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COVER SHEET  
FOR RECORDING PURPOSES



Document being recorded: Installment Agreement for Warranty  
Deed

Property Address: 368 Park Avenue, Glencoe, IL 60022

PINS: 05-07-205-006 and 05-07-205-033

Legal Description:

ALL OF LOT 4 AND THE SOUTHERLY 30 FEET (AS  
MEASURED ON THE SOUTHWESTERLY LINE) OF THE  
WESTERLY 21 FEET (AS MEASURED ON THE  
SOUTHEASTERLY LINE) OF LOT 3 IN FLETCHER'S  
SUBDIVISION OF LOT 1 AND THE NORTH 50 FEET OF LOT 2  
IN BLOCK 32 OF GLENCOE IN SECTION 7, TOWNSHIP 42  
NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL  
MERIDIAN, IN COOK COUNTY, ILLINOIS.

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2001-04-05 16:34:55

Cook County Recorder 73.50

Above Space for Recorder's Use Only

THIS DOCUMENT WAS PREPARED BY  
AND AFTER RECORDING RETURN TO:

Mitchell J. Melamed, Esq.  
Aronberg Goldgehn Davis & Garmisa  
One IBM Plaza, Suite 3000  
Chicago, IL 60611

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## INSTALLMENT AGREEMENT FOR WARRANTY DEED

This Installment Agreement for Warranty Deed, made this 19 day of March, 2001, by and between PATRICK O'NEIL (the "Seller" and/or "Beneficiary") and PASCAL IBGUI or his nominee (the "Purchaser").

### RECITALS

Seller is the owner of certain commercial real estate in Cook County, Illinois legally described as follows:

1. **Land.** That certain tract of land, which is owned in fee simple by Seller, which is described as:

All of Lot 4 and the Southerly 30 Feet (as measured on the Southwesterly Line) of the Westerly 21 Feet (as measured on the Southeasterly Line) of Lot 3 in Fletcher's Subdivision of Lot 1 and the North 50 Feet of Lot 2 in Block 32 of Glencoe in Section 7, Township 42 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

(hereinafter referred to as the "Land") comprising approximately 3,130 square feet, together with all rights, easements and interests appurtenant thereto, including, but not limited to, any streets or other public ways adjacent to the Land and owned by Seller.

2. **Improvements.** All buildings, improvements, including structures now or hereafter located on the Land, including, but not limited to, an approximately 4,243 square foot two-story brick building, and such other improvements and structures as are located on the Land (the "Improvements").
3. **Personal Property.** The personalty as specifically set forth on Schedule

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"1".

The Land, Improvements, Personal Property and Intangible Property are sometimes hereinafter referred to as the "Project".

Purchaser desires to purchase the Property and personalty as set forth from Seller, and Seller desires to sell the Property and personalty as set forth to Purchaser, at the price, and on the terms and conditions hereinafter set forth.

## AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration in hand paid, the receipt of sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. Transfer of Property. Seller hereby agrees to sell, and Purchaser hereby agrees to purchase, the Project in accordance with the provisions of this Agreement.

2. Purchase Price. The purchase price of the Project shall be \$950,000.00 ("Purchase Price"). The Purchase Price shall be:

\$825,000.00 for the land.

\$125,000.00 for the personalty including those items as set forth in Schedule 1.

3. Payment. The Purchase Price shall be paid as follows:

- a. \$10,000.00 by check at the signing of this Agreement. This payment is non-refundable, except if Seller is unable to comply with title and survey requirements;
- b. \$140,000.00 at the Initial Closing (as hereafter defined);
- c. The full balance of the Purchase Price remaining unpaid, plus or minus prorations shall be paid in full at the Final Closing (September 28, 2001).

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If a payment under b. or c. above is not timely made, the Seller may declare this Agreement null and void as set forth below. The money paid to Seller shall be defaulted as Seller's sole remedy. All payments under this Agreement shall be made payable, and delivered to:

Patrick O'Neil  
c/o David Najarian  
825 Green Bay Road  
Suite 210  
Wilmette, Illinois 60091

or to such other person(s) or at such other place as Seller may designate in writing to Purchaser.

3. Real Estate Taxes. Seller shall timely pay all general real estate taxes assessed against the Property until final payment on September 28, 2001. Seller shall present reasonable evidence of payment of the foregoing to Purchaser. The parties shall prorate real estate taxes at time of final payment at 105% of the most recently ascertainable tax bill.

4. Possession. Seller shall be entitled to sole and exclusive possession of the Project rent free until the Final Closing date.

5. Insurance. Seller shall carry, maintain and pay all premiums on general liability insurance in an amount of not less than \$3,000,000, and fire, flood and extended coverage insurance, insuring the improvements on the Property to its full replacement value. Such policy or policies shall show Purchaser and its Lender, if any, as additional insureds and provide that such policies shall not be canceled or altered except upon thirty (30) days prior written notice to Purchaser. Seller shall provide Purchaser with certificates evidencing fully paid insurance coverage for a period of a minimum of six (6) months at the Initial Closing.

6. Title. At the Initial Closing, Seller shall:

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- a. Establish a land trust for said property. The Seller shall be named as sole beneficiary. The Seller and Purchaser shall have the joint power of direction.
- b. The Seller shall issue a Warranty Deed to be recorded at the initial closing along with revenue declaration documents, required affidavits and all other documents necessary to have the property placed in the Land Trust.  
A copy of this Installment Contract shall be lodged with the Land Trust at the Initial Closing.
- c. Sell shall provide title policy at the initial closing for an Installment Purchaser in the amount set forth in this Agreement subject only to general exceptions and those items as set forth below.

Seller and Purchaser shall, at the Initial Closing open a joint order escrow and Seller shall deposit other documents necessary to transfer the property interest to Purchaser free and clear along with directions to the escrow:

- a. Assignment of Beneficial Interest
- b. Revenue Declarations
- c. Bill of Sale
- d. ALTA Statement
- e. FIRPTA
- f. Affidavit of Title
- g. Direction for the Land Trust to execute any and all other documents as reasonably requested.

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- h. Directions from Purchaser to Seller if Purchaser fails to comply with Installment Agreement.

Title to the Property may be subject to the following ("Permitted Exceptions"):

- a. real estate taxes which are not yet due and payable;
- b. Special taxes or assessments, if any, for improvements not yet completed;
- c. rights or acts of Purchaser or any person claiming by, through or under Purchaser;
- d. public and utility easements;
- e. private easements of record;
- f. building, building line and use or occupancy restrictions, covenants, conditions and restrictions of record; and
- h. roads, highways, streets and alleys, if any.

7. §1445 Holdback. Unless Purchaser is furnished a qualifying statement from the U.S. Treasury Department ("USTD") that this transaction is exempt from the §1445A withholding requirement or Purchaser is furnished with the appropriate USTD affidavit, Purchaser shall withhold as set forth in §1445A of the Internal Revenue Code.

8. Purchaser's Investigation of the Project. From the date which is the later of mutual execution of this Agreement hereof or the receipt by Purchaser of the following pertaining to the Project: (1) ALTA survey; (2) copies of all leases and amendments thereto; (3) Seller's title policy; and (4) environmental report(s) or an environmental audit, and continuing for a period of five (5) business days thereafter (hereinafter referred to as the "Property

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Investigation Period”), Seller shall permit and, to the extent reasonably required by Purchaser, assist Purchaser in the making of: (i) a complete physical investigation of the Project; and (ii) testing of the Project, provided Purchaser shall hold Seller harmless and indemnify Seller in connection with any damage caused thereby or injury resulting therefrom and shall repair any such damage. After such investigation, Purchaser shall determine whether the physical, financial and general condition of the Project is, in Purchaser’s sole estimation, satisfactory for operation and ownership in the manner and on the basis contemplated by Purchaser. If Purchaser, in his sole discretion, determines that the condition of the Project is not satisfactory, then Purchaser or its attorney shall so notify the Seller in writing on or before the termination of the Property Investigation Period (the “Investigation Approval Date”) and upon such notice, this Agreement shall become null and void, all monies (except for the initial \$10,000.00) shall be returned to Purchaser and neither party shall have any further rights against the other hereunder. If Purchaser fails to notify Seller that the Project is not acceptable, Purchaser shall be deemed to have waived its right to terminate this agreement under this Section 8. Purchaser’s investigation and inspection of the Project shall in no manner abrogate, diminish or affect the warranties and representations made by Seller in this Agreement. If inspection cannot reasonably be completed within five (5) business days of acceptance, Purchaser will request an additional period which shall not unreasonably be withheld.

9. Initial Closing Date, Title Insurance and Survey Matters. The Initial Closing shall occur on March 30, 2001 at Ticor Title, office of Seller, or other location acceptable to the parties. If Purchaser fails to close on March 30, 2001, for any reason other than Seller’s ability to produce initial documents, Purchaser shall lose the \$10,000 original earnest money as Seller’s

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sole remedy.

a. Conveyance of Title. Seller agrees to deliver at Initial Closing, a Warranty Deed conveying to the Land Trust, title to the Land and Improvements free and clear of all claims, liens and encumbrances, and the Insurance policy as set forth in Paragraph 5, and further agrees to not encumber the property in any way.

b. Title Commitment. Within ten (10) days after the date hereof, Seller, at its sole expense, shall deliver to Purchaser: (i) a commitment letter or binder ("Title Commitment") showing title to the Land and Improvements in Seller, dated after the date hereof, and issued by Ticor Title (the "Title Company"), wherein the Title Company shall commit to issue an Installment Purchaser's Policy, American Land Title Association ("ALTA") policy, in the amount of the Purchase Price, with an extended coverage endorsement over all the general title exceptions, subject only to the Permitted Exceptions and mortgages, trust deeds, assignments of rent and related loan documents which Seller shall cause to be released in conjunction with the Initial Closing, together with the following documents and additional endorsements, the form of which shall be either "ALTA" or otherwise approved by the Purchaser: zoning 3.1 (to be paid by Purchaser); access (confirming the access to the private and public roads, including that access depicted on the survey); and (ii) copies of all documents recorded with respect to the Project which appear on the Title Commitment. As a condition of the Final Closing, the Title Commitment shall be later-dated to cover

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the Final Closing Date. Seller shall pay for all title insurance; Land Trust costs, (including, but not limited to, all later-date fees, general coverage premiums, endorsement fees, one-half (½) of the escrow fees and charges) including a "New York" style closing only if requested by Purchaser or Purchaser's Lender.

c. Survey. Within ten (10) days after the date hereof, Seller, at its sole expense, shall deliver to Purchaser and Title Company, an ALTA as-built survey of the Project prepared by a registered land surveyor, licensed in the State of Illinois, and, prior to the Initial Closing Date certified to the Title Company and to Purchaser and Purchaser's lender, if any. The Survey shall depict and include, without limiting the foregoing: the total acreage and square footage of the Land and Improvements, the present location of all structures and Improvements on the Land, including all encroachments of any part thereof onto adjoining land and/or easements and all encroachments of any part of adjoining improvements onto the Land; building lines and all easements whether recorded or visible (and, if recorded, by specific reference to recorded document numbers); access to public roads or ways; and identification of each Permitted Exception capable of being geographically located, by spotting same on the Survey, and by reference to recording information. The Survey must be sufficient to cause the Title Company to delete the general printed survey exceptions and to issue the title policy covered by the Title Commitment free from any survey objections or exceptions whatsoever except for those set forth in the Permitted Exceptions.

Notwithstanding the foregoing, in the event Purchaser's lender, if any, requires

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certification as to flood area, or that Purchaser carry flood insurance for any portion of the Property lying within a flood hazard area, Seller agrees to modify the survey to indicate which portions, if any, lie within a flood plain, flood way, or other flood hazard area.

d. Defects and Cure. The Title Commitment and Survey described in this Section 9 are collectively referred to as "Title Evidence". If the Title Evidence discloses, with respect to the Survey, conditions which might materially adversely affect Purchaser, or with respect to the Title Commitment, deficiencies in endorsements or matters other than the Permitted Exceptions (hereinafter collectively referred to as the "Defects"), the Defects shall, as a condition of the Initial and Final Closing, be cured by the Seller or endorsed over by the Title Company within ten (10) days from the delivery of said Title Evidence and the Closing shall thereafter take place either on the Closing Date hereinafter specified, or ten (10) days after the last Defect is cured or endorsed over, whichever is later. If Seller fails to cure or cause the Title Company to endorse over all Defect(s), at Purchaser's election, this Agreement shall terminate and the Earnest Money shall be returned to Purchaser, except that alternatively, Purchaser may, at its sole election, proceed to close this transaction by reducing the Purchaser Price (by deduction from the Cash Payment), and paying over to the Title Company the amount necessary to cause the Title Company to endorse over such Defect(s), or may elect to cause Seller to specifically perform this Agreement.

10. Prorations and Adjustments. At the Final Closing:

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a. Real Estate taxes, levies and charges and assessments ("Taxes"), applicable to the Project shall be prorated based on 105% of the most recently ascertainable assessment multiplied by the most recently ascertainable tax bill.

b. All charges including utilities relative to the Project shall be paid by Seller to the Final Closing Date. Final meter readings shall be made on the Final Closing Date. Any deposits made by Seller shall be the Seller's property.

c. Prepaid service contracts covering periods before and after the Closing Date, if any, which Purchaser elects to assume shall be prorated.

11. Representations and Warranties of Seller. The Seller hereby represents and warrants to Purchaser, to the best of his knowledge, as to the following matters, each of which is so represented and warranted to be true and correct as of the date hereof, to the best of his knowledge, and also to be true and correct as of the Final Closing Date:

a. Title Matters. Seller has good and marketable fee simple title to the Land and Improvements, both subject only to the Permitted Exceptions.

b. No Violations of Zoning and Other Laws. The existing use and condition of the Project does not violate any zoning, building, health, fire or similar statute, ordinance, regulation or code, nor has Seller received any notice, written or otherwise, from any governmental agency alleging such violations. The Project is in full compliance with current zoning requirements, and is not a non-conforming or special use.

c. Pending and Threatened Litigation. There are no pending and, to the best knowledge and belief of Seller, threatened matters of litigation,

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administrative action of examination, claim or demand whatsoever relating to the Project.

- d. Eminent Domain, etc. There is no pending and, to the best knowledge and belief of Seller, contemplated eminent domain, condemnation or other governmental taking of the Project or any part thereof.
- e. Access to Project; Utilities. No fact or condition exists which would result in the termination or impairment of access to the Project from adjoining public or private streets or ways or which could result in discontinuation of presently available or otherwise necessary sewer, water, electric, gas, telephone or other utilities or services.
- f. Assessments. There are no public improvements in the nature of off-site improvements, or otherwise, which have been ordered to be made and/or which have not heretofore been assessed and there are no special or general assessments not of record pending against or affecting the Property.
- g. Accuracy of Information. The Records and all other documents being delivered by Seller are true, accurate and complete. Such Records and other documents present the information purportedly set forth therein in a manner which is not misleading and the Records, nor other documents fail to present any information or data which would be necessary in order to prevent the information contained therein from being misleading. There are no Leases in effect.
- h. Authority of Signatories; No Breach of Other Agreements, etc.
- The execution, delivery of and performance under this Agreement is pursuant to

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authority validly and duly conferred upon Seller and the signatories hereto. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Agreement do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangement, understanding, accord, document or instrument by which Seller is bound; and will not and does not, to the best knowledge and belief of Seller, constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, to which Seller or the Project are subject or bound.

i. Executory Agreements. Seller is not a party to, and the Project is not subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Project, other than this Agreement, which are not otherwise terminable at date of Final Closing.

j. All Required Action Taken. All action required pursuant to this Agreement necessary to effectuate the transaction contemplated herein has been or will be taken promptly and in good faith by Seller and its representatives and agents.

k. Condition of Personal Property and Improvements. All of the Personal Property and all Improvements, including, but not limited to, all machinery, structural components, mechanical systems, electrical systems, air conditioners, furnaces and heaters, partitions, fixtures and equipment used in the general operation of the Project and being the responsibility of the Seller to

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maintain and repair, shall be in the same working order at Final Closing as it was at the Initial Closing, subject to ordinary wear and tear between the date hereof and the Closing Date. The Improvements will be free from animal and insect infestation and damage therefrom. The premises shall be at the final closing in broom clean condition, any damage or holes caused by removal of equipment shall be repaired, plastered and painted to match current decor including replacement of flooring to match remainder of room as applicable. All electrical, gas and water supplied to equipment which is removed shall be properly capped, closed, plastered and/or painted.

l. Rights in the Project. There are no purchase contracts, options or any other agreements of any kind, written or oral, formal or informal, recorded or unrecorded, whereby any person or entity other than Seller has acquired or have any basis to assert any right, title or interest in, or right to possession, use, enjoyment or proceeds of all or any portion of the Project, which are not otherwise terminable at date of Final Closing.

m. Environmental Conditions and Flood Plain. Seller has received no notice and has no knowledge that the Project lies in a flood plain, was built, in whole or in part, on a land-fill, contains asbestos, lead paint or that the soil is chemically contaminated. Seller has received no notice and has no knowledge that the Project is not in compliance with all applicable hazardous material statutes, environmental pollution laws or similar legislation and/or regulations. Seller has received no notice of any judgments, writs, injunctions, decrees or orders outstanding with respect to the Project, and Seller has received no notices

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from any governmental authority having jurisdiction over the Project (and Seller has no reasonable grounds for anticipating such judgments, writs, injunctions, decrees, orders or notices) relating to or concerning any violation of any environmental, pollution control or health laws or regulations regulating the use or maintenance of property; and, without limiting the generality of the foregoing, Seller has received no notice and has no knowledge that the Project and its existing and prior uses do not comply with or have at any time not complied with, or Seller is in violation of or has violated, in connection with the ownership, use, maintenance or operation of the Project, any applicable federal, state, county or local statutes, laws, regulations, rules, ordinances, codes licenses and permits of all governmental authorities relating to environmental matters, including, by way of illustration and not by way of limitation, (i) the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (and any amendments or extensions thereof), and the Toxic Substances Control Act, and (ii) all other applicable environmental requirements. Seller has received no notice and has no knowledge that there exist any storage tanks located on or beneath the surface of the Project.

n. Easements. The Project is adjacent to and has full and free access to and from public roads and ways, such that no private easements or agreements are necessary to afford adequate access to or from the Project.

In the event of the breach of any warranty or representation made herein or elsewhere in

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this Agreement by Seller, or in the event any liability is suffered by or asserted against Purchaser or the Project as a result of any existing condition on the Project relative to any and all applicable hazardous material statutes, environmental pollution laws or similar legislation and/or regulations, Seller hereby indemnifies and holds Purchaser harmless against all losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees), and charges which Purchaser may incur or to which Purchaser may become subject as a direct or indirect consequence of such breach or liability including all incidental and consequential damages.

When used in Section 6, the expression "to the best knowledge and belief of Seller" or similar language is deemed to mean that Seller is not aware either actually or aware of any thing, matter or the like, that is contrary, negates, diminishes or vitiates that which such term precedes.

12. Covenants of Seller. Seller hereby covenants and agrees with Purchaser as to the following matters:

a. New Leases. During the period between the date hereof and the Closing Date, Seller will neither execute any new Lease, nor renew or modify any existing Lease without Purchaser's prior written consent, which consent may be withheld in Purchaser's sole discretion.

b. Operations Pending Closing. From the date of this Agreement until the Closing Date, Seller shall operate the Project in accordance with prudent management and operating standards and practices and Seller shall make or cause to be made all reasonable and ordinary and extraordinary repairs, replacements and maintenance with respect to the Project which may be necessary to maintain the Project in as good a condition as exists on the date hereof, ordinary wear and

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tear excepted, and will not, prior to Closing, delay or defer repair, replacement or maintenance items required in the ordinary course. If there is a delay or deferment of such items, Seller shall be liable for the entire cost of repair, replacement or maintenance of such items and the damages resulting therefrom. At the Closing, the Project shall be delivered to Purchaser in substantially the same condition it was on the date hereof, ordinary wear and tear excepted. Seller shall pay on a prompt and timely basis all bills, and discharge all obligations, arising from ownership, operation, management, repair, maintenance and leasing of the Project as payments for same become due. Between the Investigation Approval Date and the Final Closing Date, Purchaser shall have the continuing right from time to time to periodically inspect the Project to verify Seller's compliance with the foregoing undertakings, but no such inspections shall relieve Seller of its obligations hereunder or constitute any waiver by Purchaser hereunder. Between the date hereof and the Final Closing Date (i) Seller shall keep the Project fully insured in accordance with prudent and customary practice as set forth and (ii) Seller shall not alienate, encumber or transfer the Project or any part thereof in favor of or to any party whomsoever.

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13. Final Closing and Related Matters.

a. The Closing Date. The final closing (the "Final Closing") shall take place on September 28, 2001 at the offices of Chicago Ticor, or such earlier time as the parties may agree. If Purchaser elects to close earlier, the current Seller shall become a Tenant, subject to a written lease, the cost of which shall be

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a fixed number as agreed upon by the parties.

b. Escrow Closing. This transaction shall be closed through an escrow (the "Escrow") with the Title Company acting as escrowee and if additionally required by Purchaser's Lender, in accordance with the provisions of a customary form of "New York Style" deed and money escrow agreement (the "Escrow Agreement") reasonably acceptable to the Title Company and the parties. The attorneys for Seller and Purchaser are authorized to execute the Escrow Agreement, any amendments thereto and all directions or communications thereunder. The Escrow Agreement shall be auxiliary to this Agreement and, in the event of any conflict or inconsistency between this Agreement and the Escrow Agreement, the terms and provisions of this Agreement shall always be controlling as between the parties. Upon the opening of said Escrow, anything herein to the contrary notwithstanding, the Earnest Money, payment of the Purchase Price, and delivery of the deed and other documents shall be made through the escrow.

c. Seller's Duties at Closing. At the Final Closing and on the Closing Date, Seller shall do or perform the following (unless otherwise notified, all documents to be delivered by Seller shall be deposited in the Escrow, when same is established):

1. Deliver and execute any additional documents as reasonably requested by Purchaser or Purchaser's Lender to the Escrow necessary to transfer good title to Purchaser. Seller shall

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pay all transfer and intangible taxes and recording fees and similar fees imposed by State and County on the transfer of title, and shall furnish any declaration signed by the Seller or Seller's agent or meet any other requirements as established by any state, county, municipal or other governmental law with regard to the transfer contemplated hereunder (including but not limited to any inspection or code compliance regulation) and the transfer or transaction tax.

2. Execute and deliver to Purchaser a warranty bill of sale transferring title to the Personal Property to Purchaser, free and clear of all liens, claims and encumbrances.

3. Cause to be furnished and delivered to Purchaser, at Seller's sole cost and expense, the title policy in accordance with Section 9(b) and updated searches (dated not earlier than five [5] days prior to Closing) as set forth in Section 8(d) above.

4. Execute and deliver to Purchaser such other documents or instruments as may be reasonably required under this Agreement or standard practice or custom, as may be necessary to effectuate the Closing.

5. Deliver to Purchaser the keys and/or combination to all locks in the Project.

6. Deliver to Purchaser an assignment duly executed

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assigning to Purchaser all guaranties and warranties with respect to the Project.

7. Deliver an ALTA Statement executed by Seller.

8. Deliver an Affidavit of Title executed by Seller.

d. Purchaser's Duties at Closing. At the Final Closing and on the Closing Date, Purchaser shall deliver all monies to be paid (which shall be deposited in the Escrow) to the Title Company, a cashier's checks or wired funds in the aggregate amount of the Cash Payment, less prior installments paid, prorations and adjustments as herein provided.

14. Destruction or Loss of Project. If, between the date hereof and the Final Closing Date, all or any portion of the Project is damaged by fire or natural elements, or other causes beyond Seller's control (the "Damage"), or all or any portion of the Project is taken or made subject to condemnation, eminent domain or other governmental acquisition proceedings (collectively a "Taking"), then the following procedures shall apply:

a. If the cost of required repair or replacement related to or arising out of the Damage or if the value of the Taking is Fifty Thousand and 00/100 Dollars (\$50,000.00) or less, Purchaser shall proceed to close and take the Project as diminished by such events, subject to a reduction in the Purchase Price applied against the Cash Payment otherwise due at Closing, which reduction shall be equal to the full repair and/or replacement cost of the Project, but which shall not exceed Fifty Thousand and 00/100 Dollars (\$50,000.00). All insurance proceeds on account of the Damage or awards on account of the Taking shall belong to

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Seller after payment to Purchaser of any payments to date under this Agreement.

b. If the cost of repair or replacement related to or arising out of the Damage or if the value of the Taking is greater than Fifty Thousand and 00/100 Dollars (\$50,000.00), then Purchaser, at its sole option, may elect either to: (i) terminate this Agreement by written notice to Seller given at or prior to the Closing, and receive an immediate refund of the Earnest Money without any further obligation to Seller; or (ii) accept a reduction in the Purchase Price in an amount equal to the said cost of repair or replacement and awards on account of the Taking, deducted from the Cash Payment and/or an assignment of the insurance proceeds or awards on account of the Taking, and proceed to close, reserving all of its rights under the Agreement. In the event Purchaser does not elect to accept a reduction in the Purchase Price as set forth in (ii) above, but elects to accept an assignment, all insurance proceeds on account of the Damage or awards on account of a Taking shall belong to Purchaser and, in addition, Purchaser shall receive a credit at Closing for the amount of the deductible pertaining to the Damage. Purchaser has until the later to occur of the Final Closing Date or thirty (30) days after the event of Damage or Taking to elect hereunder, with the Closing to then take place no more than five (5) business days thereafter.

The cost of repair or replacement related to, or arising out of, the Damage or the value of the Taking shall be determined by Seller and Purchaser, or, if they are unable to agree, by an independent engineer or architect selected by two other engineers or architects, each of

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which shall be selected by each party hereto.

15. Default and Conditions Precedent to Closing. In all events, the obligations of Purchaser to make the payments and to close this transaction are contingent upon: (i) title to the Project being shown to be good as required by this Agreement or being accepted by Purchaser; (ii) the conditions precedent to Closing provided for in this Agreement being satisfied [or, for any non-fulfilled condition(s), a waiver by Purchaser in writing]; (iii) the representations and warranties of Seller contained in Section 10 and elsewhere in this Agreement being true and accurate or waived by Purchaser in writing as of the Closing Date; and (iv) Seller having performed all of its covenants and otherwise having performed all of its obligations and fulfilled all of the conditions required of it in order to close. In the event subsequent to the Investigation Approval Date, but prior to the Closing Date, Purchaser becomes aware of a breach of any of Seller's representations and warranties, or of Seller failing to perform all of its covenants or otherwise failing to perform all of its obligations and fulfill all of the conditions required of Seller in order to close, Purchaser may, at its option: (a) elect to enforce the terms hereof by action for specific performance and receive as a credit against the Purchase Price an amount equal to the diminution in value or cost to remedy resulting from Seller's default; (b) attempt to cure such breach or failure by or of Seller, charging Seller for any costs incurred in doing so and following such attempt either: (1) terminate this Agreement and receive a prompt refund of the all monies paid to date or (2) proceed to close this transaction notwithstanding such breach or nonperformance without waiving its rights to exercise any right or remedy available to it at law or in equity; (c) terminate this Agreement and receive a prompt refund of the all monies paid to date. In all events, Purchaser's rights and remedies under this Agreement shall always be

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non-exclusive and cumulative and the exercise of one remedy shall not be exclusive of or constitute the waiver of any other. IN THE EVENT OF A DEFAULT BY PURCHASER, SELLER'S SOLE AND EXCLUSIVE RIGHT AND REMEDY SHALL BE TO DECLARE A FORFEITURE AND TO RETAIN THE EARNEST MONEY AS LIQUIDATED DAMAGES, IT BEING UNDERSTOOD THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF SUCH DEFAULT ARE DIFFICULT TO ASCERTAIN AND THAT THE EARNEST MONEY IS THE PARTIES' BEST CURRENT ESTIMATE OF SUCH DAMAGES.

16. Alterations, Improvements and Additions to the Property. Seller shall not make any alterations, additions or improvements to the Property, or any part thereof, without the prior written consent of Purchaser. Every contract, written or oral, for repairs and improvements on or to the Property, shall contain an express, full and complete waiver and release of any and all lien or claim or right of lien against the Property. All work on the Property shall be done in a good and workmanlike manner with materials of good quality, and shall be performed in accordance with local building codes and other laws or ordinances applicable to the work performed on the Property. Upon completion of the work to be performed under a contract, Seller shall furnish Purchaser with contractors' affidavits and full and final waivers of mechanics' liens. Seller will promptly procure the removal of any mechanics' liens. Seller will promptly procure the removal of any mechanics', laborers, or materialmen's liens and any other lien on account of labor, services or materials furnished to Seller in connection with work of any character performed on the Property for or at the direction of Seller. If there shall be any liens at time of Final Closing, Purchaser shall be allowed to deduct from the Purchase an amount to satisfy said liens and all costs associated with said liens.

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17. Indemnification. Seller hereby agree to indemnify and hold harmless Purchaser from and against any and all claims, demands, causes of action, liability, damages, judgments, liens, decrees, fines, penalties, expenses, costs and fees, including attorneys' fees and costs, of whatever nature, arising out of or in any way connected with, any act or omission of Seller under this Agreement or with respect to the Property and shall pay the same upon written demand of Purchaser.

18. Default. Seller may terminate this Agreement and all rights and interest of Purchaser by virtue hereof by serving on Purchaser a written notice of termination setting forth the Event(s) of Default and the date of termination. In that event, Seller shall retain all payments made hereunder in full satisfaction and liquidation of Seller's damages.

If Seller fails to make any payment or perform any act for which they are obligated hereunder, Purchaser may, but is not required to, make such payment or perform such act. All sums paid by the Purchaser, including all interest and penalties and necessary expenses, costs and attorneys' fees, shall bear interest from the time of such payment at the rate of 15% per annum and shall be payable within seven (7) days of written demand by the Purchaser to the Seller. In making such payments or performing such acts, the Purchaser is not required to determine the validity of any tax, assessment, charge or lien. The Purchaser's actions in making any such payment or performing any such act shall not be a waiver or release of the Purchaser's obligations with respect thereto.

19. Brokers. Sellers and Purchasers each warrant to the other that the only broker involved in submitting, showing or selling the Property to Purchaser is Ed Schwartz of Hallmark & Johnson who is acting solely on behalf of Seller.



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20. Waiver. Time is of the essence. The acceptance of any payment hereunder after its due date never shall be a waiver of the right to require other payments hereunder to be made in the manner and at the time provided for herein.

21. Notices. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered; (ii) if mailed, on the second (2nd) business day after deposit in the United States mail, certified or registered, postage prepaid, return receipt requested; or (ii) if delivered by reputable overnight express courier, freight prepaid, the business day of delivery to such courier; in every case addressed to the party to be notified as follows:

If to Purchaser:

Pascal Ibgui  
75 Green Bay Road  
Glencoe, IL 60022

with copies to:

Mitchell J. Melamed, Esq.  
Aronberg Goldgehn Davis & Garmisa  
One IBM Plaza, Suite 3000  
Chicago, Illinois 60611

If to Seller:

Patrick O'Neil  
c/o Patrick & James  
368 Park  
Glencoe, IL 60022

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with copies to:

David Najarian  
825 Green Bay Road  
Suite 210  
Wilmette, IL 60091

Either party hereto may change the names and addresses of the designee to whom notice shall be sent by giving written notice of such change to the other party hereto in the same manner as all other notices are required to be delivered hereunder.

22. Recording. This Agreement may be recorded or lodged with the Cook County Recorder of Deeds.

23. Binding Agreement. This Agreement and all provisions hereof shall extend to, be obligatory upon and inure to the benefit of the respective heirs, legatees, devisees, personal representatives and permitted assigns of the parties hereto.

24. Acceptance. This offer shall be deemed void without further notice if a copy thereof executed by Seller is not returned to Purchaser on presentation.

Accepted:

Date: 3-19-01

SELLER:

Patrick O'Neil  
Patrick O'Neil  
220823.6

PURCHASER:

Pascal Ibgui  
Pascal Ibgui

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## Schedule 1

The following personalty shall be transferred by Warranty Bill of Sale:

1. All HVAC
2. All built-ins
3. Two (2) Temple lamps above bar
4. Dome
5. Fireplace
6. Two (2) crystal chandeliers in second floor hall
7. All leaded glass built in entrance area and washrooms

Property of Cook County Clerk's Office

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