

# UNOFFICIAL COPY

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2003-03-17 16:47:29

Cook County Recorder 76.50

THIS DOCUMENT  
PREPARED BY  
AND AFTER RECORDING  
RETURN  
TO:

James M. Crowley  
Rock, Fusco & Garvey, Ltd.  
350 N. LaSalle St., Suite 900  
Chicago, Illinois 60610



0030365763

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## SECOND MODIFICATION OF LOAN DOCUMENTS

**THIS SECOND MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made as of the 1st day of October 2002, by and among **1526 SOUTH WABASH, L.L.C.**, an Illinois limited liability company (Borrower), **CARLINA R. FOX and DR. LAWRENCE M. FOX**, ("collectively Guarantor") and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns ("Lender").

### RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Nine Hundred Thirty Thousand and 00/100 Dollars (\$930,000.00) pursuant to the terms and conditions of a certain Construction Loan and Security Agreement dated as of April 12, 2001, between Borrower, Guarantor and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated April 12, 2001, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage and Security Agreement dated April 12, 2001, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on: May 1, 2001 as Document No. 0010360028 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described in **Exhibit A** hereto (the "Property"), as well as that certain Amended Mortgage and

Security Agreement dated April 12, 2001 and recorded June 14, 2001, as document No. 0010521214 (ii) that certain Assignment of Rents and Leases dated April 12, 2001 from Borrower to Lender and recorded in the Recorder's Office on May 1, 2001 as Document No. 0010360029 (the "Assignment of Leases"); (iii) that certain Environmental and Personal Indemnity Agreement dated April 12, 2001 from Borrower and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents dated April 12, 2001 from Borrower in favor of Lender, (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, and any other document evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty dated April 12, 2001 from Guarantor to Lender (the "Guaranty").

D. The Loan was previously modified under that certain First Modification of Loan Documents dated August 1, 2002 and recorded September 20, 2002 as Document No 0021034711, for the purpose of extending the maturity date of the Loan to October 1, 2002.

E. Third Borrower now desires to amend the Loan Documents in order to (i) extend the Loan Maturity Date until October 1, 2003, and (ii) amend the Loan Rate, as agreed by the parties, and Lender is willing to (i) extend the Loan Maturity Date until October 1, 2003, and (ii) amend the Note Interest Rate, subject to the terms and conditions more fully set forth hereinafter.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) Borrower agreement to pay Lender a Modification Fee of \$2,790.00 and at the time of execution of this Agreement on all of Lender's reasonable attorneys fees and costs in connection with this Modification, (iv) the covenants and agreements contained herein, and (v) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Loan Maturity Date is extended to October 1, 2003. Any reference in the Note (as amended and restated), the Loan Agreement or any other Loan Document to the Loan Maturity Date shall mean October 1, 2003.

2. **Amendment to Note.** The Note shall be amended and restated by that certain Second Amended and Restated Promissory Note ("Note") of even date herewith executed jointly and severally by Borrower in the form attached hereto as Exhibit B. As of the date hereof, the Note shall be substituted for and replace in its entirety the Amended and Restated Promissory Note dated August 1, 2002 as evidence of the amounts due and owing to Lender, and the existing Amended and restated Note dated August 1, 2002 shall be canceled by Lender. Commencing on October 1, 2002, through and until October 1, 2003, with the first payment due November 1, 2002, Borrower shall pay

to Lender interest in arrears on the unpaid principal balance of the Note, at the Loan Rate specified in the Note. In addition, the Note shall provide in part that at no time shall the Loan Rate under the Note be less than four and one half percent (4.50%) per annum.

3. **Amendment to Loan Agreement.** That the Loan Agreement is amended as follows:

(A) That paragraph 2.1(a) (i) of the Loan Agreement is deleted in its entirety and the following language substituted in its place:

“2.1 (a) (i) The Construction Loan shall be a twenty-nine (29) month loan term ("Loan Term") with interest accruing on the outstanding balance of the Note at the rate of the greater of (i) Four and one half percent (4.50%) per annum, or, (ii) Prime Rate (as defined hereinbelow). **"Prime Rate"** means the rate of interest most recently announced by Lender at Chicago, Illinois as its prime or base rate. Subject to the terms set forth in the Note, Borrower may elect to have all or part of the outstanding principal balance of the Note bear interest at an annual rate equal to the Two Hundred and Thirty (230) basis points over the one month LIBOR Rate Commencing on the date of disbursement until October 1, 2003 (the "Maturity Date"), Borrower shall pay to Lender interest only in arrears on the outstanding principal balance. All outstanding principal and accrued and unpaid interest shall be due and payable, without notice, on October 1, 2003.”

(B) That paragraph 2.2 of the Loan Agreement, entitled “Prepayment and Partial Releases” is deleted in its entirety and the following language substituted in its place:

“2.2 Prepayment and Partial Releases:

(i) Prepayment: It is expressly understood that Borrower may prepay the Construction Loan without premium or penalty.

(ii) Partial Releases. So long as no default under the terms of the Note or any documents evidencing or securing the Note has occurred, Lender will allow Borrower the right to sell one or more of the Residential Units, the Commercial Unit or a Parking Space to a third party bona fide purchaser, subject to the following:

(a) Borrower providing Lender with written notice requesting Lender's consent to the sale or transfer of the unit(s), no less than seven (7) days prior to the proposed transfer or sale. Borrower shall include in said written notice, a copy of the executed contract for sale of the unit(s). Lender reserves the right to approve or reject the proposed sale of the unit(s), if in Lender's sole determination, the sale price is not equal to the fair market value of the unit(s) to be sold (as determined by Lender in its sole discretion), or Lender would deem itself insecure after the sale. Assuming Lender approves the sale, Lender will issue partial releases for the unit(s) subject to Borrower paying to Lender an amount equal to the greater of (i) \$350,000.00 per individual Residential Unit(s) sold, (ii) \$230,000.00 per Commercial Unit sold, or (iii) 93% of the gross sales price of the individual unit(s). In addition, upon the sale

of any Parking Space at the Property, Borrower shall pay to Lender the sum of \$15,000.00, for each Parking Space sold.

(b) Borrower agrees to pay Lender the sum of \$250.00 for each unit(s) for which a release or partial release is issued, whether for a Residential Unit or Commercial Unit or for a Parking Space. Borrower acknowledges that said release fee is reasonable. Lender shall have no obligation to issue partial releases if Borrower is in default under the Note, the Mortgage, the Construction Loan and Security Agreement or other documents securing the Loan."

4. **Amendment to Mortgage.** That paragraph 26 of the Mortgage be and hereby is deleted in the entirety and the following language inserted in its place:

"26. **Security Agreement.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the UCC Code with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

a. Mortgagor (being the Debtor as that term is used in the UCC Code in effect from time to time) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

b. The Collateral is to be used by Mortgagor solely for business purposes.

c. The Collateral will be kept at the Real Estate and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Mortgagee (being

the Secured Party as that term is used in the Code). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

d. The only persons having any interest in the Premises are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby.

e. No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable. Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage.

f. Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real

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estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Mortgagee so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

g. The terms and provisions contained in this Paragraph 26, unless the context otherwise requires, shall have the meanings and be construed as provided in the UCC Code, in effect from time to time.

h. This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are herein below set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located. Mortgagor is the record owner of the Premises. Mortgagor hereby authorizes Mortgagee to file unsigned UCC Filings and amendments with respect to the Collateral, as Mortgagee deems reasonable and necessary.

I. To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder."

- b. Mortgagor represents and warrants that:
  - i. Mortgagor is the record owner of the Premises;
  - ii. Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage
- c. Mortgagor agrees that:
  - i. Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;
  - ii. Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and
  - iii. Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located without giving the Mortgagee at least 30 days' prior written notice in each instance.
  - iv. Mortgagor's obligor number is 00454435."

5. **Representations and Warranties of Borrower and Guarantor.** Borrower and Guarantor hereby represents, covenants and warrants to Lender as follows:

- (a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.
- (b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and neither Borrower nor Guarantor knows of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.
- (c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower and Guarantor enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.
- (d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to

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Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, neither Borrower nor Guarantor has any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower and Guarantor.

6. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

7. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Freedom Title Company to issue an endorsement to Lender's title insurance policy No. 71 0125 107 00002091 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

8. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses, as well as an irrevocable Extension Fee due Lender in the amount of \$2,700.00.

9. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have



contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender, and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's and Guarantor's obligations under this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

## BORROWER:

1526 SOUTH WABASH, L.L.C., an Illinois limited liability company, by:  
FOX FAMILY LIMITED PARTNERSHIP,  
an Illinois limited partnership  
One of its Members

By: Carlina R. Fox  
Name: Carlina R. Fox  
Its: General Partner

By: Utter  
Name: Dr. Lawrence M. Fox  
Its: General Partner

K. Fox  
Kevin M. Fox, Individually  
One of its Members

Michael A. Moynihan  
Michael A. Moynihan, Individually  
One of its Members

## GUARANTOR:

Carlina R. Fox  
CARLINA R. FOX, individually

Utter  
DR. LAWRENCE M. FOX, individually

## LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Alan Munson, First Vice President

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement dated as of the day and year first above written.

**BORROWER:**

1526 SOUTH WABASH, L.L.C., an Illinois limited liability company, by:  
FOX FAMILY LIMITED PARTNERSHIP,  
an Illinois limited partnership  
One of its Members

By: \_\_\_\_\_  
Name: Carlina R. Fox  
Its: General Partner

By: \_\_\_\_\_  
Name: Dr. Lawrence M. Fox  
Its: General Partner

\_\_\_\_\_  
Kevin M. Fox, Individually  
One of its Members

\_\_\_\_\_  
Michael A. Moynihan, Individually  
One of its Members

**GUARANTOR:**

\_\_\_\_\_  
CARLINA R. FOX, individually

\_\_\_\_\_  
DR. LAWRENCE M. FOX, individually

**LENDER:**

**LASALLE BANK NATIONAL ASSOCIATION**

By:   
Thomas Kearney, Vice President

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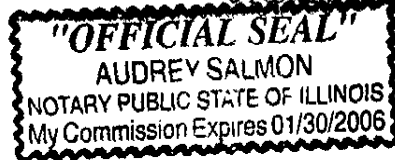
STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

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I, Audrey Salmon, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Thomas Kearney, Vice President of LaSalle Bank National Association, is 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of November, 2002.

Audrey Salmon  
Notary Public



My Commission Expires:

01/30/2006

\*\*\*\*\*

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, \_\_\_\_\_, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Carlin R. Fox and Dr. Lawrence Fox, individually and as the general partners of the Fox Family Limited Partnership, and Kevin M. Fox and Michael A. Moynihan, all being the members of 1526 South Wabash, L.L.C., an Illinois limited liability company, personally know to me to be the same persons whose name are subscribed to the foregoing instrument as such managing members, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said 1526 South Wabash, L.L.C., for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this     day of November, 2002.

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

My Commission Expires:

\_\_\_\_\_

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ALAN MUNSON, First Vice President of LaSalle Bank National Association, is 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of November, 2002.

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

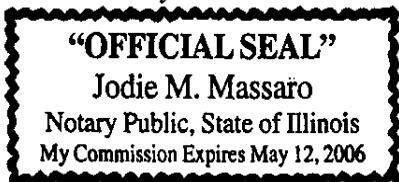
My Commission Expires:  
\_\_\_\_\_

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Jodie Massaro, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Carlin R. Fox and Dr. Lawrence Fox, individually and as the general partners of the Fox Family Limited Partnership, and Kevin M. Fox and Michael A. Moynihan, all being the members of 1526 South Wabash, L.L.C., an Illinois limited liability company, personally know to me to be the same persons whose name are subscribed to the foregoing instrument as such managing members, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said 1526 South Wabash, L.L.C., for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1<sup>st</sup> day of November, 2002.



Jodie Massaro  
Notary Public

My Commission Expires:

5/12/06

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EXHIBIT A

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## Legal Description

PARCEL A: THE EAST 122.05 FEET OF LOT 1 AND THE NORTH 1.50 FEET OF THE EAST 122.05 OF LOT 1 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, (EXCEPT THAT PART OF SAID LOT 1, FALLING IN THE NORTH 77.3 FEET OF THE SOUTH 444 FEET OF SAID FRACTIONAL QUARTER), IN COOK COUNTY, ILLINOIS.

THE LEASEHOLD ESTATE, CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE EXECUTED BY:

COSMOPOLITAN BANK AND TRUST, AS TRUSTEE UNDER A TRUST AGREEMENT DATED JUNE 16, 2000 AND KNOWN AS TRUST NUMBER 31105, AS LESSOR AND 1526 SOUTH WABASH, L.L.C., AS LESSEE, DATED APRIL 12, 2001 AND RECORDED MAY 1, 2001, AS DOCUMENT NUMBER 0010359929, DEMISING THE LAND FOR A TERM OF YEARS COMMENCING APRIL 12, 2001 AND ENDING APRIL 12, 2100.

THE LAND:

PARCEL B: LOT 1 AND THE NORTH 1.5 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, (EXCEPT THAT PART OF SAID LOT 1, FALLING IN THE NORTH 77.3 FEET OF THE SOUTH 444 FEET OF SAID FRACTIONAL QUARTER; ALSO, EXCEPT THAT PART THEREOF TAKEN FOR ALLEY; ALSO, EXCEPTING THE WEST 9 FEET OF LOT 1 AND THE WEST 9.00 FEET OF THE NORTH 1.50 FEET OF 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 LOT 2), IN COOK COUNTY, ILLINOIS.

PARCEL C: EASEMENTS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL B AS DEFINED AND SET FORTH IN THE GRANT OF EASEMENT AND AGREEMENT DATED APRIL 12, 2001 AND RECORDED MAY 1, 2001 AS DOCUMENT NUMBER 0010359930, FOR INGRESS AND EGRESS, ALL IN COOK COUNTY, ILLINOIS.

P.I.N. 17-22-105-049-0000

COMMONLY KNOWN AS: 1526 South Wabash, Chicago, Illinois 60605

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EXHIBIT B

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## SECOND AMENDED AND RESTATED PROMISSORY NOTE

Re: 1526 South Wabash, Chicago, Illinois 60605

\$930,000.00

October 1, 2002  
Chicago, Illinois

THIS SECOND AMENDED AND RESTATED PROMISSORY NOTE, made effective this 1<sup>st</sup> day of October, 2002 by **1526 SOUTH WABASH, L.L.C., an Illinois limited liability company** ("Borrower"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns ("Lender").

### RECITALS

Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of NINE HUNDRED THIRTY THOUSAND and 00/100ths DOLLAR (\$930,000.00) pursuant to the terms and conditions of a certain Construction Loan and Security Agreement dated as of April 12, 2001, between Borrower and Lender (the "Loan Agreement"), and as evidenced by a Promissory Note dated April 12, 2001, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

The Note is secured by a certain Mortgage and Security Agreement of even date with the Note which encumbers a certain real estate parcel ("Premises"), the Assignment of Rents and Leases also of even date with the Note made by Borrower to Lender, a certain guaranty from Carlina R. Fox and Dr. Lawrence M. Fox (collectively "Guarantor") of even date with the Note (the "Guaranty"), that certain Environmental and Personal Indemnity Agreement dated April 12, 2001 from Borrower and Guarantor to Lender (the "Indemnity Agreement") and certain other documents and instruments (together with the Note, referred to herein as the "Loan Documents").

The Loan was previously modified under that certain First Modification of Loan Documents dated August 1, 2002 and recorded September 20, 2002 as Document No. 0021034711, for the purpose of extending the maturity date of the Loan to October 1, 2002. In connection therewith, Borrower executed and delivered to lender a certain Amended and Restated Promissory Note dated August 1, 2002 (the "Amended Note").

Borrower, Guarantor and Lender have now agreed to amend the Loan Agreement, the Amended Note and the Loan Documents to (i) extend the Loan Maturity Date until October 1, 2003, and (ii) amend the Loan Rate, and to make such other changes to the loan Agreement as agreed by the parties, pursuant to the terms of that certain Second Modification of Loan Documents of even date herewith. Lender, Borrower and Guarantor agree that it is therefore appropriate to amend and restate the Amended Note in its entirety to reflect the amendments to the Amended Note, as set forth in the Second Modification of Loan Documents of even date herewith.

ACCORDINGLY, Borrower hereby amends and restates the Note to read in its entirety as follows:

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1. **Agreement to Pay.** FOR VALUE RECEIVED, 1526 SOUTH WABASH, L.L.C., an Illinois limited liability company ("Borrower") hereby promises to pay to the order of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender"), the principal sum of NINE HUNDRED THIRTY THOUSAND and 00/100ths DOLLARS (\$930,000.00) ("Loan"), or so much thereof as may be advanced pursuant to that certain Construction Loan and Security Agreement dated April 12 2001 between Borrower and Lender ("Loan Agreement") at the place and in the manner hereinafter provided, together with interest thereon at the rate or rates described below, and any and all other amounts which may be due and payable hereunder from time to time.

2. **Interest Rate.**

2.1 **Interest Prior to Default.**

(a) Unless an optional interest rate is in effect, as described below, interest shall accrue on the outstanding principal balance of this Note from the date hereof through October 1, 2003, ("Maturity Date") at an annual rate ("Loan Rate") equal to the greater of (i) Four and one half percent (4.50%) per annum, or, (ii) the Prime Rate (as defined hereinbelow). Changes in the rate of interest to be charged hereunder based on the Prime Rate shall take effect immediately upon the occurrence of any change in the Prime Rate. At no point shall the rate of interest be less than Four and one half percent (4.50%) per annum.

**Prime Rate**" means the rate of interest most recently announced by Lender at Chicago, Illinois as its prime or base rate. A certificate made by an officer of Lender stating the Prime Rate in effect on any given day, for the purposes hereof, shall be conclusive evidence of the Prime Rate in effect on such day. The "Prime Rate" is a base reference rate of interest adopted by Lender as a general benchmark from which Lender determines the floating interest rates chargeable on various loans to borrowers with varying degrees of creditworthiness and Borrower acknowledges and agrees that Lender has made no representations whatsoever that the "Prime Rate" is the interest rate actually offered by Lender to borrowers of any particular creditworthiness.

(b) **Optional Interest Rate.** Borrower may elect the optional interest rate described below for all or a portion of the Loan during the interest periods described below. Any principal amount bearing interest at an optional rate under this Note is referred to as a "Portion".

(c) **LIBOR Rate.** Subject to the terms hereinafter set forth, Borrower may elect to have all or part of the outstanding principal balance of this Note bear interest at an annual rate equal to the greater of (i) Four and one half percent (4.50%) per annum, or (ii) LIBOR Rate plus Two Hundred and Thirty (230) basis points (the "Applicable Margin"). Designation of a LIBOR Rate Portion is subject to the following requirements:

(i) The interest period during which the LIBOR Rate will be in effect will be one month, or such other period as may be agreed to by Lender and Borrower. Borrower shall irrevocably request, in writing, a LIBOR Rate Portion no later than 2:00 p.m. Chicago time on the day on which the London Inter-Bank Offered Rate



will be set, as specified below. If the election for a LIBOR Rate Portion is made such that the interest period shall commence on any day other than the first Business Day of a month, then the initial interest period shall end on the last day of the month in which such election is made and the Portion for such partial month shall bear interest at a short term LIBOR Rate, plus the Applicable Margin. In any event the first day of the interest period must be a day on which Lender is open for business in Chicago, Illinois (a "Business Day") and banks are open in London, England and dealing in offshore United States dollars. The last day of the interest period and the actual number of days during the interest period will be determined by Lender using the practices of the London inter-bank market.

(ii) Each LIBOR Rate Portion will be for an amount not less than \$50,000.00 and in increments in excess thereof of \$50,000.00. No more than three (3) separate LIBOR Rate Portion may be outstanding at any time.

(iii) "**LIBOR Rate**" means the interest rate determined by the following formula, rounded upward to the nearest 1/100 of one percent (all amounts in the calculation will be determined by Lender as of the first day of the interest period:

$$\text{LIBOR} = \text{London Inter-Bank Offered Rate} \\ (1.00 - \text{Reserve Percentage})$$

Where,

(1) "**London Inter-Bank Offered Rate**" means the rate per annum equal to the offered rate for deposits in U.S. dollars for the applicable interest period and for amounts comparable to the LIBOR Rate Portion published by Bloomberg's Financial Markets Commodities News at approximately 8:00 a.m. Chicago time two (2) Business Day before the commencement of the interest period (or if not so published, Lender, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to determine such rate); provided, however, that after the first election of an interest period with respect to any Portion, the London Inter-Bank Offered Rate shall be determined at approximately 8:00 a.m. Chicago time on the [first Business Day of the month for each interest period thereafter with respect to such Portion.

(2) "**Reserve Percentage**" means the total of the maximum reserve percentages for determining the reserves to be maintained by member banks of the Federal Reserve System for Eurocurrency Liabilities, as defined in Federal Reserve Board Regulation D, rounded upward to the nearest 1/100 of one percent. The percentage will be expressed as a decimal, and will include, but not be limited to, marginal, emergency, supplemental, special, and other reserve percentages.

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(iv) Each LIBOR Rate Portion elected by Borrower shall automatically renew for the same interest period at the then current LIBOR Rate plus the Applicable Margin unless Borrower shall otherwise irrevocably request, in writing, a different interest period or conversion of all or a portion of the LIBOR Rate Portion to the Loan Rate, no later than 2:00 p.m. Chicago time on the second (2<sup>nd</sup>) Business Day before the expiration of the existing interest period. Borrower may not elect a LIBOR Rate and an interest period for a LIBOR Rate Portion shall not automatically renew with respect to any principal amount which is scheduled to be repaid before the last day of the applicable interest period, and any such amounts shall bear interest at the Loan Rate, until repaid.

(v) Lender is not obligated to accept a deposit in the inter-bank market in order to charge interest on a LIBOR Rate Portion at the LIBOR Rate, once Borrower elects such rate.

(vi) Each prepayment of a LIBOR Rate Portion, whether voluntary, involuntary, by reason of acceleration or otherwise, will be accompanied by the amount of accrued interest on the amount prepaid and the "Make Whole Costs", as described below. A "prepayment" is a payment of an amount on a date earlier than the scheduled payment date for such amount as required by this Note. The "Make Whole Costs" shall be equal to all costs, expenses, penalties and charges incurred by Lender as a result of the early termination or breakage of a LIBOR Rate Portion plus any Additional Costs (hereinafter defined) and the amount (if any) by which:

(1) the additional interest which would have been payable during the interest period on the amount prepaid had it not been prepaid, exceeds

(2) the interest which would have been recoverable by Lender by placing the amount prepaid on deposit in the domestic certificate of deposit market, the eurodollar deposit market, or other appropriate money market selected by Lender, for a period starting on the date on which it was prepaid and ending on the last day of the interest period for such Portion (or the scheduled payment date for the amount prepaid, if earlier).

(vii) Each prepayment of a LIBOR Rate Portion, whether voluntary, involuntary, by reason of acceleration or otherwise, will be accompanied by the amount of accrued interest on the amount prepaid and any and all costs, expenses, penalties and charges incurred by Lender as a result of the early termination or breakage of a LIBOR Rate Portion.

(viii) Lender will have no obligation to accept an election for a LIBOR Rate Portion if any of the following described events has occurred and is continuing:

(1) Dollar deposits in the principal amount, and for periods equal to the interest period, of a LIBOR Rate Portion are not available in the London inter-bank market; or

- (2) maintenance of a LIBOR Rate Portion would violate any applicable law, rule, regulation or directive, whether or not having the force of law; or
- (3) the LIBOR Rate does not accurately reflect the cost of a LIBOR Rate Portion; or
- (4) an Event of Default has occurred and is continuing or any event or circumstance exists which, with the giving of notice or passage of time, would constitute an Event of Default.

(ix) In addition, Borrower shall be responsible for paying any costs (the "Additional Costs") actually incurred by Lender as a direct result of any change in Lender's cost of complying with any law, rule, regulation or other requirement imposed, interpreted or enforced by any federal, state or other governmental or monetary authority which is applicable to assets held by or deposits or accounts with or credits extended by Lender and which causes Lender to incur costs or increases the effective cost to Lender of lending to Borrower at the LIBOR Rate or decreases the effective spread or yield of Two Hundred Thirty (230) basis points above the LIBOR Rate which would be made by Lender on a LIBOR Rate Portion.

2.2 **Interest After Default.** From and after the Maturity Date or upon the occurrence and during the continuance of an Event of Default, interest shall accrue on the balance of principal remaining unpaid during any such period at an annual rate ("Default Rate") equal to six percent (6%) plus the Loan Rate provided, however, in no event shall the Default Rate exceed the maximum rate permitted by law. The interest accruing under this paragraph shall be immediately due and payable by Borrower to the holder of this Note upon demand and shall be additional indebtedness evidenced by this Note.

2.3 **Interest Calculation.** Interest on this Note shall be calculated on the basis of a 360 day year and the actual number of days elapsed in any portion of a month in which interest is due.

3. **Payment Terms.**

3.1 **Principal and Interest.** Payments of principal and interest due under this Note, if not sooner declared to be due in accordance with the provisions hereof, shall be made as follows:

(a) Commencing on November 1, 2002 and on the first Business Day of each month thereafter through and including the month in which the Maturity Date occurs, interest accrued on the portions of this Note bearing interest at the Loan Rate shall be due and payable. Interest on each LIBOR Rate Portion shall be paid in arrears on the first Business Day of each month and on the last day of the interest period for each LIBOR Rate Portion. Interest accrued on any LIBOR Rate Portion as of the date of termination, breakage or other disposition shall be due and payable in full on the date of such termination, breakage or disposition.

(b) The unpaid principal balance of this Note, if not sooner paid or declared to be due in accordance with the terms hereof, together with all accrued and unpaid interest thereon and any other amounts due and payable hereunder or under any other Loan Document (as hereinafter defined) shall be due and payable in full on the Maturity Date.

**3.2 Application of Payments.** Prior to the occurrence of an Event of Default, all payments and prepayments on account of the indebtedness evidenced by this Note shall be applied as follows: (a) first, to fees, expenses, costs and other similar amounts then due and payable to Lender, including, without limitation any prepayment premium, exit fee or late charges due hereunder, (b) second, to accrued and unpaid interest on the principal balance of this Note, (c) third, to the payment of principal due in the month in which the payment or prepayment is made, (d) fourth, to any escrows, impounds or other amounts which may then be due and payable under the Loan Documents, (e) fifth, to any other amounts then due Lender hereunder or under any of the Loan Documents, and (f) last, to the unpaid principal balance of this Note in the inverse order of maturity. Any prepayment on account of the indebtedness evidenced by this Note shall not extend or postpone the due date or reduce the amount of any subsequent monthly payment of principal and interest due hereunder. After an Event of Default has occurred and is continuing, payments may be applied by Lender to amounts owed hereunder and under the Loan Documents in such order as Lender shall determine, in its sole discretion.

**3.3 Method of Payments.** All payments of principal and interest hereunder shall be paid by automatic debit, wire transfer, check or in coin or currency which, at the time or times of payment, is the legal tender for public and private debts in the United States of America and shall be made at such place as Lender or the legal holder or holders of this Note may from time to time appoint in the payment invoice or otherwise in writing and in the absence of such appointment, then at the offices of Lender at 135 South LaSalle Street, (2<sup>nd</sup> Floor, Chicago, Illinois 60603. Payment made by check shall be deemed paid on the date Lender receives such check; provided, however, that if such check is subsequently returned to Lender unpaid due to insufficient funds or otherwise, the payment shall not be deemed to have been made and shall continue to bear interest until collected. Notwithstanding the foregoing the final payment due under this Note must be made by wire transfer or other final funds. Borrower agrees that interest payments and expenses owed Lender from time to time will be deducted by Lender automatically on the due date from either Borrower's account with Lender, as designated in writing by Borrower or directly from an interest reserve. Borrower will maintain sufficient funds in the account on the dates Lender enters debits authorized by this Note. If there are insufficient funds in the account on the date Lender enters any debit authorized by this Note, the debit will be reserved. Borrower may terminate this direct debt arrangement at any time by sending written notice to Lender at the address specified above.

**3.4 Late Charge.** If any payment of interest or principal due hereunder is not made within ten (10) days after such payment is due in accordance with the terms hereof, then, in addition to the payment of the amount so due, Borrower shall pay to Lender a "late charge" of five cents for each whole dollar so overdue to defray part of the cost of collection and handling such late payment. Borrower agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment are extremely difficult and impractical to ascertain, and that the amount of five cents for each one dollar due is a reasonable estimate of such damages, does not constitute interest, and is not a penalty.

**3.5 Prepayment and Partial Releases.**

(a) **Prepayment:** Provided that no Event of Default then exists, Borrower may voluntarily prepay the principal balance of this Note, in whole but not in part, at any time on or after the date hereof, without penalty or premium. The portion of this Note bearing interest at the Loan Rate may be prepaid, either in whole or in part, without penalty or premium, at any time and from time to time upon fourteen (14) days prior notice to Lender. The portion of this Note bearing interest at the LIBOR Rate may be prepaid only on the last day of an interest period; provided, however, that Borrower may prepay a LIBOR Rate Portion prior to such day so long as such prepayment is accompanied by a simultaneous payment of the Make Whole Costs described in paragraph 2.1(c) above, plus accrued interest on the LIBOR Rate Portion being prepaid through the date of prepayment.

(b) **Partial Releases:** Provided that no Event of Default then exists under the Note or any Loan Documents evidencing or securing the Note has occurred, Lender will allow Borrower the right to sell one or more of the Residential Condominium Units, the Commercial Unit or a Parking Space (the "Residential Units", "Commercial Unit" or "Parking Space", as defined in the Construction Loan and Security Agreement ("Loan Agreement") of even date between Borrower and Lender), to a third party bona fide purchaser, subject to the following:

(a) Borrower providing Lender with written notice requesting Lender's consent to the sale or transfer of the unit(s), no less than seven (7) days prior to the proposed transfer or sale. Borrower shall include in said written notice, a copy of the executed contract for sale of the unit(s). Lender reserves the right to approve or reject the proposed sale of the unit(s), if in Lender's sole determination, the sale price is not equal to the fair market value of the unit(s) to be sold (as determined by Lender in its sole discretion), or Lender would deem itself insecure after the sale. Assuming Lender approves the sale, Lender will issue partial releases for the unit(s) subject to Borrower paying to Lender an amount equal to the greater of (i) \$350,000.00 per individual Residential Unit(s) sold, (ii) \$250,000.00 per Commercial Unit sold, or (iii) 93% of the gross sales price of the individual unit(s). In addition, upon the sale of any Parking Space at the Property, Borrower shall pay to Lender the sum of \$15,000.00, for each Parking Space sold.

(b) Borrower agrees to pay Lender the sum of \$250.00 for each unit(s) for which a release or partial release is issued, whether for a Residential Unit or Commercial Unit or for a Parking Space. Borrower acknowledges that said release fee is reasonable. Lender shall have no obligation to issue partial releases if Borrower is in default under the Note, the Mortgage, the Construction Loan and Security Agreement or other documents securing the Loan.

**3.6 Loan Fees.** In consideration of Lender's agreement to extend the maturity date of the Loan, Borrower shall pay to Lender a non-refundable Extension Fee in the amount of Two Thousand Seven Hundred Ninety Dollars (\$2,790.00), which shall be due and payable at the time of the execution of this Note.

4. **Security.** This Note is given to evidence an actual loan in the above amount and is the Note referred to in and secured by:

- (a) A Mortgage and Security Agreement dated April 12, 2001, (herein called the "Mortgage") on certain real estate owned by Borrower (the "Premises") in Cook County, Illinois;
- (b) A Construction Loan and Security Agreement dated April 12, 2001, between Lender and Borrower;
- (c) An Assignment of Leases and Rents dated April 12, 2001, between Lender and Borrower;
- (d) Various Security Agreements on certain personal property now or hereinafter located on the Premises and Borrower's right to rents, issues and profits arising out of the Premises;
- (e) An Environmental and Personal Indemnity Agreement dated April 12, 2001, from Borrower, Lawrence M. Fox and Carlina R. Fox to Lender;
- (f) Various assignments of construction contracts, Borrower's rights under condominium documents, permits and of rights of Borrower under sales contracts, from Borrower to Lender;
- (g) A Guaranty from Lawrence M. Fox and Carlina R. Fox to Lender dated April 12, 2001;
- (h) UCC Financing Statements;

and reference is hereby made to the Mortgage, the Guaranty, the Construction Loan and Security Agreement, the Environmental and Personal Indemnity Agreement, the various assignments of construction contracts, Borrower's rights under condominium documents, permits and of rights of Borrower under sales contracts, the Assignment of Leases and Rents and UCC Financing Statements (hereinafter collectively "Loan Documents"), and other Loan Documents, which are hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length.

5. **Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Note.

5.1 the failure by Borrower to pay (i) any installment of principal or interest payable pursuant to this Note on the date when due, or (ii) any other amount payable to Lender under this Note, the Mortgage or any of the other Loan Documents within five (5) days after the date when any such payment is due in accordance with the terms hereof or thereof; or

5.2 the occurrence of any "Event of Default" under the Mortgage or any of the other Loan Documents; or

5.3 the occurrence of the death or legal incompetency of any guarantor of this Note; or

5.4 the maturity of the indebtedness evidenced hereby whether by passage of time or otherwise; or

5.5 the making or furnishing of any verbal or written representation, statement or warranty to Lender which is or becomes false or incorrect in any material respect by or on behalf of Borrower, or any one of them, or any co-signer, endorser, surety or guarantor of the Note or any other obligations Borrower has with Lender; or

5.6 the occurrence of the dissolution, insolvency, winding-up, death or legal incompetency, as applicable, of any guarantor of this Note unless within the ninety day period immediately following such death or legal incompetency (i) Borrower provides Lender with a substitute guarantor whose creditworthiness and real estate experience and skills are comparable to those of the original guarantor and who is otherwise acceptable to Lender in Lender's sole discretion, and (ii) such substitute guarantor executes a guaranty in favor of Lender in form and substance substantially similar to the Guaranty; or,

5.7 any creditor takes any of Borrower's property on or in which Lender has a lien or security interest. This includes a garnishment of any of the Borrower's or any one of their, accounts, including deposit accounts, with Lender; or

5.8 Failure to obtain or maintain the insurance coverages required by Lender under any of the documents securing this Note; or

5.9 Failure to pay or provide proof of payment of any tax, assessment, rent, insurance premium or escrow, escrow deficiency on or before its due date, provided such matters are not cured in the manner provided in the Mortgage; or

5.10 Lender reasonably deems itself insecure;

6. **Remedies.** At the election of the holder hereof, and without notice, the principal balance remaining unpaid under this Note, and all unpaid interest accrued thereon and any other amounts due hereunder, shall be and become immediately due and payable in full upon the occurrence of any Event of Default. Failure to exercise this option shall not constitute a waiver of the right to exercise same in the event of any subsequent Event of Default. No holder hereof shall, by any act of omission or commission, be deemed to waive any of its rights, remedies or power hereunder or otherwise unless such waiver is in writing and signed by the holder hereof, and then only to the extent specifically set forth therein. The rights, remedies and powers of the holder hereof, as provided in this Note, the Mortgage and in all of the other Loan Documents are cumulative and concurrent, and may be pursued singly, successively or together against Borrower, the Guarantors hereof, the Premises and any other security given at any time to secure the repayment hereof, all at

the sole discretion of the holder hereof. If any suit or action is instituted or attorneys are employed to collect this Note or any part hereof, Borrower promises and agrees to pay all costs of collection, including reasonable attorney's fees and court costs.

7. **Covenants and Waivers.** Borrower and all others who now or may at any time become liable for all or any part of the obligations evidenced hereby, expressly agree hereby to be jointly and severally bound, and jointly and severally: (i) waive and renounce any and all homestead, redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof; (ii) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (iii) except as expressly provided in the Loan Documents, waive any and all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (iv) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (v) agree that the liability of each Borrower, guarantor, endorser or obligor shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by Lender to any of them with respect hereof; (vi) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (vii) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such makers, endorsers, guarantors or other obligors, or security shall not affect the liability of Borrower, any guarantor and all others now liable for all or any part of the obligations evidenced hereby. This provision is a material inducement for Lender making the Loan to Borrower.

8. **Other General Agreements.**

8.1 The Loan is a business loan which comes within the purview of Section 205/4, paragraph (1)(c) of Chapter 815 of the Illinois Compiled Statutes, as amended. Borrower agrees that the Loan evidenced by this Note is an exempted transaction under the Truth in Lending Act, 15 U.S.C., Section 1601, et seq.

8.2 Time is of the essence hereof.

8.3 This Note is governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the statutes, laws and decisions of the State of Illinois. This Note may not be changed or amended orally but only by an instrument in writing signed by the party against whom enforcement of this change or amendment is sought.

8.4 Lender shall not be construed for any purpose to be a partner, joint venturer, agent or associate of Borrower or of any lessee, operator, concessionaire or licensee of Borrower in the conduct of its business, and by the execution of this Note, Borrower agrees to indemnify, defend, and hold Lender harmless from and against any and all damages, costs, expenses and liability that may



be incurred by Lender as a result of a claim that Lender is such partner, joint venturer, agent or associate.

8.5 This Note has been made and delivered at Chicago, Illinois and all funds disbursed to or for the benefit of Borrower will be disbursed in Chicago, Illinois.

8.6 If this Note is executed by more than one party, the obligations and liabilities of each Borrower under this Note shall be joint and several and shall be binding upon and enforceable against each Borrower and their respective successors and assigns. This Note shall inure to the benefit of and may be enforced by Lender and its successors and assigns.

8.7 If any provision of this Note is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Borrower and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

8.8 If the interest provisions herein or in any of the Loan Documents shall result, at any time during the Loan, in an effective rate of interest which, for any month, exceeds the limit of usury or other laws applicable to the Loan, all sums in excess of those lawfully collectible as interest of the period in question shall, without further agreement or notice between or by any party hereto, be applied upon principal immediately upon receipt of such monies by Lender, with the same force and effect as though the payer has specifically designated such extra sums to be so applied to principal and Lender had agreed to accept such extra payment(s) as a premium-free prepayment. Notwithstanding the foregoing, however, Lender may at any time and from time to time elect by notice in writing to Borrower to reduce or limit the collection to such sums which, when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirements of the preceding sentence. In no event shall any agreed to or actual exaction as consideration for this Loan transcend the limits imposed or provided by the law applicable to this transaction or the makers hereof in the jurisdiction in which the Premises are located for the use or detention of money or for forbearance in seeking its collection.

8.9 Lender may at any time assign its rights in this Note and the Loan Documents, or any part thereof and transfer its rights in any or all of the collateral, and Lender thereafter shall be relieved from all liability with respect to such collateral. In addition, Lender may at any time sell one or more participations in the Note. Borrower may not assign its interest in this Note, or any other agreement with Lender or any portion thereof, either voluntarily or by operation of law, without the prior written consent of Lender.

9. **Notices.** All notices required under this Note will be in writing and will be transmitted in the manner and to the addresses or facsimile numbers required by the Mortgage, or to such other addresses or facsimile numbers as Lender and Borrower may specify from time to time in writing.

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10. **Consent to Jurisdiction.** TO INDUCE LENDER TO ACCEPT THIS NOTE, BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS NOTE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED IN THE MORTGAGE AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

11. **Waiver of Jury Trial.** BORROWER AND LENDER (BY ACCEPTANCE OF THIS NOTE), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS NOTE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS NOTE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS NOTE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL INCIDENTAL OR PUNITIVE DAMAGES.

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IN WITNESS WHEREOF, the undersigned have caused these presents to be signed effective as of the date and year first written above.

BORROWER:

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

FOX FAMILY LIMITED PARTNERSHIP, an Illinois limited partnership  
One of its Members

By: \_\_\_\_\_  
Name: Carlina R. Fox  
Its: General Partner

By: \_\_\_\_\_  
Name: Dr. Lawrence M. Fox  
Its: General Partner

\_\_\_\_\_  
Kevin M. Fox, Individually  
One of its Members

\_\_\_\_\_  
Michael A. Moynihan, Individually  
One of its Members

Property of Cook County Clerk's Office