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Cook County Recorder 45.50



This instrument prepared by  
and after recording return to:  
James B. Smith, Esq.  
Ungaretti & Harris  
3500 Three First National Plaza  
Chicago, Illinois 60602

98-0571  
2 of 2



**FIRST AMENDMENT TO BUILDING LOAN AGREEMENT, SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING AND OTHER LOAN DOCUMENTS** dated as of July 31, 2001

by and between

**W9/ONS REAL ESTATE LIMITED PARTNERSHIP,**  
a Delaware limited partnership (the "Borrower")

and

**LEHMAN BROTHERS HOLDINGS, INC.,**  
doing business as Lehman Capital, a division of Lehman Brothers Holdings, Inc., a Delaware corporation ("Lender").

Lawyers Title Insurance Corporation

**FIRST AMENDMENT TO BUILDING LOAN AGREEMENT,  
SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY  
AGREEMENT AND FIXTURE FILING AND OTHER LOAN DOCUMENTS**

This **FIRST AMENDMENT TO BUILDING LOAN AGREEMENT, SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING AND OTHER LOAN DOCUMENTS** ("First Amendment") dated as of the July 31, 2001 by and between **W9/ONS REAL ESTATE LIMITED PARTNERSHIP**, a Delaware limited partnership (the "Borrower") and **LEHMAN BROTHERS HOLDINGS, INC.**, doing business as Lehman Capital, a division of Lehman Brothers Holdings, Inc., a Delaware corporation ("Lender").

**WITNESSETH:**

WHEREAS, pursuant to a certain Building Loan Agreement dated as July 31, 1998 between Borrower and Lender ("Building Loan Agreement") and pursuant to a promissory note of even date therewith, Lender agreed to make a loan (the "Loan") to Borrower, which Loan is evidenced by a certain Secured Note B dated as July 31, 1998 in the maximum principal amount of \$4,655,410.00 made by Borrower to the order of Lender (the "Note"); and

WHEREAS, the Loan is secured by, among other things, that certain Second Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of July 31, 1998 (the "Mortgage") made by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois ("Recorder's Office") on August 11, 1998 as Document No. 98707149, which Mortgage encumbers the Borrower's interest in and to the real property legally described in Exhibit A attached hereto and to the Mortgage, and the other Property described therein; and

WHEREAS, the Loan, is also secured by that certain Second Absolute Assignment of Leases and Rents and License Agreement dated as of July 31, 1998 (the "Assignment of Leases") made by Borrower in favor of Lender, recorded in the Recorders Office on August 11, 1998 as Document Number 98707171 and certain other Loan Documents (as defined in the Building Loan Agreement); and

WHEREAS, the stated Maturity Date of the Loan is July 31, 2001, but, Borrower has requested that Lender agree to extend the Maturity Date of the Loan; and

WHEREAS, Lender has agreed to permit the extension of the Maturity Date of the Loan to January 31, 2003 subject to the execution and delivery of this First Amendment, the First Note Amendment (defined below), and upon certain terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

1. **Conditions to First Amendment.** This First Amendment shall be effective upon Borrower's delivery to Lender of the following:

- (a) A First Amendment to Secured Note B of even date herewith (the "First Note Amendment") in form attached as Exhibit B duly executed by Borrower.
- (b) A First Amendment to Secured Note A, of even date herewith made by Borrower to Lender, a First Amendment to First Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing and other Loan Documents of even date herewith made by Borrower to Lender, together with all documents and instruments required to be delivered to Lender thereunder.
- (c) An opinion of Borrower's counsel addressed to Lender in form covering the following matters to Lender's satisfaction: valid existence and good standing of Borrower under Illinois law; authority of Borrower to execute and deliver this First Amendment and the First Note Amendment; enforceability of the Note, the Mortgage, the Assignment of Leases and other Loan Documents, as the same are amended by this First Amendment, the First Note Amendment, as the case may be.
- (d) Current good standing certificates for Borrower and its general partner from the Secretary of States of Delaware and Illinois, together with certified copy of the resolution of the general partner of Borrower authorizing the execution and delivery of this First Amendment, the First Note Amendment, and any other documents necessary in connection herewith.
- (e) Borrower shall have paid to Lender a fee in the aggregate amount of \$20,014 for this extension (and \$346,448.64 for the concurrent extension of the Secured Note A), together with the payment of all attorney's fees and expenses incurred by Lender in connection with the preparation of this First Amendment, the First Note Amendment, the Secured Note A amendment documentation and all documentation required in connection with it, and also together with any and all title charges, appraisal fees, architect's inspection fees, attorney's fees and other actual third party costs and expenses heretofore incurred by Lender in connection with the Loan and not previously paid or reimbursed to Lender.
- (f) Borrower shall have caused this First Amendment to be recorded in the land records of Cook County, Illinois and shall also have caused to be delivered to Lender a date-down endorsement to Lender's loan policy of title insurance relating to the Loan (the "Project Loan Policy") in which the title insurer shall endorse Lender's policy to reflect the recording of this First Amendment, provide that the mortgage insured thereby is the Mortgage as amended by this First Amendment, and raise no mechanic's liens or other "Schedule B" exceptions to title in addition to those set forth on the Project Loan Policy as originally issued.

## 2. Representations and Warranties.

- (a) No breach, default or event which with the passage of time, the giving of notice or both would become a default exists under the Note, the Mortgage or any of the other Loan Documents.
- (b) No credit against the outstanding indebtedness exists by way of legal or equitable defense, offset, avoidance, release, discharge, or any other manner.
- (c) All of the provisions of the Note, the Mortgage and the other Loan Documents, including without limitation all representations and warranties set forth therein, are unchanged, except as expressly amended hereby, are in full force and effect and are hereby ratified and confirmed as true and complete without exception as of today's date.
- (d) This Agreement, the Note, Mortgage and other Loan Documents are each the legal, valid and binding obligation of the Borrower, enforceable against Borrower in accordance with its terms, except as such enforcement may be limited by bankruptcy laws, creditors rights laws and equitable principles.
- (e) Borrower is a Delaware limited partnership, duly organized and validly existing under the laws of the State of Delaware, is qualified to do business in the State of Illinois and has full power and authority to execute this Agreement and to perform the obligations evidenced and secured by the Loan Documents without joinder or consent of any other party.
- (f) The modification of the Loan Documents will not and do not contravene or constitute an event which itself or which with the passing of time or giving of notice or both would constitute a default under any mortgage, loan agreement, indenture or other agreement to which Borrower is a party or by which Borrower or any of Borrower's property is bound.

**3. Amendments.** The Building Loan Agreement, Mortgage, Assignment of Leases and all other Loan Documents are hereby amended as follows (all defined terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Loan Agreement):

- (a) Maturity Date: The "Maturity Date" of the Loan is hereby changed and extended to January 31, 2003.
- (b) References: All references to the "Building Loan Agreement," "Mortgage," "Assignment of Leases," "Security Agreement" or to any other "Loan Document" shall be deemed to refer to such Loan Document as amended hereby. All references in any of the Loan Documents to the Note shall mean the Note, as amended by the First Note Amendment.

(c) Principal Balance. The parties acknowledge and agree that as of the effective date hereof the principal amount advanced under the Note is Four Million Two Thousand Eight Hundred Nineteen and 67/100ths Dollars (\$4,002,819.67). Borrower and Lender further expressly acknowledge and agree that during the term of the extension afforded by this First Amendment Lender shall be under no obligation to make additional disbursements or advances to Borrower in excess of Six Hundred Fifty-Two Thousand Five Hundred Ninety and 33/100 Dollars (\$652,590.33) and then only in accordance with the Building Loan Agreement.

4. Full Force and Effect. Except as amended hereby or pursuant hereto, the Building Loan Agreement, the Mortgage, the Assignment of Leases and all other Loan Documents shall be and remain unchanged and in full force and effect in accordance with their respective terms and are hereby ratified and confirmed.

5. Counterparts. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original and which, when taken together, shall constitute a single instrument.

6. UCC Filings. Borrower hereby authorizes Lender to file UCC statements on Borrower's behalf in the State of Delaware.

7. Further Assurances. Borrower agrees to sign, execute and deliver and to do or make, upon the written request of Lender, any and all agreements, instruments, papers, deeds, acts or things, as may be reasonably required in connection with this Agreement or any other modification document to fully effectuate the terms of this Agreement.

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IN WITNESS WHEREOF, the parties hereby have executed this First Amendment by their duly authorized representatives as of the date first above written.

**BORROWER:**

**W9/ONS REAL ESTATE LIMITED PARTNERSHIP**, a Delaware limited partnership

By: W/9ONS Gen-Par, Inc., a Delaware corporation, its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: **SUSAN SACK**  
**VICE PRESIDENT**

**LENDER:**

**LEHMAN BROTHERS HOLDINGS, INC.**, doing business as Lehman Capital, a division of Lehman Brothers Holdings, Inc.

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

The undersigned is executing this First Amendment to acknowledge and reaffirm its obligations and undertaking as guarantor, as contained in Section 15.2 of the Mortgage and all provisions related to such guaranty as specifically set forth in the Mortgage.

**WHITEHALL STREET REAL ESTATE LIMITED PARTNERSHIP IX**

By: WH Advisors, LLC IX  
General Partner

By: Whitehall IX/X, Inc.,  
Managing Member

By: \_\_\_\_\_  
Name: **SUSAN SACK**  
Title: **VICE PRESIDENT**

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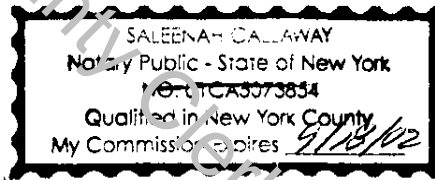
## ACKNOWLEDGEMENT OF LENDER

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STATE OF ~~ILLINOIS~~ <sup>New York</sup> )  
COUNTY OF ~~COOK~~ <sup>New York</sup> ) ss.:

On the 6<sup>th</sup> day of ~~July~~ <sup>August</sup> in the year 2001 before me, the undersigned, a Notary Public in and for said State, personally appeared Yan Cho, the ~~Vice President~~ of LEHMAN BROTHERS HOLDINGS, INC., doing business as Lehman Capital, a division of Lehman Brothers Holdings, Inc., a Delaware corporation, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

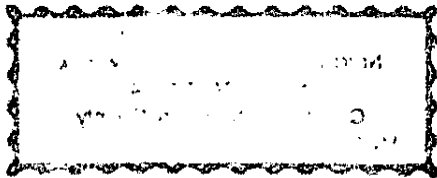
\_\_\_\_\_  
Saleenah Callaway  
Notary Public



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## ACKNOWLEDGEMENT OF BORROWER

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STATE OF ILLINOIS        )  
  ) ss.:  
COUNTY OF COOK        )

On the 31<sup>st</sup> day of July in the year 2001 before me, the undersigned, a Notary Public in and for said State, personally appeared Susan Sack, the \_\_\_\_\_ of W9ONS Gen-Par, Inc., a Delaware corporation, the general partner of W9/ONS Real Estate Limited Partnership, a Delaware limited partnership, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Jennifer M. Creter*  
\_\_\_\_\_  
Notary Public

JENNIFER M. CRETER  
Notary Public, State of New York  
No. 01CR6030888  
Qualified in Suffolk County  
Commission Expires September 20, 2001

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## ACKNOWLEDGEMENT

STATE OF ILLINOIS        )  
  ) ss.:  
COUNTY OF COOK        )

On the 3<sup>rd</sup> day of July in the year 2001 before me, the undersigned, a Notary Public in and for said State, personally appeared Susan Sack, the \_\_\_\_\_ of Whitehall IX/X, Inc., managing member of WH Advisors, LLC IX, general partner of Whitehall Street Real Estate Limited Partnership IX, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
*Jennifer M. Creter*  
Notary Public

JENNIFER M. CRETER  
Notary Public, State of New York  
No. 01CR6030888  
Qualified in Suffolk County  
Commission Expires September 20, 2001

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## EXHIBIT A LEGAL DESCRIPTION

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### PARCEL 1:

LOTS 5, 6, 7, 8, 9 AND 10 IN BLOCK 14 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL  $\frac{1}{4}$  OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

THE VACATED AIR-RIGHTS OVER ROADWAY, LYING ABOVE A HORIZONTAL PLANE 29.22 FEET ABOVE CHICAGO CITY DATUM, LYING EAST OF AND ADJOINING LOTS 8, 9, 10 AND LYING WEST OF AND ADJOINING LOTS 5, 6, 7, IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL  $\frac{1}{4}$  OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 8; THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOTS 8, 9, 10, A DISTANCE OF 146.64 FEET TO THE NORTHEAST CORNER OF SAID LOT 10; THENCE EASTERLY ALONG THE EASTERLY ELONGATION OF SAID LOT 10, A DISTANCE OF 40.0 FEET TO THE NORTHWEST CORNER OF SAID LOT 5; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOTS 5, 6, 7, A DISTANCE OF 145.88 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7; THENCE WESTERLY ALONG THE WESTERLY ELONGATION OF SAID LOT 7, A DISTANCE OF 40.0 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

SAID VACATED AIR-RIGHTS ALSO BEING DESCRIBED AS FOLLOWS:

ALL THE AIR RIGHTS LYING ABOVE AN ELEVATION OF 14.3 FEET ABOVE EXISTING GRADE OVER AND ACROSS THAT PART OF NORTH HOLDEN COURT LYING WEST OF THE WEST LINE OF LOTS 5, 6 AND 7; LYING EAST OF THE EAST LINE OF LOTS 8, 9 AND 10; LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE NORTHEAST CORNER OF LOT 10; THENCE EAST ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 10 TO THE INTERSECTION OF THE CENTERLINE OF NORTH HOLDEN COURT; THENCE SOUTH ALONG THE CENTERLINE OF NORTH HOLDEN COURT TO THE INTERSECTION OF THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 5; THENCE EAST ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 5 AND TERMINATING AT THE NORTHWEST CORNER OF SAID LOT 5; LYING NORTH OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF LOT 7 TO THE SOUTHEAST CORNER OF LOT 8 ALL IN BLOCK 14 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF

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THE THIRD PRINCIPAL MERIDIAN, SAID VACATED PART OF PUBLIC STREET BEING FURTHER DESCRIBED AS THE AIR RIGHTS LYING ABOVE AN ELEVATION OF 14.3 FEET ABOVE EXISTING GRADE OVER AND ACROSS THE SOUTH 149.2 FEET, MORE OR LESS, OR NORTH HOLDEN COURT LYING BETWEEN EAST WASHINGTON STREET AND EAST MADISON STREET.

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10784498

Common Address: One North State Street, Chicago, Illinois

PINS: 17-10-311-006  
17-10-311-007  
17-10-311-008  
17-10-311-011  
17-10-311-012

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EXHIBIT B

## FORM OF FIRST AMENDMENT TO NOTE

10784498

### FIRST AMENDMENT TO SECURED NOTE B

**THIS FIRST AMENDMENT TO SECURED NOTE B** (hereinafter referred to as the "First Amendment") is dated as of July 31, 2001, by and between **W9/ONS REAL ESTATE LIMITED PARTNERSHIP**, a Delaware limited partnership ("Borrower") and **LEHMAN BROTHERS HOLDINGS, INC.**, doing business as Lehman Capital, a division of Lehman Brothers Holdings, Inc., a Delaware corporation ("Lender").

### WITNESSETH

WHEREAS, Borrower is indebted to Lender pursuant to a certain Secured Note B in the maximum principal amount of Four Million Six Hundred Fifty-Five Thousand Four Hundred Ten and 00/100 Dollars (\$4,655,410.00) dated as of July 31, 1998 made by Borrower to the order of Lender (the "Note"); and

WHEREAS, The Note evidences a mortgage loan made pursuant to a certain Building Loan Agreement made as of July 31, 1998 between Borrower and Lender ("Loan Agreement") and is secured by, among other things, that certain Second Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("Second Mortgage") dated as of July 31, 1998 made by Borrower, as mortgagor, in favor of Lender, as mortgagee, and recorded in the Office of the Cook County Recorder of Deeds on August 11, 1998 as Document Number 98707149, which Mortgage relates to the real property legally described therein and located in the City of Chicago, Cook County, Illinois, and the improvements and personal property located thereon (the "Project"); and

WHEREAS, the stated Maturity Date of the Note is July 31, 2001, but Borrower has requested and Lender has agreed to an extension of the said Maturity Date to January 31, 2003; and

WHEREAS, Lender has agreed to extend the Maturity Date to January 31, 2003, subject to certain other terms and conditions, which are set forth herein and in that certain First Amendment to Building Loan Agreement, Second Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing and Other Loan Documents of even date herewith (the "Second Mortgage Amendment").

NOW, THEREFORE, in consideration of Ten (\$10.00) Dollars and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, and Lender hereby agree as follows:

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1. Maturity Date. The Maturity Date contained in the Note is hereby extended from July 31, 2001 to January 31, 2003.

2. Principal Balance. The parties acknowledge and agree that as of the effective date hereof the principal amount advanced under the Note is Four Million Two Thousand Eight Hundred Nineteen and 67/100ths Dollars (\$4,002,819.67) all of which remains outstanding and unpaid to date. Borrower and Lender further expressly acknowledge and agree that during the term of the extension afforded by this First Amendment Lender shall be under no obligation to make additional disbursements or advances to Borrower in excess of Six Hundred Fifty-Two Thousand Five Hundred Ninety and 33/100ths Dollars (\$652,590.33), and then such amount shall only be disbursed in accordance with the terms of the Building Loan Agreement.

3. Full Force and Effect. Except as amended hereby or pursuant hereto, the Note shall be and remains unchanged and in full force and effect in accordance with its terms, and is hereby ratified and confirmed.

4. Successor Borrower/Definition of Note/Definitions/Effective date of Extension. From and after the date of this First Amendment, any reference herein or in any Loan Document to the "Note" shall mean the Note, as amended by this First Amendment. All references in the Note to the term Building Loan Agreement, the Mortgage or any other Loan Document shall mean and refer to the Building Loan Agreement, the Mortgage and/or such other Loan Document as amended by the Second Mortgage Amendment. Unless specifically defined herein, all defined terms used herein shall have the meaning ascribed to such terms in the Loan Documents.

5. Counterparts. This instrument may be executed in one or more counterparts, each of which shall constitute an original but which when taken together shall be deemed one instrument.

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IN WITNESS WHEREOF, Borrower and Lender have executed this First Amendment to Note as of the day and year first above written.

**BORROWER:**

**W9/ONS REAL ESTATE LIMITED PARTNERSHIP**, a Delaware limited partnership

By: W/9ONS Gen-Par, Inc., a Delaware corporation, its general partner

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

**LENDER:**

**LEHMAN BROTHERS HOLDINGS, INC.**, doing business as Lehman Capital, a division of Lehman Brothers Holdings, Inc.

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

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