

# UNOFFICIAL COPY



Doc#: 1333649038 Fee: \$80.00  
RHSP Fee: \$9.00 RPIRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 12/02/2013 03:40 PM Pg: 1 of 22

This instrument prepared by  
and please return to:

Vincent Robertelli  
Giagnorio & Robertelli, Ltd.  
130 South Bloomingdale Road  
P.O. Box 726  
Bloomingdale, Illinois 60108-0726

Loan No. 112014097-1

176881553-620  
P.I.N.: 16-08-227-0001-0000 and 16-08-227-002-0000

COMMONLY KNOWN AS: 445-447 N. Waller Avenue, Chicago, Illinois

## SIXTH LOAN MODIFICATION AGREEMENT

This instrument is a Sixth Loan Modification Agreement ("**Sixth Modification**") among Northbrook Bank & Trust Company, an Illinois banking corporation, its successors and assigns ("**Lender**"), successor pursuant to a Purchase and Assumption Agreement by and between the FDIC, as Receiver of the Assets and Liabilities of First Chicago Bank & Trust, pursuant to 12 USC 1821 (D)(2)(A), as Seller and Lender as Buyer, dated July 8, 2011, Lake and Waller LLC, an Illinois limited liability company ("**Borrower**") and David Doig and Thomas Fiddler (collectively, "**Guarantors**").

### RECITALS:

A. Borrower holds fee simple title to the real estate commonly known as 445-447 N. Waller Avenue, Chicago, Illinois, which is legally described on Exhibit A attached hereto ("**Parcel No. 1**").

# UNOFFICIAL COPY

B. Borrower previously also held fee simple title to the real estate commonly known as 420 N. Waller Avenue, Chicago, Illinois ("**Parcel No. 2**").

C. Parcel No. 1 and Parcel No. 2 are collectively referred to as the "**Real Estate.**"

D. Guarantors are affiliated with Borrower.

E. On November 1, 2007, Lender granted a loan to Borrower in the amount of Four Hundred Forty Thousand (\$440,000.00) Dollars ("**445-447 Loan**"), which is evidenced by a Promissory Note in the principal amount of Four Hundred Forty Thousand (\$440,000.00) Dollars ("**445-447 Note**"). Concurrently therewith, Borrower, Guarantors, Brad Anthony ("**Anthony**") and Michael Scott ("**Scott**") and collectively with Anthony and Guarantors, "**Original Guarantors**") and other parties executed and delivered to Lender the following documents (collectively "**445-447 Security Documents**"):

1. a Mortgage covering Parcel No. 1, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934069 ("**445-447 Mortgage**");
2. an Assignment of Rents and Lessor's Interest in Leases covering Parcel No. 1, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934070 ("**445-447 Assignment of Rents**");
3. a Financing Statement, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934071;
4. an Environmental Indemnity Agreement executed by Borrower and Original Guarantors;
5. a Guaranty executed by Brad Anthony ("**445-447 Anthony Guaranty**");
6. a Guaranty executed by David Doig ("**445-447 Doig Guaranty**");

# UNOFFICIAL COPY

7. a Guaranty executed by Tom Fiddler ("**445-441 Fiddler Guaranty**");
8. a Guaranty executed by Michael Scott ("**445-447 Scott Guaranty**") together with the Guaranty executed by Brad Anthony ("**445-447 Anthony Guaranty**"), the Guaranty executed by David .Doig ("**445-447 Doig Guaranty**") and the Guaranty executed by Tom Fiddler ("**445-447 Fiddler Guaranty**") (collectively, the "**445-447 Guarantees**"); and
9. a Security Agreement executed by Borrower.

F. On November 1, 2007. Lender granted a loan to Borrower in the amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars ("**420 Loan**"), which is evidenced by a Promissory Note in the principal amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars ("**420 Note**"). Concurrently therewith, Borrower, Original Guarantors and other parties executed and delivered to Lender the following documents (collectively "**420 Security Documents**"):

1. Mortgage covering Parcel No. 2, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934066 ("**420 Mortgage**");
2. an Assignment of Rents and Lessor's Interest in Leases covering Parcel No. 1, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934067;
3. Financing Statement, which was recorded with the Cook County Recorder of Deeds on November 5, 2007 as Document No. 0730934068;
4. an Environmental Indemnity Agreement executed by Borrower and Original Guarantors;
5. a Guaranty executed by Brad Anthony ("**420 Anthony Guaranty**");

# UNOFFICIAL COPY

6. a Guaranty executed by David Doig ("**426 Doig Guaranty**");
  7. a Guaranty executed by Tom Fiddler ("**420 Fiddler Guaranty**");
  8. a Guaranty executed by Michael Scott ("**420 Scott Guaranty**") together with the Guaranty executed by Brad Anthony ("**420 Anthony Guaranty**"), the Guaranty executed by David Doig ("**420 Doig Guaranty**") and the Guaranty executed by Tom Fiddler ("**420 Fiddler Guaranty**") (collectively, the "**420 Guarantees**"); and
  9. a Security Agreement executed by Borrower.
- G. The 445-447 Security Documents and the 420 Security Documents are collectively referred to as "**Security Documents**."
- H. Borrower and the City of Chicago have executed a Redevelopment Agreement ("**Redevelopment Agreement**") and Borrower is to be the beneficiary of a Tax Increment Financing Bond ("**TIF Bond**") for the Madison/Austin Tax Increment Finance District in Chicago, Illinois, pursuant to which the City of Chicago will execute and deliver to Borrower a certain promissory note in the amount of \$1,310,000.00 ("**TIF Note**") and the Assignment of the TIF Note.
- I. On November 28, 2008, to take effect as of November 1, 2008, Borrower, Original Guarantors and Lender entered into a Loan Modification Agreement ("**445-447 Modification**"), pursuant to which Lender extended the maturity date of the Loan from November 1, 2008 until February 5, 2009. Pursuant to the 445-447 Modification, Borrower executed and delivered to Lender a Promissory Note in the amount of \$440,000.00 ("**Revised 445-447 Note**"), a copy of which was attached to the 445-447 Modification as Exhibit B; Original Guarantors executed and delivered to Lender a Revised Guaranty ("**Revised 445-447 Guaranty**"); Borrower assigned its interest in the TIF Bond to Lender pursuant to a Pledge Agreement and agreed to deliver the original TIF Note and an Allonge to the TIF Note and endorse the TIF Note, if issued, to Lender ("**445-447 Assignment**"); and the City of Chicago was requested to consent to the 445-447 Assignment. The 445-447 Modification was recorded on December 19, 2008 with the Cook County, Illinois Recorder of Deeds as Document No. 0835445098. All of the collateral covered by the 445-447 Security Documents and the 445-447 Assignment is referred to as "**Collateral**."

# UNOFFICIAL COPY

J. On November 28, 2008, to take effect as of November 1, 2008, Borrower, Original Guarantors and Lender entered into a Loan Modification Agreement ("**420 Modification**"), pursuant to which Lender extended the maturity date of the Loan from November 1, 2008 until February 5, 2009. Pursuant to the 420 Modification, Borrower executed and delivered to Lender a Promissory Note in the amount of \$3,210,000.00 ("**Revised 420 Note**"), a copy of which was attached to the 420 Modification as Exhibit B; Original Guarantors executed and delivered to Lender a Revised Guaranty ("**Revised 420 Guaranty**"); Borrower assigned its interest in the TIF Bond to Lender pursuant to a Pledge Agreement and agreed to deliver the original TIF Note and an Allonge to the TIF Note and endorse the TIF Note, if issued, to Lender ("**420 Assignment**"); and the City of Chicago was requested to consent to the 420 Assignment. The 420 Modification was recorded on December 19, 2008 with the Cook County, Illinois Recorder of Deeds as Document No. 0835445099.

K. On March 9, 2009, to take effect as of February 5, 2009, Borrower, Original Guarantors and Lender entered into a Second Loan Modification Agreement ("**Second 445-447 Modification**"), pursuant to which Lender extended the maturity date of the 445-447 Loan from February 5, 2009 until May 5, 2009. The Second 445-447 Modification was recorded on April 9, 2009 with the Cook County, Illinois Recorder of Deeds as Document No. 0909929047.

L. On March 9, 2009, to take effect as of February 5, 2009, Borrower, Original Guarantors and Lender entered into a Second Loan Modification Agreement ("**Second 420 Modification**"), pursuant to which Lender extended the maturity date of the 420 Loan from February 5, 2009 until May 5, 2009. The Second 420 Modification was recorded on March 26, 2009 with the Cook County, Illinois Recorder of Deeds as Document No. 0908545184.

M. On June 19, 2009 to take effect as of May 5, 2009, Borrower, Original Guarantors and Lender entered into a Third Loan Modification, Cross-Collateralization and Cross-Default Agreement ("**Third Modification**"), pursuant to which Lender (i) extended the maturity date of the 445-447 Loan and the 420 Loan from May 5, 2009 until August 5, 2009; (ii) decreased the interest rate charged on the 445-447 Loan and the 420 Loan; (iii) revised the Second 445-447 Modification to correct the recorded document number of the 445-447 Mortgage from 0730934070 to 0730936069 and of the 445-447 Assignment of Rents from 0730934071 to 0730934070; and (iv) modified the 445-447 Mortgage and the 420 Mortgage and other Security Documents to

# UNOFFICIAL COPY

cross-collateralize and cross-default the 445-447 Loan and the 420 Loan. Borrower executed and delivered to Lender a Second Revised Promissory Note in the amount of Four Hundred Forty Thousand (\$440,000.00) Dollars ("**Second Revised 445-447 Note**") and a Second Revised Promissory Note in the amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars ("**Second Revised 420 Note**"), copies of which were attached to the Third Modification as Exhibits B and C, respectively. Original Guarantors executed and delivered to Lender a Second Revised Guaranty of Third Modification, Second Revised Notes, Mortgages and Other Undertakings ("**Second Revised Guaranty**"). The Third Modification was recorded on July 16, 2009 with the Cook County, Illinois Recorder of Deeds as Document No. 0919729059.

N. On September 23, 2009, Borrower, Original Guarantors and Lender entered into a Fourth Loan Modification, Cross-Collateralization and Cross-Default Agreement ("**Fourth Modification**"), pursuant to which Lender (i) extended the maturity dates of the 445-447 Loan and the 420 Loan from August 5, 2009 until August 5, 2011; and (ii) amended the payments to be made on the Loans. Borrower executed and delivered to Lender a Third Revised Promissory Note in the amount of Four Hundred Forty Thousand (\$440,000.00) Dollars ("**Third Revised 445-447 Note**") and a Third Revised Promissory Note in the amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars ("**Third Revised 420 Note**"), copies of which were attached to the Fourth Modification as Exhibits B and C, respectively. Original Guarantors executed and delivered to Lender a Third Revised Guaranty of Fourth Modification, Third Revised Notes, Mortgages and Other Undertakings ("**Third Revised Guaranty**"). The Fourth Modification was recorded on October 13, 2009 with the Cook County, Illinois Recorder of Deeds as Document No. 0928629068.

O. On January 30, 2012, Guarantors and Lender entered into a Fifth Loan Modification, Cross-Collateralization and Cross-Default Agreement ("**Fourth Modification**"), pursuant to which Lender (i) extended the maturity dates of the 445-447 Loan and the 420 Loan from August 5, 2011 until August 5, 2013; and (ii) amended the payments to be made on the Loan. Borrower executed and delivered to Lender a Third Revised Promissory Note in the amount of Four Hundred Thirty Nine Thousand Nine Hundred Ninety-Seven (\$439,997.00) Dollars ("**Fourth Revised 445-447 Note**") and a Fourth Revised Promissory Note in the amount of Three Million Two Hundred Ten Thousand (\$3,210,000.00) Dollars ("**Fourth Revised 420 Note**"), copies of which were attached to the Fifth Modification as Exhibits B and C, respectively. Guarantors executed and delivered to Lender a Fourth Revised Guaranty of Fifth Modification, Fourth Revised Note, Mortgage and Other

# UNOFFICIAL COPY

Undertakings ("**Fourth Revised Guaranty**"). The Fifth Modification was recorded on June 1, 2012 with the Cook County, Illinois Recorder of Deeds as Document No. 1215316094.

P. Scott has died and Anthony has declared bankruptcy and they and their estates are no longer available to guaranty the Loans.

Q. Parcel No. 2 has been sold and the sale proceeds were applied to the 420 Loan, but were insufficient to pay the 420 Loan in full. Notwithstanding, on January 6, 2011, Lender released the 420 Security Documents in exchange for Borrower causing the conveyance.

R. As of August 5, 2013, the balance of the 445-447 Loan was \$414,738.10. Borrower has now requested Lender to (i) extend the maturity date of the 445-447 Loan from August 5, 2013 until August 5, 2014, and (ii) restructure the repayment terms of the 445-447 Loan to payments of principal and interest with new amortization. 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. The Fourth Revised 445-447 Note is hereby modified and amended in its entirety by the Fifth Revised Promissory Note in the amount of Four Hundred Fourteen Thousand Seven Hundred Thirty-Eight (\$414,738.00) Dollars executed concurrently herewith, a copy of which is attached as **Exhibit B ("Fifth Revised 445-447 Note")**. The Fifth Revised 445-447 Note evidences the outstanding principal balance of the 445-447 Loan.

2. The 445-447 Security Documents and the 445-447 Assignment are hereby modified and amended to secure the 445-447 Note, the Revised 445-447 Note, the Second Revised 445-447 Note, the Third Revised 445-447 Note, the Fourth Revised 445-447 Note and the Fifth Revised 445-447 Note and all references to the 445-447 Note, Revised 445-447 Note, Second Revised 445-447 Note, Third Revised 445-447 Note, Fourth Revised 445-447 Note in the 445-447 Security Documents and the 445-447 Assignment are modified and amended to refer to the Fifth Revised 445-447 Note. All interest charged on and all payments made on the 445-447 Note, Revised 445-447 Note, Second Revised 445-447 Note, Third Revised 445-447 Note and Fourth Revised 445-447 Note previously are unchanged.

# UNOFFICIAL COPY

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

- (a) Fifth Revised 445-447 Note in the amount of \$414,738.10;
- (b) Fifth Revised Guaranty of Sixth Modification, Fifth Revised 445-447 Note, Mortgage and Other Undertakings executed by Guarantors ("Fifth Revised Guaranty");
- (c) Resolution of Waller L.L.C.;
- (d) Resolution of GenOne Group, Inc.;
- (e) Resolution of Borrower;
- (f) a Certification of No Change to Organizational Documents executed by Borrower's managing member;
- (g) a Corporation File Detail Report printout from the Illinois Secretary of State's website showing the good standing status of Borrower;
- (h) a Corporation File Detail Report printout from the Illinois Secretary of State's website showing the good standing status of Waller L.L.C.;
- (i) a Corporation File Detail Report printout from the Illinois Secretary of State's website showing the good standing status of GenOne Group, Inc.;
- (j) if issued, the TIF Note and an Allonge endorsing the TIF Note to Lender;
- (k) a date down endorsement to Lender's loan title insurance policy;
- (l) updated financial statements of each of Guarantors;
- (m) an appraisal of Parcel No. 1; and



# UNOFFICIAL COPY

(n) payment of Lender's fee and costs set forth in Section 7 hereof and all accrued interest and other outstanding charges on the Loans.

4. This Sixth Modification shall constitute an amendment of the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Notes ("**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 445-447 Mortgage as revised by this Sixth Modification, or the covenants, conditions and agreements therein contained or contained in the Notes.

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 affirm the representations and warranties contained in the Loan Documents.

7. Borrower hereby agrees to pay Lender's fee in the amount of \$250.00 and all of Lender's expenses arising out of and in connection with this Sixth Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees.

8. As an inducement to Lender to enter in this Sixth Modification, the Borrower and Guarantors each acknowledge and agree that:

(a). the Lender has fully performed all of its obligations under the Loan Documents recited herein and otherwise between the parties hereto;

(b). each of the Borrower and Guarantors waives and affirmatively agrees not to allege, assert or otherwise pursue any claim, defense, affirmative defense, counterclaim, cause of action, setoff or other right which any of them may have, or claim to have, as of the date hereof, against Lender, whether known or unknown, including, but not limited to, any contest of;

# UNOFFICIAL COPY

- (1). the existence and materiality of the defaults stated herein;
  - (2). the enforceability, applicability or validity of any provision of any of the Loan Documents, except as modified by this Sixth Modification, or the enforcement or validity of the terms and provisions of this Sixth Modification;
  - (3). the right of Lender to demand immediate payment and performance of the obligations of the Borrower and Guarantors pursuant to any of the Loan Documents or this Sixth Modification;
  - (4). the existence, validity, enforceability or perfection of security interests granted to Lender in any of the collateral securing any of the obligations under the Loan Documents or this Sixth Modification, whether real or personal property, tangible or intangible, or any right or other interest, now or hereafter arising;
  - (5). the conduct of the Lender in administering the financial arrangements between Lender and the Borrower and Guarantors under any of the Loan Documents or this Sixth Modification; and
  - (6). any legal fees and expenses incurred by Lender and charged to the Borrower and Guarantors pursuant to any of the Loan Documents.
- (c). David Doig is the manager of Borrower and Guarantors are the sole members of Borrower.

9. Guarantors hereby expressly acknowledge and confirm that by executing this Sixth Modification and the Fourth Revised Guaranty, Lender has not waived, altered or modified Lender's rights under any of the Loan Documents to amend, extend, renew or modify or otherwise deal with the obligations of the parties hereto or any of the security given to Lender in connection therewith without the consent of Guarantors and without such action releasing, modifying, or affecting the obligations of Guarantors or affecting the security heretofore granted to Lender. Guarantors acknowledge that Anthony and Scott and their heirs, assigns and estates are not executing guaranties of the Loans concurrently herewith and Guarantors are jointly and severally liable for

# UNOFFICIAL COPY

the Loans.

10. 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 445-447 NOTE, THE REVISED 445-447 NOTE, THE SECOND REVISED 445-447 NOTE, THE SECOND REVISED 440 NOTE, THE THIRD REVISED 445-447 NOTE, THE THIRD REVISED 440 NOTE, THE FOURTH REVISED 445-447 NOTE, THIS SIXTH MODIFICATION, THE FOURTH MODIFICATION, THE THIRD MODIFICATION, THE SECOND 445-447 MODIFICATION, THE 445-447 MODIFICATION, THE 445-447 MORTGAGE, THE SECURITY DOCUMENTS, OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER, BORROWER AND/OR GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER OR GUARANTORS, OR ANY OF THEM.

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

# UNOFFICIAL COPY

**BORROWER AND GUARANTORS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER AND GUARANTORS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS; PROVIDED, HOWEVER, UNLESS LENDER IS REQUIRED BY LAW TO INSTITUTE PROCEEDINGS IN ANY OTHER JURISDICTION, LENDER SHALL FIRST INSTITUTE PROCEEDINGS IN A STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS.**

12. Borrower and Guarantors warrant to Lender that neither Borrower nor Guarantors nor any affiliate is identified in any list of known or suspected terrorists published by any 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 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

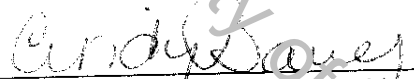
# UNOFFICIAL COPY

Person to perform such Person's obligations under or with respect to any Loan Documents.

IN WITNESS WHEREOF, the parties hereto have executed this Sixth Modification on \_\_\_\_, 2013, to be effective its of August 5, 2013.

**LENDER:**

Northbrook Bank & Trust Company, an Illinois banking corporation, its successors and assigns, successor pursuant to a Purchase and Assumption Agreement by and between the FDIC, as Receiver of the Assets and Liabilities of First Chicago Bank & Trust, pursuant to 12 USC 1821 (D)(2)(A), as Seller and Lender as Buyer, dated July 8, 2011


By:   
Cindy Bauer, Senior Vice President

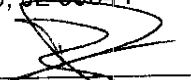
**BORROWER:**

Lake and Waller, LLC, an Illinois limited liability company

By:   
David Doig, Manager

**GUARANTORS:**

  
David Doig  
5904 W. Race  
Chicago, IL 60644

  
Thomas Fiddler  
13 Averill Court  
North Barrington, IL 60010

Property Clerk's Office  
Cook County Clerk's Office

# UNOFFICIAL COPY

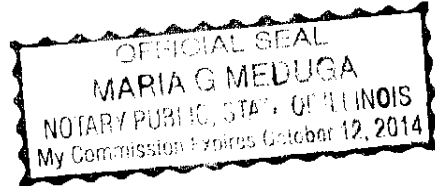
STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **David Doig** 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, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 20 day of September, 2013.

Commission expires: October 12, 2014 Maria G. Meduga  
 Notary Public

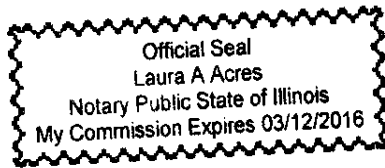
STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )



I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Thomas Fiddler** 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, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of November, 2013.

Commission expires: 3-12-2016 Laura A. Acres  
 Notary Public



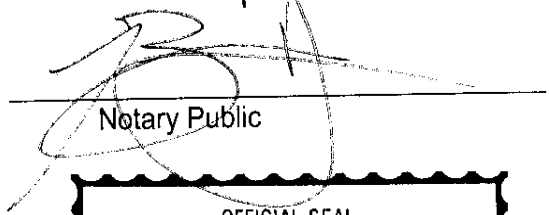
# UNOFFICIAL COPY

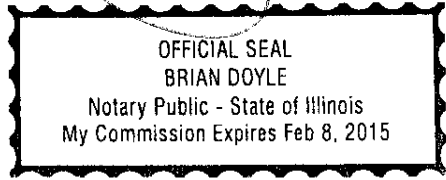
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that **Cindy Bauer** personally known to me to be a Senior Vice-President of said corporation, appeared before me this day in person and severally acknowledged that as such Senior Vice-President, she signed and delivered the said instrument, pursuant to authority given by the Board of Directors and by-laws of said corporation, as her free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 25 day of September, 2013.

Commission expires: 2/8/15

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

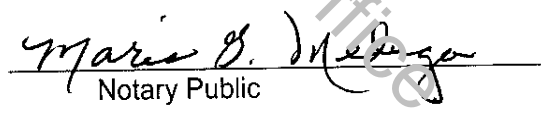


STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **David Doig** personally known to me to be the Managing Member of **Lake and Waller, LLC**, an Illinois limited liability company, appeared before me this day in person and acknowledged that as such Manager, he signed and delivered the said instrument on behalf of said limited liability company, pursuant to authority given under the Illinois Limited Liability Company Act and the provisions of the operating agreement of said limited liability company, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 20 day of September, 2013.

Commission expires: October 12, 2014

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



# UNOFFICIAL COPY

**EXHIBIT A**

**LEGAL DESCRIPTION:**

LOTS 6, 7, 8, 9 AND 10 IN WILLIAM H. ODIORNE'S SUBDIVISION OF BLOCK 8 OF AUSTIN'S SUBDIVISION OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 19 NORTH, RANGE 13, COMPRISING THE WEST PART OF AUSTINVILLE, BEING AUSTIN AND MERRICK'S SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 8 AND THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N.: 16-08-227-0001-0000 and 16-08-227-002-0000

COMMONLY KNOWN AS: 445-447 N. Waller Avenue, Chicago, Illinois

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT B

### PROMISSORY NOTE ("Fifth Revised 445-447 Note")

\$414,738.10

As of August 5, 2013

**FOR VALUE RECEIVED** the undersigned, Lake and Waller, LLC, an Illinois limited liability company ("**Borrower**"), promises to pay to the order of Northbrook Bank & Trust Company, an Illinois state chartered bank, its successors and assigns (said Bank and each successive owner and holder of this Note being hereinafter called "**Holder**"), successor pursuant to a Purchase and Assumption Agreement by and between the FDIC, as Receiver of the Assets and Liabilities of First Chicago Bank & Trust pursuant to 12 U.S.C. 1821 (D)(2)(A), as Seller and Lender as Buyer, dated July 8, 2011, the principal sum of Four Hundred Fourteen Thousand Seven Hundred Thirty-Eight and 10/100 Dollars (\$414,738.10), or so much thereof as may from time to time be outstanding hereunder, together with interest on the balance of principal from time to time remaining unpaid, in the amounts, at the rates and on the dates hereafter set forth.

Payments on account of this Note shall be made as follows:

- (a) On September 5, 2013 and on the fifth (5<sup>th</sup>) day of each succeeding month thereafter until all amounts due hereunder are paid, there shall be paid the amount of \$3,136.53, which shall be applied first to interest at the rate of three and one-quarter (3.25%) percent per annum, based on a year having 360 days, and the balance, if any, to principal.
- (b) On August 5, 2014 ("**Maturity Date**"), the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

Interest shall be calculated on the basis of a year having 360 days and paid based on the actual days outstanding. Borrower acknowledges that the calculation method results in a higher effective interest rate than the numeric rate stated in subparagraph (a) above and Borrower agrees to this calculation method.

This Note may be prepaid, in whole or in part, without premium or penalty, in whole or in part, and all accrued interest hereon shall be payable and shall be paid on the date of prepayment.

# UNOFFICIAL COPY

Payment upon this Note shall be made in lawful money of the United States at such place as the Holder of this Note may from time to time in writing appoint and in the absence of such appointment, shall be made at the offices of Northbrook Bank & Trust Company, 1145 North Arlington Heights Road, Itasca, Illinois 60143.

Without limiting the provisions of the succeeding paragraphs, in the event any payment of interest is not paid within ten (10) days after the date the same is due, the undersigned promises to pay a late charge ("**Late Charge**") of five (5.0%) percent of the amount so overdue to defray the expense incident to handling any such delinquent payment or payments.

This Note is executed pursuant to a Sixth Loan Modification Agreement ("**Sixth Modification**") executed concurrently herewith. This Note replaces that certain Promissory Note in the amount of Four Hundred Forty Thousand (\$440,000.00) Dollars ("**Original Note**") made by Borrower on November 1, 2007 which is secured by a Mortgage, which was recorded on November 5, 2007 with the Cook County Recorder of Deeds as Document No. 0730934069, an Assignment of Rents recorded as Document No. 0703914070 and other documents, all being executed and delivered concurrently therewith, and that certain Revised Promissory Note in the amount of Four Hundred Forty Thousand (\$440,000.00) Dollars ("**Revised Note**") made by Borrower on November 28, 2008 to take effect as of November 1, 2008, pursuant to a Loan Modification Agreement recorded on December 19, 2008 as Document No. 0835445098 ("**Modification**"), and further modified by a Second Loan Modification Agreement executed on March 9, 2009 to take effect as of February 5, 2009 and recorded on March 26, 2009 as Document No. 0908545184 ("**Second Modification**") and that certain Second Revised Promissory Note in the amount of Four Hundred Forty Thousand Dollars (\$440,000.00) ("**Second Revised Note**") made by Borrower on May 5, 2009 pursuant to a Third Loan Modification, Cross-Collateralization and Cross-Default Agreement executed on June 19, 2009 to take effect May 5, 2009 and recorded on July 16, 2009 as Document No. 0919729059 ("**Third Modification**"), that certain Third Revised Promissory Note in the amount of Four Hundred Forty Thousand Dollars (\$440,000.00) ("**Third Revised Note**") made by Borrower as of August 5, 2009 pursuant to a Fourth Loan Modification, Cross-Collateralization and Cross-Default Agreement executed on September 23, 2009 to take effect August 5, 2009 and recorded on October 13, 2009 as Document No. 0928629068 ("**Fourth Modification**") and that certain Fourth Revised Promissory Note in the amount of Four Hundred Thirty Nine Thousand Nine Hundred Ninety Seven Dollars (\$439,997.00) ("**Fourth Revised Note**") made by Borrower as of

# UNOFFICIAL COPY

August 5, 2011 pursuant to a Fifth Loan Modification, Cross-Collateralization and Cross-Default Agreement dated January 30, 2012 to take effect August 5, 2011 and recorded on June 1, 2012 as Document No. 1215316094 ("**Fifth Modification**"). All interest rates applicable to and charged on the Original Note, the Revised Note, the Second Revised Note, the Third Revised Note and Fourth Revised Note and all payments made on the Original Note, the Revised Note, the Second Revised Note, the Third Revised Note and Fourth Revised Note are unchanged. Pursuant to the Sixth Modification, Fifth Modification, the Fourth Modification, the Third Modification, the Second Modification, the Modification, the Mortgage and other security documents ("**Security Documents**") are modified to secure this Note.

At the election of the Holder hereof, without notice, the principal sum remaining unpaid hereon, together with accrued interest, shall be and become at once due and payable in the case of default for five (5) days in the payment of principal or interest when due in accordance with the terms hereof or upon the occurrence of any "**Event of Default**" under the Security Documents.

Under the provisions of the Security Documents the unpaid balance hereunder may, at the option of the Holder, be accelerated and become due and payable forthwith upon the happening of certain events as set forth herein. The Security Documents are, by this reference, incorporated herein in their entirety and notice is given of such possibility of acceleration.

The principal hereof, including each installment of principal, shall bear interest after the occurrence of an event of default, not cured within the applicable cure period, at the annual rate (herein called the "**Default Rate**") determined by adding three (3.0%) percentage points to the interest rate then required to be paid, as above provided, on the principal balance.

No failure on the part of Bank or any holder hereof to exercise any right or remedy hereunder, whether before or after the occurrence of an event of default, shall constitute a waiver thereof, and no waiver of any past default shall constitute a waiver of any future default or of any other default. No failure to accelerate, nor acceptance of a past-due installment, nor indulgence granted shall be construed to be a waiver of the right to insist upon prompt payment and to impose the late payment penalty and the default rate, retroactively or prospectively, or shall be deemed a waiver of any right of acceleration or any other right which Bank may have, whether by law or agreement or otherwise. None of the foregoing shall operate to release, change or effect the liability of Borrower, or any endorser or guarantor of this Note, and Borrower and each endorser

# UNOFFICIAL COPY

or 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.

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

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceeding, the undersigned promises to pay all costs incurred by Bank in connection therewith including, but not limited to, court costs, litigation expenses and attorneys' fees.

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

Funds representing the proceeds of the indebtedness evidenced herein which are disbursed by Holder by mail, wire transfer or other delivery to Borrower, escrowees or otherwise for the benefit of Borrower shall, for all purposes, be deemed outstanding hereunder and received by Borrower as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such mailing, wire transfer or other delivery until repaid to Holder, notwithstanding the fact that such funds may not at any time have been remitted by escrowees to Borrower.

**BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES IRREVOCABLY THE RIGHT IT MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE ORIGINAL NOTE, THE REVISED NOTE, THE SECOND REVISED NOTE, THE THIRD REVISED NOTE, THE FOURTH REVISED NOTE, THE MODIFICATION, THE SECOND MODIFICATION, THE THIRD MODIFICATION, FOURTH MODIFICATION, FIFTH MODIFICATION, SIXTH MODIFICATION, THE MORTGAGE, OR ANY OF THE OTHER OBLIGATIONS, OR THE COLLATERAL SECURED BY THE SECURITY DOCUMENTS, OR ANY AGREEMENT, EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH HOLDER AND BORROWERS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL**

# UNOFFICIAL COPY

INDUCEMENT FOR HOLDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER.

BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON, AND BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO BORROWER AT ITS ADDRESS AS SPECIFIED IN THE RECORDS OF HOLDER. BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

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

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

Borrower covenants to Holder that if it becomes aware that it or any affiliate is identified on

# UNOFFICIAL COPY

any Blocked Persons List, Borrower shall immediately notify Holder in writing of such information. Borrower further agrees that in the event it or any affiliate are at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Holder to exercise any and all remedies provided in any Security Document or otherwise permitted by law. In addition, Holder may immediately contact the Office of Foreign Assets Control and any other government agency the Holder deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Holder will forbear enforcement of its rights and remedies during such time as: (1) the person ("**Person**") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Holder determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of; or any lien in favor of the Holder and encumbering, any part of the collateral (as defined in the Security Documents) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Security Documents.

Time is of the essence of this Note and each provision hereof and of the Security Documents.

Lake and Waller, LLC, an Illinois limited liability company

By: \_\_\_\_\_

David Doig, Manager