unencumbered of all tenancies and parties in possession other than the Permitted Exceptions (hereinafter defined).

3. No Extensions of Term or Lease Renewals. The parties agree, and Tenant hereby acknowledges, that Tenant has no right to extend the Term of this Lease nor to renew this Lease for any additional period after the Lease Expiration Date.

4. Rent. During the Term, Tenant agrees to pay Landlord the sum of One and no/100ths Dollars (\$1.00) as gross rent for the Leased Premises ("Rent"). Landlord hereby acknowledges receipt of all Rent due, owing and payable to Landlord by Tenant hereunder for the Term.

5. Tenant's Use. Tenant may use the Leased Premises for any purpose allowable under the laws, ordinances and other governmental regulations applicable to the Leased Premises, whether now or hereinafter in effect, including, but not limited to, the construction of a

residential and commercial development pursuant to construction drawings approved by the applicable departments and agencies of the City of Chicago ("Tenant's Use").

6. Condition of Leased Premises. The Leased Premises, herein conveyed, are leased by Landlord in an "as is", "as shown", "where is" condition. Landlord has not offered, and will not provide or undertake, any build-out, service or concession other than as explicitly contained herein.

7. Utilities. Tenant shall pay directly to each respective utility provider when due, all charges for gas, electricity and other utilities it uses at the Leased Premises.

8. Maintenance; Payment. Tenant covenants and agrees to maintain the Leased Premises in good condition and repair throughout the Term and shall return the Leased Premises to Landlord upon the Lease Expiration Date, or upon the earlier termination of this Lease, in the same condition as existed on the Commencement Date, reasonable wear and tear excepted. The forgoing sentence notwithstanding, Tenant shall not be required to remove, on the Lease Expiration Date, any improvements constructed by Tenant during the Term and same shall become the property of Landlord upon the expiration of this Lease and the delivery of possession of the Leased Premises to Landlord hereupon. Tenant shall not cause or permit any waste, misuse or neglect of the Leased Premises during the Term.

9. Real Estate Taxes. Landlord shall pay, in a timely manner, all real estate taxes assessed against the Leased Premises during the Term, or earlier termination thereof ("Real Estate Taxes"). In the event that the tax bills relating to the Leased Premises include property other than the Leased Premises, Landlord will pay its proportionate share of such tax bills based on the land area of the Leased Premises compared to the land area of the other property covered by the subject tax bills. In the event that such undivided tax bills are delivered to the owner of the additional property covered by such bills, Landlord agrees to pay its share of the Real Estate Taxes to the other party within five (5) business days after receiving copies of the subject tax bills along with a calculation showing Landlord's proportionate liability therefor.

10. Insurance.

(a) Landlord. Beginning with the Commencement Date and continuing throughout the Term, Landlord shall maintain the following insurance on the Leased Premises: (i) commercial general liability and property damage insurance in the amount of not less than \$1,000,000.00 for bodily injury or death or property damage of any one person and \$1,000,000.00 for any one occurrence, (ii) fire and extended coverage insurance in an amount equal to the full replacement cost of any existing improvements located on the Property (excluding any improvements to the Leased Premises made by Tenant), and (iii) contractual liability insurance. Landlord, shall deliver to Tenant a certificate from its insurer demonstrating Landlord's compliance with the insurance requirements of this Section 10.

# UNOFFICIAL COPY

(b) Tenant. Beginning with the Commencement Date and continuing throughout the Term, Tenant shall maintain the following insurance on the Leased Premises, naming Landlord as an additional insured: (i) commercial general liability insurance and property damage insurance in the amount of not less than \$1,000,000.00 for bodily injury or death or property damage of any one person and \$1,000,000.00 for any one occurrence and (ii) fire and extended coverage insurance in an amount equal to the full replacement cost of any improvements made by Tenant to the Leased Premises. Upon notice from Landlord, Tenant shall deliver to Landlord a certificate from its insurer demonstrating Tenant's compliance with the insurance requirements of this Section 10.

(c) Waiver of Subrogation. Landlord and Tenant and all parties claiming by or through them mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard, covered or required hereunder to be covered in whole or in part by insurance on the Leased Premises or in connection with property on or activities conducted on the Leased Premises, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof.

## 11. Landlord's Title and Quiet Enjoyment.

(a) Landlord represents and warrants that Landlord is seized in fee simple title to the Leased Premises, free, clear and unencumbered except by the matters described on Exhibit B, attached hereto and made a part hereof (the "Permitted Exceptions"). Landlord covenants that so long as Tenant fulfills the conditions and covenants required of it under this Lease, Tenant will have peaceful and quiet possession of the Leased Premises. Landlord further represents and warrants that it has good right, full power and lawful authority to enter into the Lease for the Term.

(b) The parties acknowledge that, as indicated by the Permitted Exceptions, the Leased Premises are encumbered by a mortgage and related security documents (the "Security Documents") made by Landlord on July 12, 2000 in favor of Cosmopolitan Bank and Trust Company ("Lender"). Landlord shall, prior to the Commencement Date, obtain from Lender an executed subordination, non-disturbance and attornment agreement (an "SNDA"), on a form mutually acceptable to Tenant and Lender, which SNDA shall provide, at a minimum:

- (i) that the Lease shall be subordinate to the Security Documents until the loan to Landlord secured thereby (the "Loan") has been repaid in full to Lender;
- (ii) that Tenant agrees to attorn to Lender in the event that Lender obtains title or control over the Leased Premises due to a default by Landlord under the Security Documents or any other loan documents relating to the Loan; and

- (iii) that, provided Tenant has committed no act which constitutes an Event of Default (hereinafter defined) hereunder, which Event of Default remains uncured within five (5) business days after receipt of notice from Lender, Lender shall not disturb Tenant's quiet and peaceable possession of the Lease Premises during the Term.

12. Improvements. Tenant shall have the right to construct improvements upon the Leased Premises in conformance with Tenant's Use without the consent of Landlord.

13. Intentionally Omitted.

14. Liens. Landlord represents and warrants to Tenant that the Property is unencumbered by any lien, judgment, attachment, mortgage, assignment, fixture filing, pledge, security interest or other encumbrance other than the Permitted Exceptions (collectively, an "Encumbrance"). Landlord covenants and agrees not to permit, cause or suffer any Encumbrance to be filed or recorded against the Leased Premises at any point during the Term. Should any Encumbrance of any nature be filed against the Leased Premises for any reason other than due to the affirmative act or omission of Tenant, Landlord shall, within thirty (30) days, cause such Encumbrance to be released from the Leased Premises. Landlord's failure to cause the removal of an Encumbrance within such thirty (30) day period shall constitute a default under this Lease.

15. Default.

(a) Default by Tenant.

- (i) In the event Tenant shall fail to pay Rent when due, Tenant shall be deemed to have committed an act of default under this Lease (an "Event of Default").
- (ii) Upon the occurrence of an Event of Default by Tenant, Landlord may elect (i) to re-enter the Leased Premises by summary or similar proceedings and re-let the Leased Premises, using reasonable efforts therefor, and receiving the Rent therefrom, applying the same first to the payment of Rent accruing hereunder, the balance, if any, to be paid to Tenant, or (ii) to terminate the Lease and to resume possession of the Leased Premises, thereby wholly discharging Tenant from further obligations under this Lease. Landlord reserves the right to pursue any other or additional remedies it may have upon the occurrence of an Event of Default.

(b) Default by Landlord.

- (i) In the event Landlord shall deprive Tenant of its peaceable possession of the Leased Premises during the Term (in the absence

of an Event of Default by Tenant) or if Landlord shall fail to perform any obligation of Landlord hereunder, Landlord shall be deemed to have committed an Event of Default.

- (ii) Upon the occurrence of an Event of Default by Landlord, Tenant may avail itself of any and all remedies as may be available to Tenant in law or in equity.

16. Condemnation. If any portion of or interest in the Leased Premises shall be permanently or temporarily taken under any right of eminent domain or any transfer in lieu thereof, and such taking renders the Leased Premises unsuitable in the reasonable judgment of Tenant for Tenant's Use, Tenant may elect to either (i) terminate this Lease by notice to Landlord within thirty (30) days after such taking deprives Tenant of possession of any portion of the Leased Premises or of any other rights of Tenant under this Lease, or (ii) take an assignment from Landlord of any and all awards payable to Landlord as a result of the subject taking, in which event, this Lease shall continue in force and effect. Nothing contained herein shall prevent Tenant from prosecuting additional claims in any condemnation proceedings and Tenant shall have the exclusive right to prosecute additional claims, and receiving additional awards, for the taking of the improvements constructed upon the Leased Premises by Tenant or for Tenant's trade fixtures, equipment or personal property, as well as for relocation expenses.

17. Assignment or Transfer.

(a) Tenant. Tenant shall have the unrestricted right to assign, sublease, license or otherwise transfer any or all of its rights, interests and privileges under the Lease.

(b) Landlord. Landlord shall have the unrestricted right to assign or otherwise transfer any or all of its rights, interests and privileges under the Lease but only upon the written assumption by the applicable assignee or transferee of Landlord's obligations hereunder.

18. Notices. All notices, demands, or other communications of any type (herein collectively referred to as "Notices") given by Landlord to Tenant or by Tenant to Landlord, whether required by this Lease or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Lease. All Notices shall be legible and in writing and shall be delivered to the person to whom the Notice is directed, either in person with a receipt requested therefor, by facsimile or sent by a recognized overnight courier service for next day delivery or by United States certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective (a) upon receipt or refusal if delivered personally, (b) one (1) business day after depositing with such an overnight courier service, (c) three (3) business days after deposit in the mails if mailed, addressed to Landlord and Tenant, or (d) upon transmission if sent by facsimile not later than 5:00pm on the final day by which notice must be given hereunder. Either party hereto may change the address for Notices specified above by giving the other party ten (10) days advance written Notice of such change of address.

Initially, all Notices shall be sent as follows:

If to Tenant: 1526 South Wabash, L.L.C.  
1025 South State Street  
Chicago, Illinois 60605  
Attention: Kevin L. Fox  
Facsimile: 312-663-4473

With a copy to: Pedersen & Houpt, P.C.  
161 North Clark Street; Suite 3100  
Chicago, Illinois 60605  
Attention: Michael A. Moynihan  
Facsimile: 312-641-6895

If to Landlord: c/o WRL Development, L.L.C.  
828 S. Wabash Avenue, Suite 295  
Chicago, Illinois 60605  
Attention: Wayne Chertow  
Facsimile: 312-431-0927

With a copy to: Jeffrey Rappin, Esq.  
350 West Hubbard Street  
Suite 500  
Chicago, Illinois 60660  
Facsimile: 312-527-4639

19. Estoppel Certificate. Tenant and Landlord agree at any time, and from time to time, upon not less than ten (10) business days' prior written notice from the other party, to execute, acknowledge and deliver to the requesting party a statement in writing, in form and content reasonably acceptable to the requesting party, an estoppel certificate. In the event either party fails to execute and deliver any such instrument within the foregoing time period, the delinquent party shall be deemed to have acknowledged and agreed with and to the matters set forth in such certificate.

20. Indemnification.

(a) Landlord hereby indemnifies and holds Tenant, Tenant's nominees, officers, directors, members, agents, employees, successors and assigns harmless from and against any and all claims, demands, liabilities, and expenses, including attorneys' fees and litigation expenses, arising from the negligence or wilful acts of Landlord or its agents, employees, or contractors occurring on the Leased Premises. In the event any action or proceeding shall be brought against Tenant by reason of any such claims, Landlord shall defend the same at Landlord's expense by counsel selected by Landlord.

(b) Tenant hereby indemnifies and holds Landlord, Landlord's nominees, officers, directors, agents, employees, successors and assigns harmless from and against any and all claims, demands, liabilities, and expenses, including attorneys' fees and litigation expenses, arising from the negligence or wilful acts of Tenant or its agents, employees, or contractors occurring on the Leased Premises. In the event any action or proceeding shall be brought against Landlord by reason of any such claims, Tenant shall defend the same at Tenant's expense by counsel selected by Landlord.

21. Termination. The parties agree and acknowledge that the Leased Premises is subject to that certain Real Estate Sale Contract, dated July 17, 2001, as subsequently amended (the "Purchase Agreement") whereby Landlord agreed to sell to Tenant, and Tenant agreed to purchase from Landlord, the Leased Premises, upon the terms and conditions set forth in the Purchase Agreement. Upon the closing of the transactions contemplated by the Purchase Agreement with respect to the Leased Premises, this Lease shall automatically terminate, whereupon the parties shall be released from further liability hereunder.

22. Miscellaneous.

(a) This Lease contains the entire agreement between the parties. No modification, alteration or amendment of the Lease shall be binding unless in writing and executed by the parties.

(b) The representations, warranties and indemnities contained in this Lease shall survive the termination or expiration of this Lease.

(c) The parties to this Lease have been actively and materially involved in the drafting thereof. Therefore, any rules of contract construction which would require that ambiguities be resolved against a particular party shall not be applicable in the construction and interpretation of this Lease or any Exhibits hereto.

(d) Time is of the essence of this Lease and each provision; provided, however, if the final (but not any interim) date of any period set forth herein falls on a Saturday, Sunday or legal holiday under the laws of the United States of America, the final date of such period shall be extended to the next business day.

(e) The parties represents and warrants to each other that neither party has dealt with any brokers or finders in connection with this Lease and that, to the best of each party's knowledge, no broker or other person is entitled to any commission or finder's fee in connection therewith. The parties agree to indemnify and hold each other harmless from and against any loss, claim of damage incurred or sustained by either party by reason of any brokerage fee, commission or finder's fee which is payable or alleged to be payable to any other broker or finder because of any agreement, act, omission or statement of the other party. The provisions of this section shall survive the expiration or earlier termination of this Lease.

(f) This Lease shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois.

(g) This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

(h) If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

(i) If Landlord or Tenant shall bring any action against the other, arising out of this Lease, the prevailing party shall be reimbursed by the other party for reasonable attorneys' fees and costs incurred in such suit, at trial and on appeal, and such attorneys' fees and costs shall be deemed to have accrued on the commencement of such action.

23. Trustee's Exculpatory Provision - This Lease is executed by Cosmopolitan Bank and Trust, as successor trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and under the express direction of its beneficiary. It is expressly understood and agreed that nothing in this Lease contained shall be construed as creating any liability whatsoever against said Trustee, and in particular without omitting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, to keep, preserve or sequester any property of said Trust, and that all personal liability of said Trustee of every sort, if any, is hereby expressly waived by Tenant, and by every person now or hereafter claiming any right or security hereunder; and that so far as the parties are concerned the owner of any indebtedness or liability accruing hereunder shall look solely to the Trust Estate from time to time subject to the provisions of said Trust Agreement and its beneficiary for the payment thereof. It is further understood and agreed that the said Trustee has no agents or employees and merely holds naked legal title to the Leased Premises and has no control over the management thereof or the income therefrom and has no knowledge respecting any factual matters with respect to said Leased Premises, except as represented to it in writing by the beneficiary of said Trust.

[Signature Page Follows]




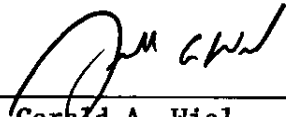
0010359929  
**UNOFFICIAL COPY**

**IN WITNESS WHEREOF**, Landlord has caused the Lease to be executed and sealed as of this 12 day of April, 2001.

**LANDLORD**

Cosmopolitan Bank and Trust not personally but as Trustee under a Trust Agreement dated June 16, 2000 and known as Trust No. 31105

  
ATTEST: Todd W. Gordell  
Its: Atsst. Vice President/T.O.

By:   
Name: Gerald A. Wiel  
Title: Vice President/Trust Officer

**IN WITNESS WHEREOF**, Tenant has caused this Lease to be executed and sealed as of this 12th day of April, 2001.

**TENANT**

1526 SOUTH WABASH, L.L.C.,  
an Illinois limited liability company

By:  
Name:  
Title:

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Landlord has caused the Lease to be executed and sealed as of this 12 day of April, 2001.

**LANDLORD**

Cosmopolitan Bank and Trust not personally but as Trustee under a Trust Agreement dated June 16, 2000 and known as Trust No. 31105

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, Tenant has caused this Lease to be executed and sealed as of this 12th day of April, 2001.

**TENANT**

1526 SOUTH WABASH, L.L.C.,  
an Illinois limited liability company

By: Kevin Fox  
Name: KEVIN FOX  
Title: MEMBER

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0010359929

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify, that the above named Gerald A: Wiel of Cosmopolitan Bank and Trust, personally known to me to be the same person whose name is subscribed to the foregoing instrument as Vice President/T.O. respectively, 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 Company, and that the same is his free act and deed, and the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written



STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this day in person by \_\_\_\_\_, an member of 1526 South Wabash, L.L.C., an Illinois limited liability company, who acknowledged that he did sign the foregoing instrument as such member on behalf of said company, and that the same is his free act and deed, and the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT PREPARED BY:  
Michael A. Moynihan  
Pedersen & Houpt  
161 North Clark Street  
Suite 3100  
Chicago, Illinois 60601-3224

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify, that the above named \_\_\_\_\_ of Cosmopolitan Bank and Trust, personally known to me to be the same person whose name is subscribed to the foregoing instrument as \_\_\_\_\_ respectively, 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 Company, and that the same is \_\_\_ free act and deed, and the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this day in person by Kevin A Fox, an member of 1526 South Wabash, L.L.C., an Illinois limited liability company, who acknowledged that he did sign the foregoing instrument as such member on behalf of said company, and that the same is his free act and deed, and the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

Jodie M. Massaro  
Notary Public

THIS INSTRUMENT PREPARED BY:  
Michael A. Moynihan  
Pedersen & Houpt  
161 North Clark Street  
Suite 3100  
Chicago, Illinois 60601-3224

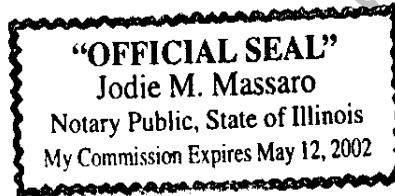


EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOT 1 AND THE NORTH 1.50 FEET OF LOT 2 IN BLOCK 26 IN THE ASSESSOR'S DIVISION OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN; EXCEPTING THEREFROM THAT PART OF SAID LOT 1 FALLING IN THE NORTH 77.3 FEET OF THE SOUTH 444 FEET OF SAID NORTHWEST FRACTIONAL QUARTER; ALSO EXCEPTING THAT PART THEREOF TAKEN FOR ALLEY; ALSO EXCEPTING THE WEST 9.00 FEET OF SAID LOT 1 AND THE WEST 9.00 FEET OF THE NORTH 1.50 FEET OF SAID LOT 2; ALSO EXCEPTING THE EAST 122.05 FEET OF SAID LOT 1 AND THE EAST 122.05 FEET OF THE NORTH 1.50 FEET OF SAID LOT 2, CONTAINING 0.024 ACRE (1,038.41 SQUARE FEET), MORE OR LESS, ALL SITUATED IN THE CITY OF CHICAGO, THE COUNTY OF COOK AND THE STATE OF ILLINOIS.

Address of Property: 1526 South Wabash Avenue, Chicago, Illinois 60605

P.I.N: 17-22-106-049

# UNOFFICIAL COPY

0010359929

## EXHIBIT B

### PERMITTED EXCEPTIONS

1. REAL ESTATE TAXES NOT YET DUE OR PAYABLE.
2. THE LAND LIES WITHIN THE BOUNDARIES OF SPECIAL SERVICE AREA NUMBER 13 AND IS SUBJECT TO ASSESSMENTS THEREUNDER AS DISCLOSED BY ORDINANCE RECORDED AS DOCUMENT NUMBER 91075341.
3. PARTY WALLS AND PARTY WALL RIGHTS AS DISCLOSED BY AGREEMENT AND RECORDED APRIL 15, 1895 AS DOCUMENT 2201518 RELATING TO THE PARTY WALL ON THE LINE BETWEEN LOTS 1 AND THE PROPERTY TO THE NORTH AND ADJOINING (AFFECTS NORTH LINE OF THE LAND).
4. MORTGAGE DATED JULY 12, 2000 AND RECORDED JULY 24, 2000 AS DOCUMENT NO. 00553799 MADE BY COSMOPOLITAN BANK AND TRUST, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 16, 2000 AND KNOWN AS TRUST NUMBER 31105 TO COSMOPOLITAN BANK AND TRUST TO SECURE A NOTE IN THE AMOUNT OF \$6,000,000.00.
5. SECURITY INTEREST OF COSMOPOLITAN BANK AND TRUST, SECURED PARTY, INCERTAIN DESCRIBED CHATTELS ON THE LAND, AS DISCLOSED BY FINANCING STATEMENT EXECUTED BY COSMOPOLITAN BANK AND TRUST, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 16, 2000 AND KNOWN AS TRUST NUMBER 31105, DEBTOR, AND RECORDED JULY 24, 2000 AS DOCUMENT NO. 00553800.