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THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

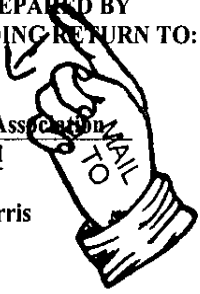
LaSalle Bank National Association  
8303 West Higgins Road  
Chicago, Illinois 60631  
Attn: Patricia A. Harris

**Property Address:**

5235-39 N. Winthrop  
5236 N. Kenmore  
Chicago, Illinois

**Property Index Numbers:**

14-08-211-004-0000  
14-08-211-021-0000



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2001-10-17 09:25:45  
Cook County Recorder 67.50



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## MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 5 day of October, 2001, by and among 5235-39 North Winthrop Limited Partnership, an Illinois limited partnership ("Borrower"), Robert L. Bernstein ("Guarantor") and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender", as successor in interest to LaSalle Bank FSB, hereafter referred to as "LBFSB").

### RECITALS:

A. Borrower is indebted to Lender under a loan ("Loan") to Borrower originated by LBFSB in the principal amount of Seven Hundred Ninety Eight Thousand Seven Hundred Fifty Dollars (\$798,750.00) as evidenced by Borrower's Installment Note dated November 17, 1997, in like amount payable to the order of LBFSB (the "First Note").

B. The First Note is secured by, among other things, the following documents, each dated November 14, 1997 and executed as in the First Note: (i) that certain Mortgage, Security Agreement and Financing Statement recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on November 21, 1997, as Document No. 97874351 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases recorded in the Recorder's Office on November 21, 1997, as Document No. 97874352 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement from Borrower and Guarantor (the "Indemnity Agreement"); (iv) that certain Guaranty Agreement from Guarantor (the "Guaranty"); and (v) certain other loan documents evidencing, securing and guarantying the Loan, (the First Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the Guaranty, and the said other documents, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents"). The Loan Documents together with the Loan were assigned and are now owned and held by Lender.

ATGF, INC.

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C. Borrower desires to obtain an additional advance under the Loan in the amount of \$325,000.00.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Increase of Loan; Additional Credit.** The Loan is hereby amended so as to increase its principal balance by the sum of Three Hundred Twenty Five Thousand Dollars (\$325,000.00) ("Facility B"), to be disbursed upon compliance with section 4 below, which shall be deemed to be, and administered as, an additional credit under the Loan, the present balance of the First Note being deemed to be a credit facility known as "Facility A". The term "Indebtedness" as used in the Mortgage is hereby deemed to mean and include Facility B.

2. **Note B.** Facility B shall be evidenced by a Promissory Note ("Note B") executed by Borrower concurrently with the execution of this Agreement, the terms of which are incorporated herein by reference, a copy of which is attached to this Agreement as Exhibit B, and which shall be on a parity with, and to be equally secured by and entitled to the benefits of the Loan Documents to the same extent as, the First Note.

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

(a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

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(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

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

4. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Attorneys Title Guaranty Fund, Inc. to issue an endorsement to Lender's title insurance policy No. 5386929 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, and reflecting the Loan increase, subject only to the exceptions set forth in the Title Policy as of its date of issuance and with all existing endorsements being expressly continued in effect, and any other encumbrances expressly agreed to by Lender.

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

6. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

7. **Debt Service Ratio.** Mortgagor shall maintain a Debt Service Ratio of at least 1.20:1 at all times on Facility A and 1.25:1 on Facilities A and B combined. Beginning December 31, 2001, if either Debt Service Ratio falls below its required level, Borrower shall pledge additional cash with Lender sufficient to achieve such level by the next annual review.

8. **Security Agreement.** The provisions of Paragraph 13 of the Mortgage are hereby deleted in their entirety and replaced by the following:

"This Mortgage shall constitute a Security Agreement within the meaning of the provisions of the Illinois Uniform Commercial Code in effect from time to time (the "Code"), with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or

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may not constitute a "fixture" (within the meaning of Section 102(41) of the Code) (which property is hereinafter referred to as "Personal Property" and which is herewith deemed to include, without limitation and notwithstanding any contrary provisions of such granting clauses, the following: deposit accounts, letter of credit rights, software, payment intangibles and health care insurance receivables), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

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

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

c. The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

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

e. No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable.

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

g. The terms and provisions contained in this Paragraph 13, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code in effect from time to time.

h. This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located.

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

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replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

- j. Mortgagor represents and warrants that:
  - i. Mortgagor is the record owner of the Premises;
  - ii. Mortgagor's chief executive office is located in the State of Illinois;
  - iii. Mortgagor's state of formation is the State of Illinois; and
  - iv. Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage and Mortgagor's organizational identification number is 5007632.
- k. Mortgagor agrees that:
  - i. Mortgagee is authorized to file a financing statement describing the Collateral;
  - ii. Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;
  - iii. Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper; and
  - v. Until the indebtedness is paid in full, Mortgagor will not change the state where it is located or change its partnership name without giving the Mortgagee at least 30 days' prior written notice in each instance.

l. To the extent permitted by the provisions of the Code, Mortgagor herewith specifically authorizes Mortgagee to file or record unsigned Financing Statements, or Financing Statements signed only by the Mortgagee as secured party, from time to time to perfect Mortgagee's security interest in the Collateral.

In addition, the maximum indebtedness secured by this Mortgage shall not exceed \$2,171,000.00, excluding 'protective advances'."

As to any conflict between the foregoing and any other Mortgage provisions, this Section 8 shall prevail.

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9. Miscellaneous.

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

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

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

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

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

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

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

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

(i) Each of the Loan Documents, the same being incorporated herein by reference, are hereby modified to the extent necessary to reflect or conform to the provisions of this Agreement.

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

**LENDER:**

LASALLE BANK NATIONAL  
ASSOCIATION

By: *Adam Paskiewicz*  
Name: Adam PASKIEWICZ  
Title: LOAN OFFICER

**BORROWER:**

5235-39 North Winthrop Limited  
Partnership

By: *Robert L. Bernstein*  
Name: Robert L. Bernstein  
Title: General Partner

**GUARANTOR:**

*Robert L. Bernstein*  
Robert L. Bernstein

Cook County Clerk's Office

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STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

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I Patricia A. Harris, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Adam J. Paskiewicz, Loan Officer of LaSalle Bank National Association, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4 day of October, 2001.



Patricia A. Harris  
Notary Public

My Commission Expires: 4/2/05

STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF Cook )

I Patricia A. Harris, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert L. Bernstein, General Partner of 5235-39 North Winthrop Limited Partnership, an Illinois limited partnership, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4 day of October, 2001.



Patricia A. Harris  
Notary Public

My Commission Expires: 4/2/05

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IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County, at Chicago, Illinois, this 1st day of January, 2011.

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CLERK OF COOK COUNTY

2011

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STATE OF ILLINOIS     )  
                                  ).ss  
COUNTY OF Cook     )

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I Patricia A. Harris, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert L. Bernstein, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4 day of October, 2001.



Patricia A. Harris  
Notary Public

My Commission Expires: 4/2/05

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## EXHIBIT A

### THE PROPERTY

#### PARCEL 1 (WINTHROP)

LOT 20 IN BLOCK 11 IN JOHN LEWIS COCHRAN'S SUBDIVISION, A SUBDIVISION OF THE WEST ½ OF THE EAST FRACTIONAL ¼ OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 5235-39 N. WINTHROP AVENUE, CHICAGO, ILLINOIS  
PERMANENT INDEX NUMBER: 14-08-211-004-0000

#### PARCEL 2 (KENMORE)

LOT 5 IN BLOCK 11 IN JOHN LEWIS COCHRAN'S SUBDIVISION, A SUBDIVISION OF THE WEST ½ OF THE EAST FRACTIONAL ¼ OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 5236 N. KENMORE AVENUE, CHICAGO, ILLINOIS  
PERMANENT INDEX NUMBER: 14-08-211-021-0000

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EXHIBIT B

PROMISSORY NOTE B

SEE ATTACHED

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## PROMISSORY NOTE B

\$325,000.00

\_\_\_\_\_, 20\_\_\_\_  
Chicago, Illinois

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1. **Agreement to Pay.** FOR VALUE RECEIVED, 5235-39 North Winthrop Limited Partnership, an Illinois limited partnership ("Borrower"), hereby promises to pay to the order of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender"), the principal sum of Three Hundred Twenty Five Thousand Dollars (\$325,000.00) (the "Loan"), at the place and in the manner hereinafter provided, together with interest thereon at the rate or rates described below, and any and all other amounts which may be due and payable hereunder from time to time.

2. **Interest Rate.**

2.1 **Interest Prior to Default.** Interest shall accrue on the outstanding principal balance of this Note from the date hereof through \_\_\_\_\_, 2006, ("Maturity Date") at an annual rate equal to seven and one-half percent (7.50%) ("Loan Rate").

2.2 **Interest After Default.** From and after the Maturity Date or upon the occurrence and during the continuance of an Event of Default, interest shall accrue on the balance of principal remaining unpaid during any such period at an annual rate ("Default Rate") equal to five percent (5%) plus the Loan Rate; provided, however, in no event shall the Default Rate exceed the maximum rate permitted by law. The interest accruing under this Section 2.2 shall be immediately due and payable by Borrower to the holder of this Note upon demand and shall be additional indebtedness evidenced by this Note.

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

3. **Payment Terms.**

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

(a) On the date the proceeds of the Loan are disbursed by Lender ("Closing Date"), interest on the principal balance of this Note accruing during the period commencing on the Closing Date and ending on the last day of the month in which the Closing Date occurs shall be due and payable.

(b) Commencing on \_\_\_\_\_, 2001, and on the first Business Day of each month thereafter through and including the month in which the Maturity Date occurs, payments of principal and accrued and unpaid interest on the

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outstanding principal balance hereof in the amount of \$2,401.72 each shall be due and payable.

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

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

**3.3 Method of Payments.** All payments of principal and interest hereunder shall be paid by automatic debit, wire transfer, check or in coin or currency which, at the time or times of payment, is the legal tender for public and private debts in the United States of America and shall be made at such place as Lender or the legal holder or holders of this Note may from time to time appoint in the payment invoice or otherwise in writing, and in the absence of such appointment, then at the offices of Lender at 135 South LaSalle Street, 12th Floor, Chicago, Illinois 60603. Payment made by check shall be deemed paid on the date Lender receives such check; provided, however, that if such check is subsequently returned to Lender unpaid due to insufficient funds or otherwise, the payment shall not be deemed to have been made and shall continue to bear interest until collected. Notwithstanding the foregoing, the final payment due under this Note must be made by wire transfer or other final funds. Interest, principal payments and any fees and expenses owed Lender from time to time will be deducted by Lender automatically on the due date from Borrower's account with Lender, as designated in writing by Borrower. Borrower will maintain sufficient funds in the account on the dates Lender enters debits authorized by this Note. If there are insufficient funds in the account on the date Lender enters any debit authorized by this Note, the debit will be reversed. Borrower may terminate this direct debt arrangement at any time by sending written notice to Lender at the address specified above.

**3.4 Late Charge.** If any payment of interest or principal due hereunder is not made within five days after such payment is due in accordance with the terms hereof,

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then, in addition to the payment of the amount so due, Borrower shall pay to Lender a "late charge" of five cents for each whole dollar so overdue to defray part of the cost of collection and handling such late payment. Borrower agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment are extremely difficult and impractical to ascertain, and that the amount of five cents for each one dollar due is a reasonable estimate of such damages, does not constitute interest, and is not a penalty.

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## 3.5 Prepayment.

(a) Provided that no Event of Default then exists, Borrower may voluntarily prepay the principal balance of this Note, in whole but not in part, at any time on or after the date hereof, subject to the following conditions:

(i) Not less than thirty (30) days prior to the date upon which Borrower desires to make such prepayment, Borrower shall deliver to Lender written notice of its intention to prepay this Note in full, which notice shall be irrevocable and state the prepayment date ("Prepayment Date");

(ii) Borrower shall pay to Lender, concurrently with such prepayment, a prepayment premium ("Prepayment Premium") equal to the greater of (A) the Yield Amount (as hereinafter defined) or (B) the Fixed Amount (as hereinafter defined); and

(iii) Borrower shall pay to Lender all accrued and unpaid interest through the date of such prepayment on the principal balance being prepaid.

Notwithstanding the foregoing, no Prepayment Premium shall be owing if such prepayment is made on or after the ninetieth (90<sup>th</sup>) day prior to the Maturity Date.

(b) Borrower acknowledges that the Loan was made on the basis and assumption that Lender would receive the payments of principal and interest set forth herein for the full term hereof. Therefore, if the maturity hereof has been accelerated by reason of the occurrence of an Event of Default the Prepayment Premium shall be due, in addition to the outstanding principal balance, accrued interest and other sums due hereunder.

(c) For purposes of this Note, the "Fixed Amount" shall mean one percent (1.00%) of the amount prepaid.

For purposes of this Note, the "Yield Amount" shall be the amount calculated as follows:

(i) There shall first be determined, as of the Prepayment Date, the amount, if any, by which the Loan Rate exceeds the yield to maturity

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percentage ("Current Yield") for actively traded U.S. Treasury bonds, bills and notes ("Treasury Security") closest in maturity to the Maturity Date as published in The Wall Street Journal on the fifth business day preceding the Prepayment Date. If publication of (A) The Wall Street Journal or (B) the Current Yield of the Treasury Security in The Wall Street Journal is discontinued, Lender, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine the Current Yield;

(ii) The difference calculated pursuant to clause (i) above shall be multiplied by the outstanding principal balance of this Note as of the Prepayment Date;

(iii) The product calculated pursuant to clause (ii) above shall be multiplied by the quotient, rounded to the nearest one-hundredth of one percent, obtained by dividing (A) the number of days from and including the Prepayment Date to and including the Maturity Date, by (B) 365; and

(iv) The product calculated pursuant to clause (iii) above shall be discounted at the annual rate of the Adjusted Current Yield (where the "Adjusted Current Yield" means the Current Yield adjusted to reflect the difference in timing of semi-annual payments of interest on the Treasury Security and monthly payments under this Note) to the present value thereof as of the Prepayment Date, on the assumption that said sum would be received in equal monthly installments on each monthly anniversary of the Prepayment Date prior to the Maturity Date, with the final such installment to be deemed received on the Maturity Date;

provided that Borrower shall not be entitled in any event to a credit against, or a reduction of, the indebtedness being prepaid if the Adjusted Current Yield exceeds the Interest Rate or for any other reason.

If, at any time prior to the maturity of this Note, Borrower desires to convert the property commonly known as 5235-39 North Winthrop (the "Property") into a condominium and to actively market individual condominiums in the retail market, Borrower shall give to Lender notice of its intention to do so and the following terms and conditions shall govern the applicability of the foregoing prepayment penalty:

- a) If the Borrower gives such notice to Lender, Lender may, on or before the twentieth (20) day after it actually receives such notice, give Borrower notice that LaSalle Bank National Association of one of its affiliates ("Conversion Lender") desires to finance the conversion.
- b) If Lender does not so notify Borrower, Borrower may, for a period up to six (6) months after the end of said twenty (20) business day period, prepay this Note in full with proceeds of such conversion loan from another lender. If Borrower does so, the prepayment premium provided

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for above shall not be payable if, within a reasonable time after such prepayment, Borrower commences the conversion process and, within two (2) years after such prepayment, time being of the essence, Borrower is actively pursuing the conversion process.

- c) If Lender does notify Borrower that it desires to make the Conversion Loan, such notice shall constitute only an expression of Conversion Lender's interest in entertaining Borrower's request that Conversion Lender make such a loan and shall not constitute a commitment or agreement by conversion Lender to finance the conversion. If Lender so notifies Borrower, Lender shall specify to Borrower in its notice the information that Conversion Lender requests in order to underwrite Borrower's loan request.
- d) If Borrower thereafter submits a complete application for such a loan conforming to Conversion Lender's reasonable requirements and, within a reasonable time after such application is complete, conversion Lender issues its commitment, term sheet, proposal or similar instrument for such a loan on financial and other terms generally consistent with the terms being offered by commercial banks in the Chicago Metropolitan Area for loans similar in size, purpose and other characteristics, Borrower may prepay this Note in full with the proceeds of a conversion loan from Conversion Lender, without penalty or premium. If Conversion Lender issues such a commitment, term sheet, proposal or similar instrument but Borrower elects to prepay this Note with the proceeds of a conversion loan from another lender, the prepayment premium provided for above shall be due and payable simultaneously with and as part of said prepayment.
- e) If Conversion Lender does not so issue such a commitment, term sheet, proposal or similar instrument, the prepayment premium provided for above shall not be payable if, within a reasonable time after such prepayment, Borrower commences the conversion process and, within two (2) years after such prepayment, time being of the essence, Borrower is actively pursuing the conversion process.
- f) Borrower acknowledges that this paragraph (including subpart 1 through 6, both inclusive) is not intended to relieve it of the obligation to pay the premium provided for in this Note under all sets of circumstances involving the conversion of the Property into a condominium. Without limiting the foregoing, although this paragraph contemplates that Conversion Lender's financial and other terms will be generally consistent with the terms being offered by commercial banks in the Chicago Metropolitan Area for loans similar in size, purpose and other characteristics and there is no guarantee that Conversion Lender's terms will be the most favorable terms offered by any particular lender or class

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or category of lenders to Borrower or any particular class or category of borrowers.

- g) For the purposes of subparts 2 and 5 above, active pursuit of the conversion process shall require beginning to market condominium units actively in the retail market, preparation of property, engineering and other material reports and disclosure documents required under applicable law or ordinance and providing notice of intent to convert to tenants of the Property. If Borrower has not so commenced the conversion process within a reasonable time and/or is not actively pursuing the conversion process within said two (2) year period, the prepayment premium shall be immediately due and payable and shall bear interest from the date of proper demand therefor by Lender at a rate equal to the sum of the default interest rate provided for in this Note plus three percent (3%). Any and all costs and expenses, including, without limitation, attorney's fees, incurred by Lender in enforcing Borrower's obligation to pay the prepayment premium shall be paid by Borrower and/or any guarantor of this Note and shall bear interest from the date paid at the rate prescribed in the immediately preceding sentence. The terms and provisions of this paragraph shall survive repayment of this Note.

**3.6 Loan Fees.** In consideration of Lender's agreement to make the Loan, Borrower shall pay to Lender a non-refundable fee in the amount of Three Thousand Two Hundred Fifty Dollars (\$3,250.00), which shall be due and payable in full as a condition precedent to disbursement of proceeds under this Note.

**4. Security.** Pursuant to and as provided in that certain Modification of Loan documents of even date herewith between Borrower and Lender (the "Modification Agreement"), this Note is deemed to be on a parity with, and equally secured by and in the same manner as, that certain \$798,750.00 Promissory Note dated November 17, 1997 as executed by Borrower (the "First Note"), evidencing an outstanding loan owed by Borrower to Lender (referred to in the Modification Agreement as "Facility A"), and secured by those certain documents described and referred to in the Modification Agreement as the Mortgage, the Assignment of Leases, the Indemnity Agreement and the Guaranty, respectively, each dated the date of and executed as in the First Note, except that Robert L. Bernstein, (the "Guarantor"), is sole guarantor under the Guaranty and co-indemnitor under the Indemnity Agreement. Such documents and the First Note, originally made in favor of a predecessor in interest to and now owned and held by Lender, together the Modification Agreement and any other document now or hereafter given to evidence or secure payment of this Note or delivered to induce Lender to disburse the proceeds of the Loan (referred to in the Modification Agreement as Facility B), as such documents may hereafter be amended, restated or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents". Reference is hereby made to the Loan Documents (which are incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a statement of the covenants and agreements contained therein, a statement of the rights, remedies, and security afforded thereby, and all matters therein contained.

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

5.1 the failure by Borrower to pay (i) any installment of principal or interest payable pursuant to this Note within fifteen (15) days after the date when due, or (ii) any other amount payable to Lender under this Note, the Mortgage or any of the other Loan Documents within fifteen (15) days after the date when any such payment is due in accordance with the terms hereof or thereof; or

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

5.3 the occurrence of the dissolution, insolvency, winding-up, death or legal incompetency, as applicable, of the Guarantor or any other guarantor of this Note

6. **Remedies.** At the election of the holder hereof, and without notice, the principal balance remaining unpaid under this Note, and all unpaid interest accrued thereon and any other amounts due hereunder, shall be and become immediately due and payable in full upon the occurrence of any Event of Default. Failure to exercise this option shall not constitute a waiver of the right to exercise same in the event of any subsequent Event of Default. No holder hereof shall, by any act of omission or commission, be deemed to waive any of its rights, remedies or powers hereunder or otherwise unless such waiver is in writing and signed by the holder hereof, and then only to the extent specifically set forth therein. The rights, remedies and powers of the holder hereof, as provided in this Note, the Mortgage and in all of the other Loan Documents are cumulative and concurrent, and may be pursued singly, successively or together against Borrower, any guarantors hereof, the Premises and any other security given at any time to secure the repayment hereof, all at the sole discretion of the holder hereof. If any suit or action is instituted or attorneys are employed to collect this Note or any part hereof, Borrower promises and agrees to pay all costs of collection, including reasonable attorneys' fees and court costs. If upon the occurrence of an Event of Default and acceleration of this Note, a tender of payment in the amount necessary to satisfy the Note in full together with all other amounts owed under the Loan Documents is made by Borrower, its successors or assigns, or by anyone on its or their behalf, or the purchaser at a foreclosure sale, such tender shall constitute an evasion of the prepayment terms hereof and shall be deemed to be a voluntary prepayment hereunder and any such prepayment, to the extent permitted by law, will be subject to the Prepayment Premium described in Section 3.5 hereof. Such premium or fee shall constitute liquidated damages payable to Lender on account of Borrower's breach of its agreements hereunder and Borrower's evasion of the prepayment provisions hereof; provided that Borrower hereby recognizes that any such prepayment will result in loss and damage to Lender through the occurrence of additional administrative expenses and Borrower acknowledges that Lender's damages for such a default will be extremely difficult and impracticable to ascertain and therefore agrees that the foregoing premium is a reasonable estimate of said loss and damage to Lender. Borrower expressly waives the provisions of any present or future statute or law which prohibits or may prohibit the collection of said premium in connection with any such acceleration.

7. **Covenants and Waivers.** Borrower and all others who now or may at any time become liable for all or any part of the obligations evidenced hereby, expressly agree hereby to

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

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## 8. Other General Agreements.

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

8.2 Time is of the essence hereof.

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

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

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

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

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

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

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

8.10 Borrower hereby covenants and agrees that it will maintain (whether or not derived in whole or in part from its ownership and operation of the Premises) a twelve month average of available demand deposits of at least \$12,000, to be reviewed yearly commencing October 1, 2002. If upon any such review the average of such deposits for the prior twelve month period is less than the required level, the Loan Rate shall increase by one-quarter percent (.25%).

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

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

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

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IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the day and year first written above.

**BORROWER:**

5235-39 North Winthrop Limited  
Partnership, an Illinois limited partnership

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

Name: Robert L. Bernstein

Title: General Partner

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