



00459787

**LOAN MODIFICATION  
AGREEMENT,  
AMENDMENT TO NOTE,  
MORTGAGE, AND OTHER  
LOAN DOCUMENTS  
AND ACKNOWLEDGMENT  
OF GUARANTOR**

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C.T.I.C.

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This LOAN MODIFICATION AGREEMENT, AMENDMENT TO NOTE, MORTGAGE, AND OTHER LOAN DOCUMENTS AND ACKNOWLEDGMENT OF GUARANTOR this ("Modification Agreement") is entered into as of this 27<sup>th</sup> day of April, 2000, by and among FIRST BANK AND TRUST COMPANY OF ILLINOIS, an Illinois banking corporation ("Lender"), SAN MARCOS ACQUISITION, L.L.C., an Delaware limited liability company ("Borrower"), MITCHELL P. KAHN, an individual, ("Kahn"), ANDREW S. HOCHBERG, an individual, ("Hochberg") and HILCO TRADING CO, INC., an Illinois corporation, ("Hilco") (Kahn, Hochberg and Hilco shall hereinafter be collectively referred to as the "Guarantors").

**WITNESSETH:**

**WHEREAS**, Lender and Borrower have entered into a certain Loan Agreement dated March 30, 1999 (the "Loan Agreement"), whereby Lender agreed to lend Borrower the principal amount of up to \$1,675,000.00 (the "Loan") secured in part by certain real property commonly known as 2247 North Milwaukee Avenue, Chicago, Illinois as more fully described on Exhibit A attached hereto and made a part hereof (the "Property");

**WHEREAS**, to evidence the Loan, Borrower executed and delivered to Lender that certain Secured Demand Note dated March 30, 1999 in the principal amount of \$1,675,000.00 and which shall be hereinafter referred to as the "Note";

**WHEREAS**, payment of the Note is secured by, among other things, the following instruments of even date with the Note:

*This instrument prepared by (and return after recording to):*

Robert W. Glantz, Esq.  
SHAW GUSSIS DOMANSKIS FISHMAN & GLANTZ  
1144 West Fulton Street, Suite 200  
Chicago, Illinois 60607

BOX 333

- (1) Loan Agreement;
- (2) Construction Mortgage, Security Agreement Financing Statement by the Borrower recorded April 5, 1999 in the real estate records of Cook County as Document Number 99-323101 (the "Mortgage");
- (3) Assignment of Leases and Rents (the "Assignment of Rents") by the Borrower recorded in the real estate records of Cook County as Document Number 99-323102 (the "Assignment of Rents");
- (4) Environmental Indemnity Agreement (the "Environmental Indemnity"); and
- (5) Limited Guaranty and Subordination Agreement (the "Guaranty") from the Guarantors.

[The Loan Agreement, Note, Amended Note (as hereinafter defined), this Modification Agreement, Mortgage, Assignment of Rents, Environmental Indemnity, Guaranty and any and all other agreements and documents related to the Loan shall hereinafter be collectively referred to as the "Loan Documents"]

WHEREAS, Borrower has requested that Lender extend the Maturity Date until the earlier of demand made by Lender or December 31, 2000;

WHEREAS, Borrower has requested that Lender extend up to an additional \$300,000.00 to Borrower increasing the principal amount of the Loan from \$1,675,000.00 to up to \$1,975,000.00 for the purpose of funding additional improvements on the Property;

WHEREAS, Lender is willing to extend the Maturity Date and fund the additional \$300,000.00 upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in considerations of the covenant and agreements hereinafter set forth, and also in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid to Lender by Borrower, the parties hereto agree as follows:

1. **Amendment and Restatement of Note.** Simultaneously with the execution and delivery of this Modification Agreement, the Note has been amended and restated in its entirety pursuant to Borrower's execution and delivery of an Amended and Restated Secured Demand Note effective as of March 30, 2000 payable to Lender in the principal amount of \$1,975,000.00, a copy of which is attached hereto as Exhibit B, (the aforesaid Amended and Restated Secured Demand Note, as amended, extended, renewed or consolidated from time to time in substitution or replacement therefor, being hereinafter referred to as the "Amended Note").

The Amended Note amends and restates the terms of the Note and replaces and supersedes the Note as evidence of the indebtedness heretofore evidenced by the Note. Neither the execution, delivery and acceptance of the Amended Note or this Modification Agreement nor any of the terms and provisions set forth in the Amended Note or this Modification Agreement shall be deemed to have been paid, extinguished, released, satisfied or discharged.

2. Amendment of Loan Agreement. The following amendments shall be made to the Loan Agreement:

- (a) The maximum amount available under the Amended Note shall be amended to be the principal amount of up to \$1,975,000.00;
- (b) Notwithstanding anything contained in the Loan Agreement or any of the other Loan Documents to the contrary, the Interest Rate shall never be less than Ten percent (10%); and
- (c) The definition of "Maturity Date" shall be amended to be the earlier of (i) demand made upon Borrower by Lender, or (ii) December 31, 2000.

3. Amendment of Mortgage, Assignment of Rents and other Loan Documents. The principal amount of the debt evidenced and secured by the Mortgage, Assignment of Rents and other Loan Documents shall be \$1,675,000.00. The Maturity Date of the Loan shall be the earlier of (i) demand made upon Borrower by Lender, or (ii) December 31, 2000.

4. Modification/Extension Fee. Borrower acknowledges that as partial consideration for Lender entering into this Modification Agreement, the Amended Note shall accrue a fee payable to Lender in the amount of ~~\$20,000.00~~ as of the date of this Modification Agreement.  
10,000.00

5. Covenants of Borrower. Borrower hereby represents to and covenants with Lender that:

- (a) At the date hereof, the Loan Documents as amended hereby are in full force and effect, and Borrower is not in default in the payment of any sums, charges or obligations under the Loan Documents or in the payment or performance of any covenants, agreements or conditions of Borrower contained in the Loan Documents;
- (b) At the date hereof, Borrower has no right or claim of set-off, discount, deduction, defense or counterclaim which could be asserted in any action brought to enforce the Loan Documents;

- (c) Lender is not in default in the performance or observance of any of its covenants, agreements and obligations under the Loan Documents;
- (d) There are no actions, suits or proceedings (including, without limitation, proceedings before any court, arbitrator or governmental authority or agency) pending or threatened against Borrower (or to the knowledge of Borrower any basis for any such action, suit or proceeding), which if adversely determined, might individually, or in the aggregate, materially adversely:
  - i) impair the ability of Borrower to pay or perform its obligations under the Loan Documents; or
  - ii) affect the assets pledged as collateral under the Loan Documents;
- (e) There is no presently known fact which affects, or may affect in the future (so far as the undersigned can foresee), materially and adversely the condition (financial or other) of Borrower to pay or perform its obligations under the Loan Documents; and
- (f) Neither the Loan Documents nor any other document or written materials delivered or made, and any other communication made, to Lender or any employee or agent of Lender contains any untrue statement of a material fact or fails to state a material fact necessary in order to make any statement contained therein not misleading in light of the circumstances in which such statement was made.

6. **Acknowledgment and Consent of the Guarantors.** The Guarantors hereby acknowledge and consent to the modification of the Loan Documents as herein provided and, in consideration of the modification of the terms of the Loan Documents, hereby agree that:

- (a) The modification of the Loan Documents as herein provided does not and shall not in any way limit, prejudice or impair the obligations of the Guarantors, as guarantors under the Amended Note, or the rights, powers, privileges, benefits and remedies of Lender under the Loan Documents;
- (b) The Guaranty constitutes a valid and binding obligation of each of the Guarantors to pay unconditionally and absolutely that portion of the indebtedness evidenced by the Amended Note as is specifically set forth in the Guaranty, which obligations are enforceable in accordance with the terms and conditions of the Loan Documents, as modified by the terms of this Modification Agreement; and

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- (c) The Guarantors hereby waive all errors and imperfections, if any, in the Amended Note or any of the other Loan Documents, and all defenses, if any, on account thereof in case of any subsequent action to enforce any of the Loan Documents.

7. **Title Policy Endorsements and Legal Opinion.** Concurrently with the execution of this Modification Agreement, Borrower, at its sole cost and expense, shall obtain and deliver to Lender:

- (a) An endorsement to loan policy of title insurance (the "Policy"), extending the effective date of the Policy through the recording of this Modification Agreement, insuring this Modification Agreement in Schedule A of the Policy, and insuring the priority of the Mortgage as modified by this Modification Agreement;
- (b) An endorsement to the Policy assuring Lender that the lien of the Mortgage shall not be impaired by reason of the changes in the Loan Amount. Endorsements pursuant to subparagraphs (a) and (b) of this Paragraph 7 shall be delivered to Lender simultaneously with and as a condition to the recordation of this Modification Agreement and shall be in form and content satisfactory to Lender; and
- (c) an opinion executed by Borrower's and the Guarantors' attorney (acceptable to Lender) describing this Modification Agreement and all other Loan Documents executed in connection herewith and favorably opining:
  - i) the authority of Borrower and the Guarantors to consummate this Modification Agreement;
  - ii) the due and proper execution of this Modification Agreement and all other loan modification documents;
  - iii) the validity, binding effect and enforceability of this Modification Agreement, all other Loan Documents: specifying that they are not subject to defenses of or claims based on usury or lack of capacity or any other claims or defenses;
  - iv) the availability of exemptions for usury laws;
  - v) that to the best of counsel's knowledge, after reasonable investigation and inquiry to the Borrower, the nonexistence of any undisclosed litigation involving the Borrower or the Property, which could affect any of Lender's rights, powers or security under the Loan Documents or this Modification Agreement;

- vi) that to the best of counsel's knowledge, after reasonable investigation and inquiry to the Borrower and review of necessary documentation, the nonexistence of any conflict or breach of any mortgage, agreement, covenant, restriction, law, rule, regulation, judgement or decree affecting or binding Borrower, with this Modification Agreement or any other Loan Document on account of the execution, delivery or performance of this Modification Agreement or any of the other Loan Documents; and
- vii) any other matters reasonably required by Lender.

8. No Waiver. Notwithstanding anything contained in this Modification Agreement to the contrary or any prior act of Lender or any procedure established by Lender with regard to the Loan, Borrower acknowledges and agrees that Lender has not heretofore waived any of its rights or remedies under the Loan Documents nor has Lender waived any of the duties or obligations of Borrower thereunder. No waiver by Lender of any covenant or condition under the Loan Documents shall be deemed a waiver of any subsequent breach of the same or any other covenant or condition. No covenant, term or condition of the Loan Documents shall be deemed waived by Lender unless waived in writing.

9. Miscellaneous.

- (a) Time is of the essence with respect to the payment, performance and observance of each and every covenant, agreement, condition, representation, warranty and obligation of Borrower under the Loan Documents.
- (b) This Modification Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument.
- (c) None of the covenants, terms or conditions of this Modification Agreement shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto.
- (d) This Modification Agreement contains the entire agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind.
- (e) The recitals to this Modification Agreement are hereby incorporated into and made a part of this Modification Agreement, and shall constitute covenants and representations of Borrower and shall be binding upon and enforceable against Borrower.

- (f) Any defined terms contained in this Modification agreement not otherwise defined in this Modification Agreement shall have the meaning as set forth in the Loan Agreement.

CONTINUED ON NEXT PAGE

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IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

FIRST BANK AND TRUST COMPANY OF ILLINOIS, an Illinois Banking corporation

By: [Signature]  
Name: Michael C. Winick  
Its: President

HILCO TRADING COMPANY, Inc., an Illinois corporation

By: [Signature]  
Name: Jeffrey B. Heckman  
Its: President

ANDREW S. HOCHBERG

Andrew Hochberg

MITCHELL P. KAHN

[Signature]

SAN MARCOS ACQUISITION, L.L.C., a Delaware limited liability company

By: Hilco Trading Company, Inc., a managing member

By: [Signature]  
Name: Jeffrey B. Heckman  
Its: President

By: Next Investment Partnership, an Illinois general partnership, a managing member

By: Andrew Hochberg  
Name: Andrew Hochberg  
Its: Partner



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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 Michael C. Winter, personally known to me to be the President/CEO of FIRST BANK AND TRUST COMPANY OF ILLINOIS, an Illinois banking corporation, and 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 severally acknowledged that as such President/CEO; he signed and delivered the said instrument as President/CEO of said bank, as his free and voluntary act and as the free and voluntary act and deed of said bank, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 13 day of June, 2000.



[Signature]  
Notary Public

My Commission expires:

7/18/00

Cook County Clerk's Office

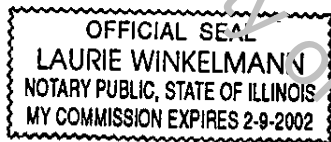
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00459787

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 **Andrew S. Hochberg**, 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 severally acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 6<sup>th</sup> day of June, 2000.



*L. Winkelmann*

Notary Public

My Commission expires:

2/9/2002

Property of Cook County Clerk's Office

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00459787

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 **Mitchell P. Kahn**, 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 severally acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 6<sup>th</sup> day of June, 2000.



L Winkelmann  
Notary Public

My Commission expires:

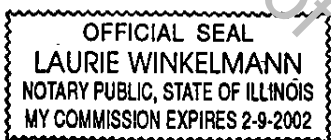
2/9/2002

Property of Cook County Clerk's Office

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 JEFFREY B. HECKTMAN, the PRESIDENT of Hilco Trading Company, Inc. (the "Corporation"), a managing member of San Marcos Acquisition, L.L.C., a Delaware limited liability company (the "Company"), 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 instruments as his free and voluntary act, and on behalf of the free and voluntary act of the Corporation as a manager of the Company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 6<sup>th</sup> day of June, 2000.



[Signature]  
Notary Public

My Commission expires:

2/9/2002

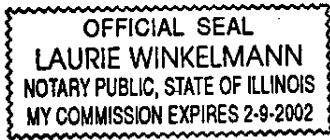
Property of Cook County Clerk's Office

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

ANDREW HOCHBERG

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ~~Mitchell P. Kahn~~, a partner of Next Investment Partnership (the "Partnership") a managing member of San Marcos Acquisition, L.L.C., a Delaware limited liability company (the "Company"), 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 instruments as his free and voluntary act, and on behalf of the free and voluntary act of the Partnership as a manager of the Company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 6<sup>th</sup> day of June, 2000.



[Signature]  
Notary Public

My Commission expires:

2/9/2002

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EXHIBIT A

MORTGAGED PREMISES

PARCEL 1:

LOTS 5, 6, 7, 8, 9, 10, AND 11 IN BLOCK 4 IN C.E. WOOLEY'S SUBDIVISION OF 7 AND ONE-HALF ACRES EAST OF AND ADJOINING THE WEST 10 ACRES OF THE NORTHEAST 1/4 NORTH OF MILWAUKEE AVENUE OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF VACATED ALLEY LYING BETWEEN THE SOUTH LINE OF LOT 9 AND THE SOUTHEASTERLY LINE OF LOT 11 EXTENDED NORTHEASTERLY IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 2 IN SECOND FEDERAL SAVINGS AND LOAN SUBDIVISION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENTS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 3, AS SET FORTH AND DEFINED IN THE EASEMENT AGREEMENT AND COVENANTS, CONDITION AND RESTRICTIONS MADE BY SECOND FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHICAGO AND DELRAY FARMS, INC., DTD SEPTEMBER 20, 1996. RECORDED SEPTEMBER 20, 1996 AS DOCUMENT NO. 96722596, FOR INGRESS AND EGRESS, OVER THE FOLLOWING DESCRIBED LAND;

LOT 1 IN SECOND FEDERAL SAVINGS AND LOAN SUBDIVISION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

PIN # 13 - 36 - 215 - 048 - 0000 +  
13 - 36 - 215 - 050 - 0000

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## EXHIBIT B

### AMENDED AND RESTATED SECURED DEMAND NOTE

\$1,975,000.00

Date: March 30, 2000

FOR VALUE RECEIVED, the undersigned, SAN MARCOS ACQUISITION, L.L.C., a Delaware limited liability company ("Borrower") hereby promises to pay upon demand made to the order of FIRST BANK AND TRUST COMPANY OF ILLINOIS, an Illinois banking corporation ("Lender"), the principal sum of ONE MILLION NINE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$1,975,000.00) or so much of such sum that has been disbursed together with interest thereon as hereinafter provided.

**Interest.** Prior to maturity or default, the principal balance remaining from time to time unpaid hereunder shall bear interest at a rate (the "Interest Rate") equal to the Prime Rate (as defined hereinafter) **plus** one percent (1%) calculated daily on the basis of a 360-day year for each day any part of the principal balance shall remain outstanding. As used herein, the "Prime Rate" means the rate of interest announced by Bank of America, Illinois, or its successor, ("BofA") as its prime rate (or equivalent rate of interest). If BofA ceases to announce a "Prime Rate," then the Prime Rate herein shall be determined by reference to the "prime rate" announced by any other national bank selected by Lender. "Prime Rate" shall not imply that such rate is a preferred rate or one which is offered by Lender to its most credit-worthy customers. Notwithstanding anything contained in this Note to the contrary, the Interest Rate shall never be less than Ten percent (10%).

**Debt Service.** Monthly installments of interest only shall be due and payable on this Note on the **tenth (10th) day** of each month immediately following the date hereof and on the **tenth (10th) day** of each month thereafter.

A final payment of all principal, interest and other amounts unpaid hereunder and under the Security Instruments (as hereinafter defined) shall be due and payable in full on the earlier of (i) demand made upon Borrower by Lender, or (ii) December 31, 2000 (such earlier date being referred to herein as the "Maturity Date"), if not sooner paid.

**Application of Payments.** Prior to default or maturity, all payments due hereon shall be first applied to accrued and unpaid interest and the balance shall be applied to principal; after default (and after any applicable cure period) or maturity, such payments may be applied in such order as Lender may determine in its sole discretion. Borrower reserves and shall have the right to prepay the principal amount due hereon in whole or in part at any time without premium or penalty. Any partial prepayments of principal shall be applied to the principal balance remaining

unpaid hereunder and such partial prepayments of principal shall not reduce or extend the due dates for the next payable monthly installments of interest.

**Place of Payments.** All payments hereunder shall be made in lawful money of the United States of America at 300 East Northwest Highway, Palatine, Illinois 60067 or at such other place as the Lender or the legal holder hereof may designate from time to time in writing. No credit against any indebtedness evidenced hereby shall be given to the undersigned until Lender has received collected funds.

**Security.** Payment of this Note is also evidenced and secured by the following instrument(s) of even date herewith (which instruments together with any other instruments now or hereafter executed and/or delivered in connection with the Note or this loan shall be collectively referred to as the "Security Instruments") in favor of Lender:

- (1) Loan Agreement;
- (2) Construction Mortgage, Security Agreement and Financing Statement;
- (3) Assignment of Leases and Rents;
- (4) Limited Guaranty and Subordination Agreement from Mitchell Kahn, Andrew Hochberg and Hilco Trading Company, Inc. (collectively, the "Guarantors"); and
- (5) Environmental Indemnification Agreement by Borrower and Guarantors.

**Default.** Borrower shall be in default hereunder upon the occurrence of any one of the following events: (a) any payment of the principal of or interest on this Note or any other indebtedness of the undersigned or any guarantor of the undersigned to Lender is not paid when due; (b) any of the undersigned or any guarantor of this Note shall die, be dissolved or liquidated or become bankrupt or insolvent, however evidenced and Borrower shall fail to provide Lender within thirty (30) days of such event, with an acceptable alternate guaranty from a guarantor acceptable to Lender or such other additional collateral as is acceptable to Lender in Lender's reasonable discretion; (d) any of the undersigned or any guarantor of this Note shall be in default, and after any applicable cure period, under any of the Security Instruments. Whenever the undersigned shall be in default as aforesaid, Lender, at its option, may declare the entire unpaid principal balance hereof together with all accrued and unpaid interest thereon immediately due and payable. The undersigned agree to pay on demand all costs of collection, including reasonable attorneys' fees, paid or incurred by Lender or the legal holder of this Note in enforcing any rights of Lender or the legal holder hereof or in connection with assembling, collecting, selling or otherwise dealing with or realizing upon any guaranty or collateral for the indebtedness evidenced hereby. From and after the occurrence of any one or more of the aforementioned defaults,



whether by acceleration or otherwise, interest hereunder shall accrue at the default rate, which rate shall be twenty-four percent (24%) per annum (the "Default Rate").

**Late Payments.** If any installment of principal or interest due hereunder, or any monthly deposit for taxes or insurance required under any of the Security Instruments, shall become overdue, Borrower shall pay to Lender a "late charge" of twenty-four cents (\$0.24) for each dollar so overdue in order to defray part of the increased cost of collection occasioned by any such late payments. Such late charge is liquidated damages and not a penalty.

**Notice** Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to Lender: First Bank and Trust Company of Illinois  
300 East Northwest Highway  
Palatine, Illinois 60067  
Attention: Michael C. Winter

with a copy to: Shaw, Gussis, Domanskis, Fishman & Glantz  
1144 West Fdulton Street, Suite 200  
Chicago, Illinois 60607  
Attention: Robert W. Glantz, Esq.

If to Borrower: San Marcos Acquisition, L.L.C.  
C/o Next Realty, L.L.C.  
One Northfield Plaza, Suite 210  
Northfield, Illinois 60093  
Attention: Mitchell P. Kahn

with a copy to: David G. Spak, Esq.  
One Northfield Plaza  
Suite 300  
Northfield, Illinois 60093

Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Lender herein is required to be given.

**General.** Borrower agrees that: (a) the obligation evidenced by this Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. § 1601, et seq.; and (b) said obligation constitutes a business loan within the purview of Illinois law.

If this Note is signed by more than one person, firm, company or corporation, every obligation of each signatory shall be joint and several. Borrower hereby waives presentment, demand, notice of dishonor and protest and all other notices or demands with respect to this Note and the indebtedness evidenced hereby, except as specifically provided herein. Each of the undersigned do hereby waive notice of and consents to any and all extensions of this Note or any part thereof, the release of all or any part of the security for the payment hereof or the release of any party liable for any of the obligations of or related to this Note. Any failure by the Lender or the legal holder hereof to exercise any right or remedy available hereunder shall not be constituted as a waiver of the right to exercise the same or any other right or remedy at any other time. No waiver of any right or remedy of Lender hereunder shall be effective unless in a writing signed by an authorized officer of Lender and then only to the extent specifically provided therein. Time is of the essence of this Note. Each of the undersigned shall have no right of subrogation and waive any right to enforce and remedy which Lender now has or may hereafter have against any of the undersigned and any benefit of, and any right to participate in, any security now or hereafter held by Lender.

The headings of sections and paragraphs in this Note are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof. As used in this Note, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. This Note is executed, delivered and accepted in Chicago, Illinois, and shall be governed by the laws of the State of Illinois, without reference to the conflict of law principle of such State. The undersigned agrees that any suit, action, proceeding or other litigation under or on account of this Note may be brought or instituted in or removed to any State or federal court situated in Cook County, Illinois, having subject matter jurisdiction and the undersigned hereby consents thereto and submits to the jurisdiction of any such court.

**Legality.** The parties hereto intend and believe that each provision in this Note comports with all applicable law. However, if any provision in this Note is found by a court of law to be in violation of any applicable law, and if such court should declare such provision of this Note to be unlawful, void or unenforceable as written, then it is the intent of all parties to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Note shall be construed as if such unlawful, void or unenforceable provision were not contained therein, and that the rights, obligations and interests of the undersigned and the holder hereof under the remainder of this Note shall continue in full force and effect; provided, however, that if any provision of this Note which is found to be in violation of any applicable law concerns the imposition of interest hereunder, the rights, obligations and interests of the undersigned and Lender with respect to the imposition of interest hereunder shall be governed and controlled by the following paragraph.

It being the intention of Lender and the undersigned to comply with the laws of the State of Illinois with regard to the rate of interest charged hereunder, it is agreed that, notwithstanding any provision to the contrary in this Note, or in any of the Security Instruments, no such provision shall require the payment or permit the collection of any amount in excess of the maximum amount

of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by this Note ("**Excess Interest**"). If any Excess Interest is provided for, or is adjudicated to be provided for, in this Note or in any of the Security Instruments, then in such event:

- (a) the provisions of this paragraph shall govern and control;
- (b) neither the undersigned nor any guarantor of this Note shall be obligated to pay any Excess Interest;
- (c) any Excess Interest that Lender may have received hereunder, at the option of Lender, shall be (i) applied as a credit against either the then outstanding principal balance due under this Note, or the accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both; (ii) refunded to the payor thereof; or (iii) any combination of the foregoing;
- (d) the applicable interest rate or rates shall be automatically subject to reduction to the maximum lawful rate allowed to be contracted for in writing under the applicable usury laws of the aforesaid State, and this Note, and the Security Instruments shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in such interest rate or rates; and
- (e) neither the undersigned nor any guarantor of this Note shall have any action or remedy against Lender for any damages whatsoever or any defense to enforcement of the Note, or any of the Security Instruments arising out of the payment or collection of any Excess Interest.

CONTINUED ON NEXT PAGE

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**BORROWER HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF OR RELATING TO THIS NOTE.**

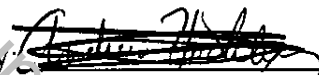
IN WITNESS WHEREOF, the undersigned has caused this secured note to be executed and delivered as of the date and year first above written.

**SAN MARCOS ACQUISITION, L.L.C., a Delaware limited liability company**

By: Hilco Trading Company, Inc., a managing member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: Next Investment Partnership, an Illinois general partnership, a managing member

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Property of Cook County Clerk's Office