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PREAPRED BY &  
MAIL TO  
FUCHS & ROSELLI LTD  
440 W. RANDOLPH #500  
CHICAGO, IL. 60606  
ATTN: MICHAEL T. O'CONNOR

Doc#: 0400549153  
Eugene "Gene" Moore Fee: \$52.00  
Cook County Recorder of Deeds  
Date: 01/05/2004 03:04 PM Pg: 1 of 15

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**SUBORDINATION AGREEMENT**

15

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## SUBORDINATION AGREEMENT

This Subordination Agreement is made and entered into this 30th day of December 2003, by and between Fifth Third Bank (Chicago), a Michigan banking corporation ("Senior Lender"), and Barry Ray, on behalf of (i) Barry M. Ray; (ii) the Barbara Katz Uzan Trust, by Barry M. Ray, not individually but solely as Trustee; (iii) the Ely Katz Trust by Barry M. Ray, not individually but solely as Trustee; (iv) the Stuart Katz Trust, by Barry M. Ray, not individually but solely as Trustee; (v) the Jordan Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (vi) the Joshua Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (vii) the Amy Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (viii) the Sharon Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (ix) the Elemelach Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (x) the Chaim Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (xi) the Devorah Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (xii) the Malka Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; and (xiii) the Nechama M. Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee (the individuals and trusts referred to in (i) through (xiii) shall collectively be referred to herein as "Junior Creditor").

### INTRODUCTION

A. 6840 Partnership, an Illinois general partnership ("Borrower"), is currently indebted to the Junior Creditor pursuant to the terms of a certain Promissory Note, dated December 1, 2001, in the principal sum of Six Million Six Thousand Seven Hundred Twenty-Seven and 00/100 Dollars (\$6,006,727.00) ("Subordinated Note").

B. The Borrower desires to obtain additional credit from the Senior Lender pursuant to the terms of a certain Mortgage Note dated December 30, 2003, in the principal sum of Two Million and 00/100 Dollars (\$2,000,000.00) ("Note") secured by certain loan documents (as amended, extended and modified, collectively the "Loan Documents"), all of even date, including the following: (a) a Mortgage, Assignment of Leases and Rents, and Security Agreement ("Mortgage") from Borrower to Lender, constituting a first lien on certain real estate (and any other property mortgaged thereby) described therein; (b) Uniform Commercial Code Financing Statement from Borrower to Lender; and (c) Guaranty from Arnold Kaplan, Robert Kaplan and Michael Kaplan (collectively "Guarantor") to Lender. (the Note and any and all documents securing the Revolving Credit Note and Promissory Note are collectively referred to herein as "Loan Documents").

C. In order to induce the Senior Lender to enter into the loan with the Borrower and to make available to the Borrower the credit under it, the Junior Creditor is willing to subordinate the priority of the indebtedness evidenced by the Subordinated Note to the indebtedness evidenced by the Loan Documents, all pursuant to the terms of this Agreement.

Now, therefore, in consideration of the mutual promises and undertakings set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Junior Creditor and the Senior Lender agree as follows:

1. *Definitions.* As used in this Agreement, the following terms shall have the meanings specified below:

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“Collateral” shall have the meaning set forth in the Loan Documents.

“Event of Default” shall have the meaning set forth in the Loan Documents.

“Note” shall have the meaning set forth in the Mortgage Note.

“Senior Debt” shall mean all obligations of Borrower now or later existing under the Loan Documents whether for the original principal amount of \$2,000,000 or the amount by which said original principal amount has been reduced by payments, which ever is less, interest (including interest accruing after the filing of a petition initiating a proceeding described in §2(c) of this Agreement), fees, expenses, or otherwise.

“Subordinated Debt” mean all obligations of Borrower under the Subordinated Note or any other agreement, instrument, or promissory note related to it, whether for principal, interest, premium, fees, costs, indemnification, or otherwise, and including, without limitation, any amounts payable as damages or for rescission under any cause of action arising out of or relating to any of the foregoing.

“Subordinated Note” shall mean the promissory note referred to in Paragraph A of the Introduction, a copy of which is attached as Exhibit A.

2. *Subordination.* The Junior Creditor covenants and agrees that the Subordinated Debt is and shall be subordinate in right of payment to the prior payment in full of the Senior Debt as and to the extent provided in this Section. The Senior Debt shall not be deemed to have been paid in full until the Senior Lender’s obligation to make advances under the Loan Documents shall have been terminated as provided in the Loan Documents and the Senior Lender shall have received full payment of the Senior Debt. The priority of all present and future security interests of the Junior Creditor in any property of the Borrower shall be subordinated to all present and future enforceable perfected security interests of the Senior Lender in the property of the Borrower. Prior to the occurrence of an Event of Default or an event described in clause (c) of this Section or the Event of Default has been cured or resolved by an amendment to or modification agreement of the Loan Documents between Borrower and Senior Lender, the Junior Creditor shall be entitled to receive all regularly scheduled payments of principal and interest on the Subordinated Debt.

(a) *Event of Default.* Upon the occurrence of an Event of Default, (i) all Senior Debt shall be paid in full before any further payment or distribution of any kind or character, whether in cash, property, or securities, however arising or evidenced, is made to the Junior Creditor, (ii) the Junior Creditor shall not directly or indirectly take, set off, accept, or demand any payment for or institute any legal action or proceedings for the collection of all or any portion of the amounts owing to the Junior Creditor, provided that this provision shall not prevent Junior Creditor from asserting its claims in any foreclosure or other enforcement action, as herein after permitted; and (iii) all payments or distributions that, but for the subordination provisions of this Agreement, would otherwise be payable or deliverable to the Junior Creditor shall instead be paid and delivered to the Senior Lender until the Senior Debt is paid in full.

(b) *Notice of Event of Default.* No direct or indirect payment in respect of the Subordinated Debt or exercise of any other rights or remedies with respect to the Subordinated Debt

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shall be made if, at the time of the payment, there exists any Event of Default and the Senior Lender has so advised the Junior Creditor in writing, and the Event of Default has not been cured or waived in writing or the benefits of this sentence have not been waived in writing by the Senior Lender. In the absence of a written notice from the Senior Lender to the Junior Creditor of the occurrence of an Event of Default, the Junior Creditor shall be entitled to assume that an Event of Default does not exist unless the Junior Creditor has actual knowledge of the existence of an Event of Default.

(c) *Dissolution, Liquidation, and Bankruptcy.* In the event of any dissolution, winding up or liquidation of the Borrower, receivership, insolvency, reorganization, bankruptcy proceedings of the Borrower, assignment by the Borrower for the benefit of its creditors, payment or distribution of all or substantially all of the assets or securities of the Borrower of any kind or character, whether in cash, property, or securities, or proceeding initiated by or against the Borrower for any relief under any federal or state bankruptcy, reorganization, or insolvency law, or any other federal or state law relating to the relief of debtors, readjustment of indebtedness, reorganization, composition, or extension of indebtedness (collectively, "Debt Resolution Proceedings"), (i) all Senior Debt shall be paid in full before any payment or distribution of any kind or character, whether in cash, property, or securities, however arising or evidenced, is made to the Junior Creditor, (ii) the Junior Creditor shall not directly or indirectly take, set off, accept, or demand any payment for or institute any legal action or proceedings for the collection of all or any portion of the amounts owing to the Junior Creditor, provided that this provision shall not prevent the Junior Creditor from asserting its claims as hereinafter permitted or in any Debt Resolution Proceedings initiated by or participated in by the Senior Lender, and (iii) all payments or distributions that, but for the subordination provisions of this Agreement, would otherwise be payable or deliverable to the Junior Creditor shall instead be paid and delivered to the Senior Lender until the Senior Debt is paid in full.

(d) *Prior Payments.* The provisions of clauses (a) and (c) of this Section 2 shall in no way affect the Junior Creditor's right to receive and retain any regularly scheduled payments previously and hereafter made to the Junior Creditor that the Junior Creditor was entitled to receive pursuant to the terms of this Subordination Agreement.

(e) *Acceleration of Subordinated Debt.* If the Subordinated Debt is declared due and payable before its stated maturity, the Senior Lender shall be entitled to receive payment in full of all amounts due or to become due on or in respect of the Senior Debt (whether a Default or Event of Default has occurred or the Senior Debt is, or has been declared to be, due and payable prior to the date on which it otherwise would have become due and payable) before the Junior Creditor is entitled to receive any payment of the Subordinated Debt (including any payment that may be payable by reason of the payment of any other indebtedness of the Borrower's being subordinated to the payment of the Subordinated Debt).

(f) *Payments Received by Junior Creditor.* In the event that, notwithstanding the foregoing provisions prohibiting such payment or distribution, the Junior Creditor shall receive any payment or distribution in respect of the Subordinated Debt contrary to the provisions of this Agreement, the Junior Creditor shall promptly remit these payments or distributions to the Senior Lender. Pending their delivery to the Senior Lender, the Junior Creditor shall receive and hold these payments or distributions in trust for the benefit of the Senior Lender.

(g) *Notices to the Junior Creditor.* The Senior Lender agrees that a copy of any demand

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for payment or notice of default under the Loan Documents that is sent by Senior Lender to the Borrower shall, at the same time, be sent to the Junior Creditor in accordance with the notice provisions of this Subordination Agreement.

(h) *The Junior Creditor's Right to Cure.* The Junior Creditor shall have the right, but no obligation, to cure any of Borrower's defaults and bring the Senior Debt current within the same time periods for cure provided under the Loan Documents or within one (1) business day after said time to cure, provided Junior Creditor receives from the Senior Lender the notice of default, as provided in Paragraph 2(g) above, whichever is later.

3. *Representations of Junior Creditor.* The Junior Creditor represents to the Senior Lender as follows:

(a) *Subordinated Note.* Attached as Exhibit A is a full, complete, and correct copy of the Subordinated Note and all other documents between the Borrower and Junior Creditor evidencing the Subordinated Debt that have not been modified and are in full force and effect. There are no other agreements or understandings relating to the Subordinated Debt between the Borrower and Junior Creditor.

(b) *Other indebtedness.* Except for the Subordinated Debt and the Subordinated Note that evidences it, the Borrower is not indebted to the Junior Creditor.

(c) *Liens of Junior Creditor.* Except as expressly set forth in the documents attached as Exhibit A, the Junior Creditor has no lien, security interest, or other charge or encumbrance in or on any of the Borrower's property, whether real, personal, or mixed, as security for the Borrower's obligations to the Junior Creditor.

(d) *Authority and Validity.* This Agreement has been duly executed and delivered by the Junior Creditor and is the valid and binding obligation of the Junior Creditor, enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by principles of equity.

4. *Covenants of Junior Creditor.* The Junior Creditor covenants and agrees with the Senior Lender that, unless the Senior Lender shall otherwise agree in writing, prior to the termination of the Note and Mortgage and payment in full of the Senior Debt, the Junior Creditor shall not:

(a) Cancel or otherwise discharge any of the Subordinated Debt, except for payments received and to be received as provided in Paragraph 2(d) above.

(b) Subordinate any of the Subordinated Debt to any indebtedness of the Borrower other than the Senior Debt.

(c) Sell, transfer, assign, pledge, encumber, or otherwise dispose of any of the Subordinated Debt unless that sale, assignment, pledge, encumbrance, or disposition is expressly made subject to this Agreement.

(d) Permit the terms of any of the Subordinated Debt to be changed in a manner that will

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have any adverse effect on the rights or interests of the Senior Lender under this Agreement.

(e) Accept additional collateral security for the payment of any Subordinated Debt or any other obligation of the Borrower to the Junior Creditor, or obtain a lien, security interest, or other charge or encumbrance of any nature whatsoever against the Borrower's property, whether now owned or later acquired.

(f) Commence or join with any other person in any bankruptcy or similar proceeding against the Borrower prior to (i) Senior Lender commencing or joining in any bankruptcy or similar proceeding against the Borrower or (ii) thirty (30) days after Junior Creditor notifies Senior Lender that Borrower is in default under the Subordinated Note, which ever is first to occur.

5. *Rights of Senior Lender Not To Be Impaired.* No right of the Senior Lender to enforce the subordination as provided in this Agreement shall at any time in any way be prejudiced or impaired by any act or failure to act in good faith by the Senior Lender or by any noncompliance by the Borrower with the terms, provisions, and covenants of this Agreement, regardless of any actual or imputed knowledge of this noncompliance by the Senior Lender. The provisions of this Agreement are for the benefit of and shall be enforceable directly by the Senior Lender.

6. *Authority of Senior Lender To Effect Subordination.* Until the Senior Debt is paid in full, the Senior Lender is irrevocably authorized and empowered (in its own name or in the name of the Junior Creditor or otherwise), but shall have no obligation, to demand, sue for, collect, and receive every payment referred to in Paragraph 2 above and give acquittance for them and to file claims and proofs of claim and to take any other action (including without limitation voting the Subordinated Debt or enforcing any security interest or other lien securing payment of the Subordinated Debt) it may deem necessary or advisable for the exercise or enforcement of any of its rights or interests in respect of the Senior Debt, provided any amounts collected or received by the Senior Lender in excess of the amount of the Senior Debt shall be paid to the Junior Creditor.

7. *Cooperation of Junior Creditor.* Until the Senior Debt is paid in full, the Junior Creditor shall duly and promptly take any reasonable action the Senior Lender may request to (a) collect the Subordinated Debt for the account of the Senior Lender, (b) file appropriate claims or proofs of claim in respect of the Subordinated Debt, (c) execute and deliver to the Senior Lender any assignments, or other instruments the Senior Lender may reasonably request to enable the Senior Lender to enforce any and all claims with respect to and any security interests and other liens securing payment of the Subordinated Debt, and (d) collect and receive any and all payments or distributions that may be payable or deliverable upon or with respect to the Subordinated Debt, provided any amounts collected or received by the Senior Lender in excess of the amount of the Senior Debt shall be paid to the Junior Creditor.

8. *Suspension of Remedies.* Until the Senior Debt shall have been paid in full or until Senior Lender shall have commenced Debt Resolution Proceedings or other enforcement action against Borrower or until thirty (30) days after the Junior Creditor notifies the Senior Lender that the Subordinated Debt is in default or until one hundred twenty (120) days after the Senior Lender shall have declared the Borrower in default under the Senior Debt, which ever is first to occur, Junior Creditor shall not (a) ask, demand, or sue for any payment, distribution, or any other remedy in respect of the Subordinated Debt or any collateral security for it, or (b) commence or join with any

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other creditor (other than the Senior Lender) in commencing any proceeding referred to in Paragraph 2(c).

9. *Invalidity of Senior Debt.* All rights and interests of the Senior Lender under this Agreement and all agreements and obligations of the Junior Creditor under this Agreement shall remain in full force and effect irrespective of (a) any lack of validity or enforceability of the Loan Documents, the Note or any other agreement or instrument relating to this or any other Senior Debt, (b) any change in the time, manner, or place of payment of, or in any other term of all or any of the Senior Debt or any other amendment or waiver of or any consent to departure from the Note, the Mortgage, or any other agreement or instrument relating to this Agreement or to the Senior Debt, (c) any exchange, release, or non perfection of any collateral, or any release, amendment, or waiver of or consent to departure from any guaranty, for all or any of the Senior Debt, or (d) any other circumstance that might otherwise constitute a defense available to or a discharge of the Borrower or a subordinated creditor.

10. *Effect of Bankruptcy of Borrower.* The provisions of this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Senior Debt is rescinded or must otherwise be returned by the Senior Lender upon the insolvency, bankruptcy, or reorganization of the Borrower or, otherwise, all as though the payment had not been made.

11. *Subrogation.* The Junior Creditor shall not be subrogated to the rights of the Senior Lender to receive payments or distributions of assets of the Borrower applicable to the Senior Debt until the Senior Lender has received payment in full of the Senior Debt. Upon payment in full of the Senior Debt, the Junior Creditor shall be subrogated to the rights of the Senior Lender to receive payments or distributions of assets of the Borrower applicable to the Senior Debt until the Subordinated Debt is paid in full.

12. *Subordination Legend.* The Junior Creditor will cause each instrument evidencing the Subordinated Debt to be endorsed with the following legend:

The indebtedness evidenced by this instrument is subordinated to the prior payment in full of certain Senior Debt pursuant to, and to the extent provided in, that certain Subordination Agreement dated December \_\_, 2003, in favor of the Senior Lender. This instrument may not be offered, sold, or otherwise transferred until the purchaser, assignee, or transferee has become a party to or expressly agrees in writing to be bound by that Subordination Agreement.

13. *Specific Performance.* The Senior Lender and the Junior Creditor are hereby authorized and empowered to demand specific performance at any time when either party shall have failed to comply with any of the provisions of this Agreement. The Senior Lender and the Junior Creditor (a) irrevocably waive any defense based on the adequacy of a remedy at law that might be asserted as a bar to the remedy of specific performance and (b) acknowledge that the provisions of this Agreement are intended to be enforceable at all times, whether before or after the commencement of Debt Resolution Proceedings referred to in §2(c).

14. *Waiver.* Except as otherwise provided in this Subordination Agreement, the Junior Creditor waives promptness, diligence, notice of acceptance, and any other notice with respect to any of the Senior Debt and any requirement that the Senior Lender protect, secure, perfect, or insure any

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security interest or lien or any property subject to a security interest or lien or exhaust any right or take any action against the Borrower or any other person or entity or any collateral. No failure on the part of the Senior Lender to exercise and no delay in exercising any right under this Agreement shall operate as a waiver of that right, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of that right or any other. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

15. *Continuing Agreement.* The provisions of this Agreement constitute a continuing agreement and shall (a) remain in full force and effect until the Senior Lender's obligation to make advances under the Loan Documents shall have been terminated as provided and the Senior Debt shall have been paid in full, (b) be binding on the Senior Lender and the Junior Creditor and their respective successors and assigns, and (c) inure to the benefit of and be enforceable by the Senior Lender and its successors, transferees, and assigns. Without limiting the generality of the foregoing, the Senior Lender may assign or otherwise transfer any Senior Debt or portion of it held by it or grant any participation in any of its rights or obligations under the Loan Documents to any other person or entity, and that other person or entity shall then become vested with all the rights and subject to all of the duties and obligations in respect of the Senior Debt or portion of it granted to the Senior Lender in this Agreement or otherwise.

16. *Amendments.* No amendment or waiver of any provision of this Agreement or consent to any departure from it by the Junior Creditor or the Senior Lender shall in any event be effective unless in writing and signed by both parties, and then the waiver of consent shall be effective only in the specific instance and for the specific purpose for which it was given.

17. *Legal Fees.* The unsuccessful party in any litigation agrees to pay on demand to the successful party the amount of any and all reasonable expenses, including reasonable fees and expenses of its counsel, that the successful party may incur in connection with the exercise or enforcement of any of its rights, remedies, or interests under this Agreement.

18. *Notices.* All demands, notices, and other communications provided for under this Agreement shall be in writing (including telegraphic communication) and sent to the following addresses:

To Senior Lender: Fifth Third Bank  
101 West Stephenson Street,  
Freeport, Illinois 61032  
Attention: Christine Swiderski

With copy to: Fuchs & Roselli, Ltd..  
440 West Randolph Street, 5th Floor  
Chicago, Illinois 60606  
Attention: Michael T. O'Connor, Esq.

To Junior Creditor: Barry Ray  
5454 West Fargo Avenue  
Skokie, IL 60077



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Prepared By  
With copy to:

Sachnoff & Weaver, Ltd.  
30 S. Wacker, Suite 2900  
Chicago, IL 60606-7484  
Attention: Abraham J. Stern, Esq.

To Borrower:

KAF Enterprises, Ltd.  
980 Woodlands Parkway  
Suite A  
Vernon Hills, IL 60061  
Attention: Arnold Kaplan

Mailed To  
With copy to:

James M. Mainzer  
McNish, Knable & Kroning  
Two First National Plaza, Suite 2301  
20 South Clark Street  
Chicago, IL 60603

or another address designated by a party in a written notice to the other party delivered according to the terms of this Agreement. All such demands, notices, or other communications shall, when mailed or telegraphed, be effective when deposited in the mails or delivered to the telegraph company, as the case may be, addressed as provided above.

19. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the internal laws and not the conflict of laws rules of the State of Illinois. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision.

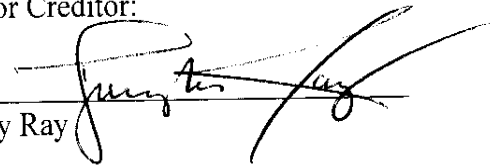
IN WITNESS WHEREOF, the Junior Creditor and the Senior Lender have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

Senior Lender:

Fifth Third Bank, a Michigan banking corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Title

Junior Creditor:

\_\_\_\_\_  
Barry Ray 

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## EXHIBIT A TO SUBORDINATION AGREEMENT

### MORTGAGE NOTE

\$6,006,727.00

Chicago, Illinois

Dated for reference purposes only as of \_\_\_\_\_

FOR VALUE RECEIVED, 6840 Partnership, an Illinois general partnership (the "Maker") promises to pay to the order of Barry Ray, on behalf of (i) Barry M. Ray; (ii) the Barbara Katz Uzan Trust, by Barry M. Ray, not individually but solely as Trustee; (iii) the Ely Katz Trust by Barry M. Ray, not individually but solely as Trustee; (iv) the Stuart Katz Trust, by Barry M. Ray, not individually but solely as Trustee; (v) the Jordan Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (vi) the Joshua Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (vii) the Amy Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (viii) the Sharon Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (ix) the Elemelach Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (x) the Chaim Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (xi) the Devorah Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; (xii) the Malka Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee; and (xiii) the Nechama M. Ray Minority Trust, by Barry M. Ray, not individually but solely as Trustee (the individuals and trusts referred to in (i) through (xiii) shall collectively be referred to herein as the "Holder"), at 5454 West Fargo Avenue, Skokie, IL 60077 or at such other place as the Holder of this Note may designate in writing to the Maker, the sum of Six Million Six Thousand Seven Hundred Twenty-Seven and 00/100 Dollars (\$6,006,727.00), inclusive of interest at a rate of six percent (6%) per annum, in accordance with the terms of this Note.

1. Maturity Date. The entire sum under this Note, together, if not sooner paid, shall be due and payable on December 31, 2016.

2. Payment Schedule. The Maker shall pay principal and interest as follows:

(a) Fifty Thousand Nine Hundred Five and 08/100 Dollars (\$50,905.08) on the Redemption Date (as such term is defined in that certain Partnership Agreement (the "**Partnership Agreement**") for 6840 Partnership, dated as of July 1, 1992, as amended concurrently herewith), and on the first day of each calendar month for the next succeeding twenty-one (21) months following the Redemption Date; and

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(b) Fifty Four Thousand Seven Hundred Seventeen and 68/100 Dollars (\$54,717.68) on the first day of the twenty-second (22<sup>nd</sup>) calendar month following the Redemption Date; and

(c) Thirty Thousand Nine Hundred Five and 08/100 Dollars (\$30,905.08) on the first day of the twenty-third (23<sup>rd</sup>) calendar month following the Redemption Date and on the first day of each calendar month thereafter through and including the first day of the 180<sup>th</sup> calendar month following the Redemption Date.

In the event the Redemption Date is after January 1, 2002, then the Maker shall pay a lump sum on the Redemption Date, retroactive to January 1, 2002. For example, if the Redemption Date is March 1, 2002, then the Maker shall pay \$152,715.24 (\$50,905.08 x 3) on March 1, 2002. All payments made hereunder will be made to the Holder at the address specified above and in lawful currency of the United States of America. Maker shall make or cause such payments to be made by wire transfer of immediately available funds to an account specified by the Holder. In the event the funds are not wire transferred as provided herein, the Holder agrees to send written notice (the "Notice") of such failure to the Maker or to any member of the Kaplan Group (as defined in the Partnership Agreement). If the Maker and/or the Kaplan Group fails to subsequently wire transfer the funds that are then due and payable to the Holder within five (5) days after receipt of the Notice, such failure shall be a default hereunder.

4. Default Rate. Upon the occurrence of an Event of Default under Paragraph 7 below, and during the continuance thereof, the outstanding sums payable under 3(a), (b) or (c) above, whichever is applicable, shall bear interest at the rate of six percent (6%) per annum.

5. Prepayment. The Maker may not prepay this Note at any point in time.

6. Mortgage. This Note is secured by that certain Mortgage (the "Mortgage") of even date herewith on the property commonly known as 6840 West Touhy Avenue, Niles, Illinois 60648.

7. Default. The following shall constitute Events of Default under this Note:

(a) any failure to pay any amount owing on this Note within five (5) days of written notice thereof, or

(b) any default shall occur under the terms of the Mortgage.

8. Remedies. Upon the occurrence of an Event of Default hereunder, the entire balance hereunder, if any, shall, at the option of the Holder and without demand or notice of any kind to Maker, immediately become due and payable in full.

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9. Waiver. Maker hereby waives diligence, presentment, protest and demand, and also notice of protest, of demand, of nonpayment, of dishonor and of maturity and also recourse or suretyship defenses generally.

10. Costs. The Maker shall be liable to the Holder of the Note for all costs and expenses incurred in connection with collection, whether by suit or otherwise, of any amount due under this Note, including, without limitation, court costs and reasonable attorneys' fees.

11. Notice. Any notice, demand, or communication required or permitted to be given by any provision of this Note shall be deemed to have been sufficiently given or served for all purposes upon: (a) the actual receipt by the recipient, if notice is given by personal delivery or any method not described below; (b) one business day after mailing, if notice is given by reputable overnight commercial courier service for next day delivery; or (c) three days after mailing, if notice is given by U.S. mail, postage prepaid, certified or registered, return receipt requested. All notices to Maker and/or the Kaplan Group shall be addressed to Maker and/or the Kaplan Group as follows:

Maker: 6840 Partnership  
c/o Family Care Management  
555 Skokie Blvd.  
Suite 450  
Northbrook, IL 60062

With a copy to: Darryl P. Jacobs, Esq.  
1615 Barclay Blvd.  
Buffalo Grove, IL 60089

With a copy to: Abraham J. Stern, Esq.  
Sachnoff & Weaver, Ltd.  
30 South Wacker Drive, Ltd.  
Chicago, IL 60606

or such other address as designated by the Maker.

12. Waiver.

(a) The Maker, for itself and for its successors, transferees and assigns hereby irrevocably (i) waives diligence, presentment and demand for payment, protest, notice, notice of protest and nonpayment, dishonor and notice of dishonor and all other demands or notices of any and every kind whatsoever, and (ii) agrees that this Note and any or all payments coming due hereunder may be extended from time to time in the sole and absolute discretion of the Holder hereof without in any way affecting or diminishing any of the Maker's liability hereunder.

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(b) No extension of the time for any payment due hereunder made by agreement with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability under this Note, either in whole or in part.

(c) No delay in the exercise of any right or remedy hereunder by the Holder shall be deemed to be a waiver of such right or remedy, nor shall the exercise of any right or remedy hereunder by the Holder be deemed an election of remedies or a waiver of any other right or remedy. Without limiting the generality of the foregoing, the failure of the Holder promptly after the occurrence of any default hereunder to exercise its right to declare the indebtedness remaining unmatured hereunder to be immediately due and payable shall not constitute a waiver of such right while such default continues nor a waiver of such right in connection with any future default.

(d) No waiver or limitation of any right or remedy hereunder by the Holder shall be effective unless (and any such waiver or limitation shall be effective only to the extent) expressly set forth in a writing, signed and delivered by the Holder to the Maker. No notice to or demand on the Maker in any case shall entitle the Maker to any other notice or demand in similar or other circumstances, nor shall such notice or demand constitute a waiver of any rights or remedy of the Holder to any other or further actions. In its sole discretion, the Holder may, at any time and from time to time, waive any one or more of the rights or remedies contained herein, but such waiver in any instance or under any particular circumstance shall not be deemed to be a waiver of such rights or remedies in any other instance or under any other circumstance.

13. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of Illinois.

14. Non-Recourse. Notwithstanding anything to the contrary contained herein or pursuant to applicable law, the obligations hereunder and under the Mortgage shall be on a nonrecourse basis to the partners of 6840 Partnership and the individual members of the Kaplan Group (as such term is defined in that certain Partnership Agreement, dated as of July 1, 1992, as concurrently amended herewith, and as hereafter amended), irrespective of their capacities as Partners of the Maker. Each member of the Kaplan Group shall have no liability for payment or performance of any liability or obligation under this Note or the Mortgage. Upon the occurrence of an Event of Default, Lender will look solely to the real estate for satisfaction of the secured obligations and will not seek to enforce any obligation or liability or deficiency judgment against any of the foregoing.

# UNOFFICIAL COPY

**MAKER:**

6840 Partnership, an Illinois general partnership

By: Arnold Kapl  
Its: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## LEGAL DESCRIPTION

### PARCEL 1:

THAT PART OF LOT 5 LYING SOUTHWESTERLY OF A LINE DESCRIBED AS BEGINNING 140 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 5 AND RUNNING SOUTHWESTERLY TO A POINT IN THE SOUTHERLY LINE OF SAID LOT, 350.15 FEET EASTERLY OF THE INTERSECTION OF THE SOUTHERLY LINE PRODUCED WESTERLY TO THE WEST LINE OF SAID LOT 5, IN THE CIRCUIT COURT PARTITION OF LOT 2 IN THE WILLIAM WEST AND OTHERS SUBDIVISION OF PART OF LOT 1 AND LOT 18 OF THE ASSESSOR'S DIVISION OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 30 AND LOT 8 OF THE ASSESSOR'S DIVISION OF JANE MIRANDA'S RESERVE, ALSO LOT 11 OF THE ASSESSOR'S DIVISION OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, IL.

### PARCEL 2:

THAT PART LYING NORTH OF TOUHY AVENUE AND LYING WESTERLY OF A LINE DESCRIBED AS BEGINNING AT A POINT IN THE NORTHERLY LINE OF HEREAFTER DESCRIBED LOT 14, 350.15 FEET EASTERLY OF THE INTERSECTION OF SAID NORTHERLY LINE PRODUCED WESTERLY TO THE WESTERLY LINE OF LOT 5, IN CIRCUIT COURT COMMISSIONER'S SUBDIVISION OF LOT 2 IN HEREAFTER DESCRIBED WILLIAM WEST AND OTHERS SUBDIVISION; THENCE SOUTHERLY IN A STRAIGHT LINE FORMING AN ANGLE OF 90 DEGREES 14 MINUTES WITH SAID NORTHERLY LINE OF SAID LOT 14 (TURNED EAST TO SOUTHERLY) OF THE FOLLOWING DESCRIBED LAND TAKEN AS A TRACT, TO WIT: LOT 9 (EXCEPT THE WESTERLY 25 FEET THEREOF), ALL OF LOTS 10 TO 14 IN WILLIAM WEST AND OTHERS SUBDIVISION OF PART OF LOT 1 AND LOT 18 OF THE ASSESSOR'S DIVISION OF THE SOUTHWEST FRACTIONAL  $\frac{1}{4}$  OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT FROM SAID PREMISES THAT PART FALLING IN TOUHY AVENUE), ALL IN COOK COUNTY, IL.

Permanent Index No.: 10-30-317-030/044

Commonly known as: 6840 W. Touhy Ave.  
Niles, IL 60648