

1139075  
**UNOFFICIAL COPY**

00288766

2927/0043 20 001 Page 1 of 11  
2000-04-26 07:50:35  
Cook County Recorder 41.00



00288766

**BOX 370**

**MORTGAGE**

THIS MORTGAGE ("Security Instrument") is given on April 3, 2000. The mortgagor is Byron Kirkwood (the "Borrower"). This Security Instrument is given to Charles Elardo (the "Lender"). The Borrower owes the Lender the principal sum of Sixty Four Thousand Three Hundred Twenty Five and 00/100 (\$64,325.00) Dollars. This debt is evidenced by the Borrower's promissory note, dated the same date as this Security Instrument (the "Note") and provides for monthly interest payments, with the full debt due and payable on or before July 3, 2001 pursuant to Section 10B of the Note. This Security Instrument secures to the Lender: (i) the repayment of the debt evidenced by the Note, with interest, if any, and all renewals, extensions and modifications; (ii) the payment of all other sums, with interest, advanced hereunder, to protect the security of this Security Instrument; and (iii) the performance of the Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, the Borrower does hereby mortgage, grant and convey to the Lender the following described property located in Cook County, Illinois:

See Exhibit "A"

and commonly known as 51 West 107th Street, Chicago, Illinois 60628 (the "Property Address").

Permanent Real Estate Index Number: 25-16-405-003-0000

together with all replacements and additions to the property, all improvements now or hereafter erected on the property and all easements, appurtenances and fixtures now or hereafter a part of the property (the "Property"). All of the foregoing definition of the Property is covered by this Security Instrument. **THIS PROPERTY DOES NOT CONSTITUTE HOMESTEAD PROPERTY.**

THE BORROWER COVENANTS that the Borrower will be lawfully seised of the estate hereby conveyed, has the right to mortgage,

llm

ATGF, INC

# UNOFFICIAL COPY

grant and convey the Property and that the Property will be unencumbered, except for encumbrances of record. The Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** The Borrower and the Lender covenant and agree as follows:

1. **Payment of Principal, Interest and Late Charges.** The Borrower shall promptly pay the principal of and interest on the debt evidenced by the Note when due as well as any late charges due under the Note.

2. **Application of Payments.** Unless applicable law provides otherwise, all payments received by the Lender under Paragraph 1 shall be applied first to interest due, second to principal due and last to any late charges due under the Note.

3. **Charges; Liens.** The Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument and leasehold payments or ground rents, if any. The Borrower shall pay these obligations on time directly to the person owed payment. The Borrower shall promptly furnish to the Lender all notices of amounts to be paid under this Paragraph and shall promptly furnish to the Lender all receipts evidencing such payments.

The Borrower shall promptly discharge any lien which has priority over this Security Instrument unless the Borrower: (a) agrees in writing to payment of the obligation secured by the lien in a manner acceptable to the Lender; (b) contests in good faith the lien by, or defend against enforcement of the lien in, legal proceedings which, in the Lender's opinion, operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to the Lender subordinating the lien to this Security Instrument. If the Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, the Lender may give a notice identifying the lien to the Borrower. The Borrower shall satisfy the lien or take one or more of the actions set forth above within ten (10) days of the providing of notice.

4. **Hazard or Property Insurance.** The Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire and hazards included within the term "extended coverage" and any other hazards, including floods or flooding for which the Lender requires insurance. This

# UNOFFICIAL COPY

insurance shall be maintained in the amounts and for the periods that the Lender requires, and the Lender shall be named an additional insured party to all insurance policies as the Lender requires. All insurance policies and renewals shall include a standard mortgage clause and shall be acceptable to the Lender. The carrier who will provide insurance coverage shall be chosen by the Borrower subject to the Lender's approval, which shall not be unreasonably withheld. If the Borrower fails to maintain the insurance described above, the Lender may at the Lender's option obtain coverage to protect the Lender's rights in the Property in accordance with Paragraph 5.

If the Lender requires, the Borrower shall promptly give to the Lender all receipts of paid premiums and notices of renewal. The Lender shall have the right to hold such policies and renewals.

In the event of loss, the Borrower shall give prompt notice to the insurance carrier and the Lender. The Lender may make proof of loss if not made promptly by the Borrower. Unless the Lender and the Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and the Lender's security is not lessened. If restoration or repair is not economically feasible or the Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to the Borrower. If the Borrower abandons the Property or does not answer a notice from the Lender of offer of settlement of claim by the insurance carrier within thirty (30) days, then the Lender may collect the insurance proceeds. The Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The thirty (30) day period shall begin when such notice is provided.

Unless the Lender and the Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraph 1 or change the amount of the payments. If the Property is acquired by the Lender under Paragraph 20, the Borrower's rights to any insurance policies and proceeds resulting from damage to the Property prior to acquisition shall pass to the Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

**5. Protection of the Lender's Rights in the Property.** If the Borrower fails to perform the covenants and agreements contained in this Security Instrument or there is a legal proceeding that may significantly affect the Lender's rights in the Property, such as a proceeding in bankruptcy or probate for condemnation, forfeiture or enforcement of laws or regulations, then the Lender may do and pay for whatever is necessary to protect the value of the Property and the Lender's rights in the Property. The Lender's actions may include paying any sums

# UNOFFICIAL COPY

secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering the Property to make repairs. Although the Lender may take action under this Paragraph 5, the Lender is not obligated to do so.

Any amounts disbursed by the Lender under Paragraph 4 or this Paragraph 5 shall become additional debt of the Borrower secured by this Security Instrument. Unless the Borrower and the Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the applicable Note rate and shall be payable with interest upon notice requesting payment from the Lender to the Borrower.

**6. Mortgage Insurance.** If the Lender requires mortgage insurance coverage which shall pay the principal and interest in full in the event of death of the Borrower as a condition of the loan secured by this Security Instrument, the Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If for any reason the mortgage insurance coverage required by the Lender lapses or ceases to be in effect, the Borrower shall pay premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect from an alternate mortgage insurer approved by the Lender at a cost substantially equivalent to the cost of the mortgage insurance previously in effect. If substantially equivalent mortgage insurance is not available, the Borrower shall pay to the Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium that was being paid by the Borrower when the insurance coverage lapsed or ceased to be in effect. The Lender shall accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required at the option of the Lender if mortgage insurance coverage (in the amount and for the period that the Lender requires) provided by an insurer approved by the Lender again becomes available and is obtained. The Borrower shall pay premiums required to maintain mortgage insurance in effect or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between the Borrower and the Lender or in accordance with applicable law.

**7. Inspection.** The Lender or its agent may make reasonable entries upon the Property for the purpose of inspection of the Property. The Lender shall give the Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

**8. Condemnation.** The proceeds of any award or claim for direct or consequential damages in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to the Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security

00288766



# UNOFFICIAL COPY

Instrument, whether or not then due, with any excess paid to the Borrower. Unless the Borrower and the Lender otherwise agree in writing, the sums secured by this Security Instrument, in the event of a partial taking of the Property where the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before taking, shall be reduced by the amount of the proceeds multiplied by the following fraction: the total amount of the sums secured immediately before the taking, divided by the fair market value of the Property immediately prior to the taking of the Property. Any balance shall be paid to the Borrower. Unless the Borrower and the Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not the sums are then due, in the event of a partial taking of the Property where the fair market value of the Property immediately prior to the taking is less than the amount of the sums secured immediately before the taking.

If the Property is abandoned by the Borrower or the Borrower fails to respond to the Lender within thirty (30) days after the date of the Lender's notice to the Borrower that the condemnor has offered to make an award or settle a claim for damages, the Lender is authorized to collect and apply the proceeds at the Lender's option either to restoration or repair of the Property or to the sums secured by this Security Instrument whether or not then due.

Unless the Lender and the Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraph 1 or change the amount of such payments.

**9. Borrower Not Released; Forbearance By the Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by the Lender to any successor in interest of the Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. The Lender shall not be required to commence proceedings against any successor in interest, refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Interest by reason of any demand made by the original Borrower or the Borrower's successor in interest. Any forbearance by the Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**10. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of the Lender and the Borrower, subject to the provisions of Paragraph 15. The Borrower's covenants and agreements shall be joint and several. Any Borrower, who co-signs this Security Instrument but does not execute the Note, (a) is co-signing this

# UNOFFICIAL COPY

Security Instrument only to mortgage, grant and convey the Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that the Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

18. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges and that law is finally interpreted so the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit and (b) any sums already collected from the Borrower which exceeded permitted limits shall be refunded to the Borrower. The Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to the Borrower. If a refund reduces principal, the reduction shall be treated as a partial prepayment without any prepayment charge under the Note.

12. **Notices.** Any notice to the Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it first class mail unless applicable law requires use of the another method. The notice shall be directed to the Property Address or any other address that the Borrower designates by notice to the Lender. Any notice to the Lender shall be directed by first class mail to the Lender's address or any other address that the Lender designates by notice to the Borrower. Any notice provided for in this Security Instrument shall be deemed to have been furnished to the Borrower or the Lender when given as provided in this Paragraph.

13. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note, which can be given effect without the conflicting provision. To this end, the provisions of this Security Instrument and the Note are declared to be severable.

14. **Borrower's Copy.** The Borrower shall be given one conformed copy of the Note and of this Security Instrument.

15. **Transfer of the Property or Transfer of a Beneficial Interest in the Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in the Borrower is sold or transferred and the Borrower is not a natural person) without the Lender's prior written consent, the Lender may at the Lender's option require immediate payment in full of all sums secured by this Security Instrument.

00288766

# UNOFFICIAL COPY

However, this option shall not be exercised by the Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If the Lender exercises this option, the Lender shall provide a notice of acceleration to the Borrower. The notice shall provide a period of not more than thirty (30) days from the date that the notice is delivered or mailed within which the Borrower must pay all sums secured by this Security Instrument. If the Borrower fails to pay these sums prior to the expiration of this period, the Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on the Borrower.

**16. Sale of the Note; Change of the Escrow Agent.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior written notice to the Borrower. A sale may result in a change in the entity known as the "Escrow Agent." There also may be one or more changes of Escrow Agent unrelated to a sale of the Note. If there is a change of Escrow Agent, the Borrower shall be provided written notice of the change in accordance with Paragraph 12 and applicable law. The notice shall state the name and address of the new Escrow Agent and any other information required by applicable law or this Security Instrument.

**17. Hazardous Substances.** The Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. The Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses, rehabbing and maintenance of the Property.

The Borrower shall promptly give the Lender written notice of any investigation, claim, demand, law suit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which the Borrower has actual knowledge. If the Borrower learns or is notified by any governmental or regulatory authority that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, the Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 17, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Paragraph 17, "Environmental Law" means federal

00288766

# UNOFFICIAL COPY

laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**NON-UNIFORM COVENANTS.** The Borrower and the Lender further covenant and agree as follows:

18. **Occupancy, Preservation, Maintenance and Protection of the Property; The Borrower's Loan Application; Leaseholds.** The Borrower shall install a centrally wired alarm system in each of the living units of the Property if required by the Lender. The Borrower shall not occupy, establish or use the Property as a residence unless the Lender otherwise agrees in writing, which shall not be unreasonably withheld if such occupancy is for the sole purpose of providing security for the Property. The Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. The Borrower shall be in default if any forfeiture action or proceeding, civil or criminal is begun that in the Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or the Lender's security interest. The Borrower shall be in default if the Borrower fails to provide the Lender with material information or gave materially false or inaccurate information or statements to the Lender during the loan application process in connection with the loan evidenced by the Note, including but not limited to the Borrower's representations concerning occupancy of the Property. If this Security Instrument is on a leasehold, the Borrower shall comply with all the provisions of the lease. If the Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless the Lender agrees to the merger in writing.

19. **Waiver of the Borrower's Rights to Reinstate.** THE BORROWER HEREBY WAIVES ANY AND ALL OF THE BORROWER'S STATUTORY OR OTHER RIGHTS TO HAVE ENFORCEMENT OF THIS SECURITY INSTRUMENT DISCONTINUED ANY TIME FOR ANY REASON, INCLUDING BUT NOT LIMITED TO THOSE RIGHTS SET FORTH IN ILLINOIS MORTGAGE FORECLOSURE LAW, 735 ILCS 5/15-1601 ET SEQ., AS AMENDED.

20. **Acceleration; Remedies.** The Lender shall provide notice to the Borrower prior to acceleration following the Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to notice of acceleration under Paragraph 15 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure default; (c) a date that is not less than five (5) days from the date that the notice is provided to the Borrower by which the default must be cured; and (d) the information that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. If the default is not cured on or before the date specified in the notice, the Lender at the Lender's option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this

00288766



# UNOFFICIAL COPY

Security Instrument by judicial proceeding. The Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 20, including but not limited to reasonable attorneys' fees and costs of title evidence.

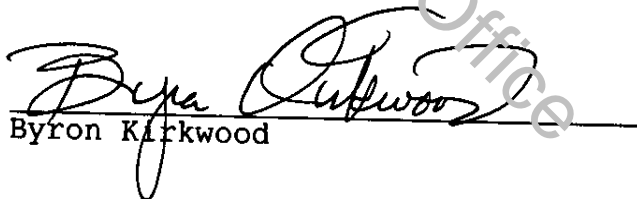
21. **Foreclosure Costs.** In the event of the Lender's foreclosure on the loan secured by this Security Instrument, the Lender shall be entitled to collect from the Borrower reasonable attorneys' fees necessary to enforce the terms of the mortgage and the Note in connection with such loan, including appeal and efforts to collect any judgment. In addition to the aforementioned costs, the Lender shall be entitled to collect a Foreclosure Fee from the Borrower as defined herein, which shall be the greater of (i) **Four Thousand (\$4,000.00) Dollars** or (ii) **Five (5%) Percent** of the principal plus any accrued and outstanding interest owed on the loan; provided, however, if the loan is subject to a law which sets maximum loan charges and fees and which is finally interpreted so that the Foreclosure Fee to be collected exceeds the permitted limits, then the Foreclosure Fee shall be reduced by the amount necessary to reduce it to the permitted limit.

22. **Release.** Upon payment of all sums secured by this Security Instrument, the Lender shall release this Security Instrument without charge to the Borrower. The Borrower shall pay any recordation costs.

23. **Waiver of Homestead.** The Borrower waives all right of homestead exemption in the Property.

24. **Business Purpose.** The Borrower acknowledges that this mortgage secures repayment of debt that is for business purposes only and is not for personal use or for a personal residence.

BY SIGNING BELOW, the Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by the Borrower and recorded with it.

  
Byron Kirkwood

Prepared by and Mail to:

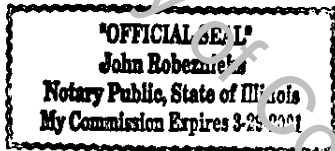
John Robeznieks  
140 South Dearborn Street  
Suite 1610  
Chicago, Illinois 60603

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
                                  )SS  
COUNTY OF COOK        )

I, John Robezniec, a Notary Public in and for said County and state, do hereby certify that Byron Kirkwood, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the foregoing instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 3<sup>rd</sup> day of April, 2000.



[Signature]  
NOTARY PUBLIC

00288766

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A LEGAL DESCRIPTION

LOT 3 AND THE WEST 6 AND ONE-QUARTER FEET OF LOT 4 IN  
BLOCK 6 IN SAVIDGE'S SUBDIVISION OF THE SOUTH HALF OF  
LOT 32 AND ALL OF LOT 33 IN THE SCHOOL TRUSTEE'S  
SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 14,  
EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,  
ILLINOIS.

Permanent Index Number: 25-16-405-003-0000

Property Address: 51 West 107th Street  
Chicago, Illinois 60628

Property of Cook County Clerk's Office

00288766