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Doc#: 0712934045 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/09/2007 09:46 AM Pg: 1 of 16

This instrument prepared by
and please return to:

Polsinelli Shalton Flanigan Suelthaus PC
180 N. Stetson Avenue, Suite 4525
Chicago, Illinois 60601-6733
Attention: Jennifer L. Worstell, Esq.

COMMONLY KNOWN AS: 400 N. Orleans, Chicago, Illinois
P.I.N.: 17-09-256-005-0000

FOURTH LOAN MODIFICATION AGREEMENT

This instrument is a Fourth Loan Modification Agreement ("Fourth Modification") among New Century Bank, an Illinois banking corporation ("Lender"), 400 N. Orleans, LLC, an Illinois limited liability company ("Borrower"), and Steven Siegel, David M. Kaiser and Walter Kaiser (collectively "Guarantors").

RECITALS:

A. Borrower holds fee simple title to certain real estate commonly known as 400 N. Orleans, Chicago, Illinois, which is legally described on Exhibit A attached hereto ("Real Estate"). Guarantors are affiliated with Borrower. The Real Estate is improved with a mixed-use building. Borrower is constructing a building ("Building") which will contain one (1) retail rental unit and six (6) residential condominium units (the "Units") on the Real Estate. Borrower has

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submitted the Real Estate to the Illinois Condominium Act and is selling the Units (collectively the "Project").

B. On May 27, 2004, Borrower, Guarantors and Lender entered into a Construction Loan Agreement ("Loan Agreement"), pursuant to which Borrower executed and delivered to Lender a Revolving Construction Loan Promissory Note in the amount of \$3,500,000.00 ("Note"), which evidences a loan in the amount of \$3,500,000.00 ("Loan") under which Lender agreed to permit maximum total disbursements of \$3,840,000.00. To secure the Note, Borrower executed and delivered to Lender the following documents (collectively "Security Documents"):

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Financing Statement ("Mortgage") executed by Borrower and covering the Real Estate, which Mortgage was recorded with the Cook County Recorder of Deeds on June 16, 2004 as Document No. 0416842025;
2. Guaranties of Note, Mortgage, Loan Agreement, Second Modification and Other Undertakings executed by Guarantors ("Original Guaranties");
3. an Environmental, ADA and ERISA Indemnification Agreement executed by Borrower and Guarantors;
4. a UCC Financing Statement authorized by Borrower; and
5. such other documents and items as were requested by Lender

C. On or about February 7, 2006, Borrower, Guarantors and Lender entered into a Loan Modification Agreement ("Modification"), pursuant to which Lender agreed to (1) increase the amount of the Loan from \$3,500,000.00 to \$4,867,815.00 ("Revised Loan"), (2) terminate the revolving nature of the Loan, and (3) extend the date for full payment of the Loan from May 1, 2006 to December 1, 2006. Pursuant to the Modification, Borrower executed a Revised

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Promissory Note in the amount of \$4,867,815.00 ("Revised Note") and Guarantors executed revised Guaranties ("Revised Guaranties"). The Modification was recorded with the Cook County Recorder of Deeds on February 27, 2006 as Document No. 0605810013.

D. On or about December 19, 2006, Lender, Borrower and Guarantors entered into a Second Note Modification ("Second Modification") pursuant to which Lender extended the maturity date of the Revised Note from December 1, 2006 to February 1, 2007.

E. On or about February 1, 2007, Lender, Borrower and Guarantors entered into a Third Note Modification ("Third Modification") pursuant to which Lender extended the maturity date of the Revised Note from February 1, 2007 to April 6, 2007.

F. As of April 6, 2007, the outstanding balance of the Note is \$4,466,142.43. Borrower has now requested Lender to increase the aggregate amount of the Revised Loan by \$608,100.00 to \$5,475,915.00 ("Second Revised Loan"), and to extend the date for full payment of the Loan from April 6, 2007 until April 6, 2008. Lender is agreeable to these requests subject to the covenants, conditions and restrictions contained herein.

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

1. Subject to and upon the terms and conditions set forth in this Fourth Modification, Lender agrees to make the Second Revised Loan to Borrower as provided herein. The proceeds of the Second Revised Loan shall be disbursed pursuant to the provisions of the Loan Agreement and this Fourth Modification, and all of the parties' covenants, representations and agreements set forth in the Loan Agreement shall apply to the Second Revised Loan. References in the Loan Agreement to the "Project" shall include the Project as described in the Loan Agreement and revised herein. The additional available Second Revised Loan funds will be used to complete the

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Project of which \$150,000.00 will be added to the Interest Reserve as described in the Loan Agreement, and will be funded upon receipt of this executed Fourth Modification and the documents and items required hereby.

2. Concurrently herewith, Borrower shall execute and deliver a revised Promissory Note in the amount of \$5,475,915.00 ("Second Revised Note") in form and content as set forth on Exhibit B attached hereto. The Security Documents are hereby modified and amended to secure the Second Revised Note and all references to the Note or Revised Note in the Security Documents are modified and amended to refer to the Second Revised Note in place thereof. All amounts presently outstanding on the Note and Revised Note shall be deemed outstanding on the Second Revised Note. All interest charged on and all payments made on the Note previously are unchanged.

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

- (a) the Second Revised Note in the amount of \$5,475,915.00 executed by Borrower;
- (b) Revised Guaranties executed by Guarantor, ("Second Revised Guaranties");
- (c) a date down endorsement to Lender's loan title insurance policy which extends the effective date thereof until the recording date of this Fourth Modification, increases the amount of coverage to \$5,475,915.00, insures the Mortgage as modified by this Fourth Modification, confirms that Borrower is the fee simple owner of the Real Estate and includes no additional exceptions;
- (d) updated certificates of insurance for the Real Estate;

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- (e) a Certificate of Good Standing of Borrower;
- (f) a Borrowing Resolution executed by Borrower authorizing this Fourth Modification;
- (g) a Certificate of Good Standing of Borrower's manager, Atlas Development Corporation;
- (h) a Borrowing Resolution executed by Borrower's manager, Atlas Development Corporation, authorizing this Fourth Modification;
- (i) certified copies of four (4) executed real estate sale contracts for Units;
- (j) updated sworn owner's and sworn contractor's statements;
- (k) an updated construction budget and schedule;
- (l) evidence of Borrower's additional equity contribution to the Project in the amount of \$196,000.00; and
- (m) a Fourth Modification fee of \$3,040.00 plus payment of Lender's expenses as set forth in Section 7 hereof.

4. This Fourth Modification shall constitute a Fourth Modification and amendment of the Loan Agreement and Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Note, Revised Note or Second Revised Note ("Loan Documents") reference is made to the Loan Documents aforesaid, such reference shall be deemed a reference to such Loan Documents as hereby modified and amended. All other provisions of the Loan Documents remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Security Documents, or the covenants, conditions and agreements therein contained or contained in the Loan Documents.

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

6. Borrower and Guarantors hereby renew, remake and affirms the representations and warranties contained in the Loan Documents.

7. Borrower hereby agrees to pay Lender's fee in the amount of \$3,040.00 as and for the Second Revised Loan and this Fourth Modification, all of Lender's expenses arising out of and in connection with this Fourth Modification including, but not limited to, title insurance premiums, recording fees, and attorneys' fees performed in the preparation of necessary documentation.

8. Guarantors hereby acknowledge and agree that the Original Guaranties and Revised Guaranties are hereby replaced in their entirety with the Second Revised Guaranties. Guarantors hereby expressly acknowledge and confirm that by executing this Fourth Modification, Lender has not waived, altered or modified Lender's rights under any of the Loan Documents to amend, extend, renew or modify or otherwise deal with the obligations of the parties hereto or any of the security given to Lender in connection therewith without the consent of Guarantors and without such action releasing, modifying, or affecting the obligations of Guarantors or affecting the security heretofore granted to Lender.

9. BORROWER AND GUARANTORS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THE REVISED NOTE, THE SECOND REVISED NOTE, THE MORTGAGE, THE LOAN AGREEMENT, THE LOAN DOCUMENTS, THE SECURITY DOCUMENTS, THE MODIFICATION, THE

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SECOND MODIFICATION, THE THIRD MODIFICATION, THIS FOURTH MODIFICATION, OR ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH LENDER, BORROWER AND GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER OR GUARANTORS, OR ANY OF THEM.

10. BORROWER AND GUARANTORS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS, OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER AND GUARANTORS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER AND GUARANTORS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER AND GUARANTORS IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO BORROWER AND GUARANTORS AT THEIR ADDRESSES AS SPECIFIED IN THE RECORDS OF LENDER. BORROWER AND GUARANTORS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

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BORROWER AND GUARANTORS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREIN ABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER, GUARANTORS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

11. Borrower and Guarantors warrant to Lender that neither Borrower, nor Guarantors nor any affiliate are identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower and Guarantors covenant to Lender that if they become aware that they or any affiliate are identified on any Blocked Persons List, Borrower and Guarantors shall immediately notify Lender in writing of such information. Borrower and Guarantors further agree that in the event they or any affiliate are at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of

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such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Modification on MAY 1st, 2007, to take effect as of April 6, 2007.

LENDER:

New Century Bank, an Illinois banking corporation

By: [Signature]
Its 1st. VP

BORROWER:

400 N. Orleans LLC, an Illinois limited liability company

By: Atlas Development Corporation,
Manager of 400 N. Orleans, LLC

By: [Signature]
Steven Siegel, President

By: [Signature]
David M. Kaiser, Vice
President/Secretary

GUARANTORS:

[Signature]
Steven Siegel

[Signature]
David M. Kaiser

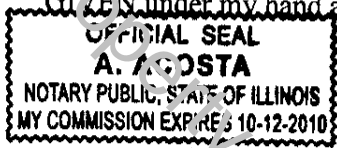
[Signature]
Walter Kaiser

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

A. Acosta, a Notary Public in and for the State and County aforesaid, does hereby certify that Opann Wong, 1st V-President of New Century Bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal May 1st, 2007.

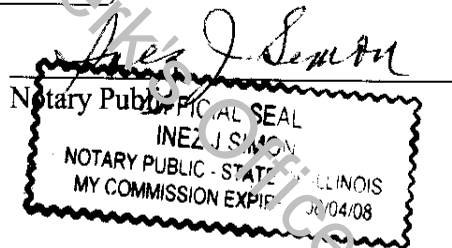


A. Acosta
Notary Public

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

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Steven Siegel and David M. Kaiser, President and Vice-President/Secretary of Atlas Development Corporation, an Illinois corporation and the manager of 400 N. Orleans, LLC, an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, 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 corporation and limited liability company for the uses therein set forth.

GIVEN under my hand and Notarial Seal 5/1/07, 2007.

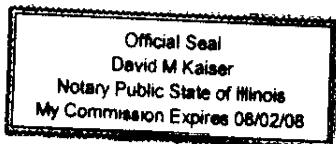


STATE OF ILLINOIS)
COUNTY OF C O O K) SS.

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Steven Siegel, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal MAY 1st, 2007.

[Signature]
Notary Public

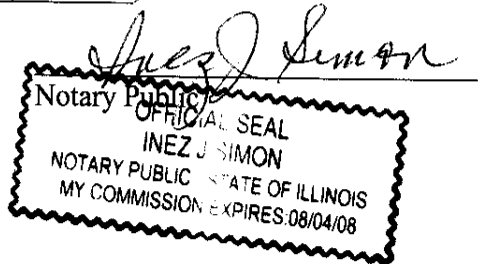


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STATE OF ILLINOIS)
COUNTY OF C O O K) SS.

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that David M. Kaiser, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

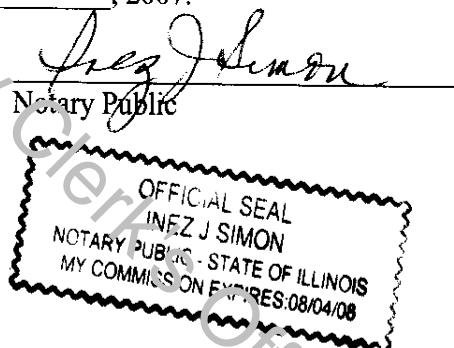
GIVEN under my hand and Notarial Seal 11, 2007.



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

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Walter Kaiser, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 11, 2007.



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EXHIBIT A

Parcel 1:

Lot 15 (except the West 18 feet) and all of Lot 16 in Block 2 in Butler, Wright and Webster's Addition to Chicago in the West Half of the West Half of the Northeast Quarter of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

Parcel 2:

Exclusive easement for the benefit of the following legal description:

Lot 15 (except the West 18 feet) and all of Lot 16 in Block 2 in Butler, Wright and Webster's Addition to Chicago in the West Half of the West Half of the Northeast Quarter of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois as created by Grant of Easement made by and between the City of Chicago and American National Bank and Trust Company of Chicago, as trustee under Trust Number 105163 recorded September 18, 1990 as Document 90454674 for the construction, operation and maintenance of the proposed structure (a twelve-story office building) within the air space boundaries described as follows:

That part of West 18.00 feet of Lot 15 lying above an incline plane beginning at elevation +25.73 feet Chicago City Datum, measured along the South line of Lot 15; thence North, along said incline plane, (of uniform slope) to elevation +28.52 feet Chicago City Datum, measured along the North line of Lot 15; and lying below a horizontal plane at elevation +198.52 feet Chicago City datum, all in Block 2 in Butler, Wright and Webster's Addition to Chicago in the West Half of the West Half of the Northeast Quarter of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

COMMONLY KNOWN AS: 400 N. Orleans, Chicago, Illinois
P.I.N.: 17-09-256-005-0000

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EXHIBIT B

CONSTRUCTION LOAN PROMISSORY NOTE (“Second Revised Note”)

\$5,475,915.00

As of April 6, 2007

FOR VALUE RECEIVED, the undersigned, 400 N. Orleans, LLC, an Illinois limited liability company (“Maker”), with a mailing address of c/o Atlas Development Corp., 600A Waukegan Road, Northbrook, Illinois 60062, hereby promises to pay to the order of New Century Bank, an Illinois banking corporation (“Payee” or “Bank”), at 363 W. Ontario Street, Chicago, Illinois 60610 or at such other place as Payee may from time to time designate by written notice the principal sum of Five Million Four Hundred Seventy-Five Thousand Nine Hundred and Fifteen (\$5,475,915.00) Dollars, or so much thereof as may now or hereafter be advanced, repaid and advanced again (“Advances”) by Payee to Maker pursuant to the terms hereof and pursuant to the Construction Loan Agreement described herein, together with interest on the outstanding principal balance from time to time, as follows:

(a) On the first day of the first calendar month following initial disbursement hereunder, and on the first day of each calendar month thereafter, interest shall be paid, in arrears, at a rate equal to the greater of: (a) seven and one-quarter (7.25%) percent, or (b) the prime rate of interest in effect from time to time at, and as charged by, Payee as hereafter provided plus three-quarters (0.75%) percent (the “Interest Rate”). In the event Maker and the guarantors of this Note do not collectively maintain balances with Payee in at least the aggregate amount of \$35,000, averaged annually, the Interest Rate applicable to this Note shall increase one-quarter (0.25%) percent per annum. Interest shall be computed and paid for the actual number of days outstanding based upon a year of three hundred sixty (360) days.

(b) On April 6, 2008 (“Maturity Date”), the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

This Note replaces that certain Revolving Construction Loan Promissory Note in the amount of \$3,500,000 (“Original Note”) dated May 27, 2004, and that certain Construction Loan Promissory Note in the amount of \$4,867,815.00 (“Revised Note”) dated on or about February 7, 2006. This is not a revolving line of credit and amounts repaid on this Note will not be available to be disbursed again. This Note is executed pursuant to a Fourth Loan Modification Agreement (“Fourth Modification”) of even date herewith, which modifies the terms of that certain Construction Loan Agreement (“Loan Agreement”) dated May 27, 2004, and is secured by an instrument titled Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing dated May 27, 2004 and recorded with the Cook County Recorder of Deeds on June 16, 2004 as Document No. 0416842025 (“Mortgage”), as modified by a Loan Modification Agreement (“Modification”) executed in connection with the Revised Note, which was recorded with the Cook County Recorder of Deeds on February 27, 2006 as Document No. 0605810013, and a Second Note Modification (“Second Modification”) dated December 19, 2006, and a Third Note Modification (“Third Modification”) dated February 1, 2007, and by other loan and security documents (collectively “Loan Documents”) as defined in the Loan Agreement and the Fourth Modification, all of which are made a part hereof and are incorporated herein by this reference. Amounts outstanding pursuant to the Original Note shall be outstanding under this

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EXHIBIT B

Note. All interest rates applicable to and charged on the Original Note and all payments made on the Original Note and Revised Note are unchanged. Pursuant to the Fourth Modification, the Mortgage and Loan Documents are modified to secure this Note.

The prime rate of Bank is the highest prime rate of interest published in The Wall Street Journal and is not necessarily Bank's lowest or most favorable rate. If Bank ceases to use the term "prime rate" in setting a base rate of interest on commercial loans, the prime rate shall be determined by reference to the rate used by Bank as such a base. The prime rate of Bank is the highest prime rate of interest published in The Wall Street Journal.

If Maker fails to pay within five (5) days after written notice any installment or payment of principal or interest or other amount or charge due hereunder or under the Loan Documents, when due, or if at any time hereafter the right to foreclose or exercise the remedies available under the Mortgage or Loan Documents or the right to accelerate this Note shall accrue under the provisions of this Note, the Mortgage, the Fourth Modification or the Loan Documents, at the election of Payee, the entire unpaid principal balance, together with all interest accrued and all other amounts payable pursuant hereto, may be accelerated and may become immediately due and payable.

In the event any payment of interest or principal is not paid within ten (10) days after its due date, Maker agrees to pay a late charge of five (5.0%) percent of the amount so overdue ("Late Charge") to defray the expense incident to handling any such delinquent payment or payments.

From and after the occurrence of an event of default hereunder or under the provisions of the Mortgage, the Fourth Modification or Loan Documents, the principal balance shall bear interest at an annual rate determined by adding four (4.0%) percent per annum to the Interest Rate (the "Default Rate") on the principal balance until such default is cured or this Note is paid in full.

No failure on the part of Payee or any holder hereof to exercise any right or remedy hereunder, whether before or after the occurrence of an event of default, shall constitute a waiver thereof, and no waiver of any past default shall constitute a waiver of any future default or of any other default. No failure to accelerate, nor acceptance of a past-due installment, nor indulgence granted shall be construed to be a waiver of the right to insist upon prompt payment and to impose the late payment penalty and the Default Rate, retroactively or prospectively, or shall be deemed a waiver of any right of acceleration or any other right which Payee may have, whether by law or agreement or otherwise. None of the foregoing shall operate to release, change or affect the liability of Maker, endorser or guarantor of this Note, and Maker and each endorser and guarantor hereby expressly waive the benefit of any statute or rule of law or equity which would produce a result contrary to or in conflict with the foregoing.

Maker agrees to pay to Payee any and all costs and expenses incurred by Maker in and about determining and enforcing its rights hereunder, including, without limitation, attorneys' fees, investigative fees, credit report fees, court costs, litigation expenses, and interest on such amounts, incurred by Maker, as if additional principal, at the rates herein provided.

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EXHIBIT B

Payments received on account of this Note shall be applied first to the payment of any amounts due pursuant to the next preceding paragraph, second to interest and Late Charges and the balance to principal.

Maker waives presentment, notice of default, notice of dishonor, protest and notice of protest.

Funds representing the proceeds of this Note which are disbursed by Payee by mail, wire transfer or other delivery to Maker, escrowees or otherwise for the benefit of Maker shall, for all purposes, be deemed outstanding hereunder and received by Maker as of the date of such mailing, transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such mailing, wire transfer or other delivery until repaid, notwithstanding that such funds may not have been remitted by such escrowees or other recipient to Maker.

Maker, by the execution and delivery of this Note, and Payee, by the acceptance of this Note, knowingly, voluntarily and intentionally waive irrevocably the right to trial by jury in respect to any legal proceeding based hereon, or arising out of, under or in connection with this Note, the Mortgage, the Fourth Modification and the other Loan Documents, or the collateral securing this Note, or any agreement executed or contemplated to be executed in conjunction herewith, or any course of conduct or course of dealing in which Maker and Payee are adverse parties. This provision is a material inducement for Payee in granting financial accommodation to Maker.

Maker hereby irrevocably submits to the jurisdiction of any state or federal court sitting in Chicago, Illinois over any action or proceeding based hereon and Maker hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such state or federal court. Maker hereby irrevocably waives, to the fullest extent they may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Maker irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Maker at its address as specified in the Loan Agreement or otherwise in the records of the Payee. Maker agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

This Note may be prepaid in whole or in part without penalty or premium of any kind. Releases of documents securing this Note shall be executed and delivered upon payment of the amounts provided in the Loan Agreement. Payments received shall be applied by Payee to this Note and to other indebtedness as described in the Loan Agreement.

Time is of the essence of this Note, the Modification, the Fourth Modification, the Mortgage and the Loan Documents.

Signature page follows

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EXHIBIT B

IN WITNESS WHEREOF, the undersigned as aforesaid have caused these presents to be executed and attested the day and year first above written.

400 N. Orleans, LLC, an Illinois limited liability company

By: Atlas Development Corporation, Manager of 400 N. Orleans, LLC

By:  Steven Seigel, President

By:  David M. Kaiser, Vice President Secretary

Property of Cook County Clerk's Office