

# UNOFFICIAL COPY

When recorded return to:

Bank One, NA  
131 South Dearborn  
Chicago, IL 60603  
Attention: Sharon B. Graven  
IL1-0951



Doc#: 0407919110  
Eugene "Gene" Moore Fee: \$50.00  
Cook County Recorder of Deeds  
Date: 03/19/2004 02:55 PM Pg: 1 of 14

*This space reserved for Recorder's use only*

**Cross-Reference Instrument No. 0021457404**

## ASSUMPTION AGREEMENT

This Assumption Agreement (this "Agreement") is made effective as of March 5, 2004, by and among Restoration Specialists, L.L.C., an Illinois limited liability company (the "Transferor"), Hermitage-Berteau, L.L.C. a Delaware limited liability company (the "Transferee"), and Bank One, NA, a national banking association having its main office in Chicago, Illinois (the "Bank").

### RECITALS:

A. The Bank is the holder of that certain Promissory Note dated as of December 16, 2002 (the "Note") in the original principal amount of \$907,500.00, made by the Transferor payable to the order of the Bank, which Note evidences a loan (the "Loan") made by the Bank to the Transferor (which is also referred to herein as the "Borrower"). The Loan was made on the terms and subject to the conditions of a Loan Agreement dated as of December 16, 2002 (the "Loan Agreement"), by and between the Transferor and the Bank. To secure the repayment of the Note, the Transferor also executed and delivered a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of December 16, 2002 (the "Mortgage") in favor of the Bank, which was recorded in the official records of Cook County, State of Illinois on December 30, 2002, as Instrument No. 0021457405, and which grants a lien to the Bank on the property described in Exhibit A to this Agreement (the "Project"). The Transferor is liable for the payment and performance of all of Borrower's obligations under the Note, the Loan Agreement, the Mortgage, and all other documents executed in connection with the Loan, as listed on Exhibit B to this Agreement (the Note, the Loan Agreement, the Mortgage, and all other documents executed in connection with the Loan being collectively referred to herein as the "Loan Documents").

B. The Transferor and the Transferee have asked the Bank to consent to the transfer of the Project from the Transferor to the Transferee, and to the assumption by the Transferee of all of the obligations of the Transferor under the Loan Documents.

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C. The Bank has agreed to consent to the transfer of the Project by the Transferor to the Transferee, and to the assumption by the Transferee of all of the obligations of the Transferor under the Loan Documents, subject to the terms and conditions stated in this Assumption Agreement.

## AGREEMENT:

In consideration of the foregoing and the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Transferor, the Transferee and the Bank agree as follows:

1. Assumption of Obligations. The Transferee agrees to assume, and hereby assumes and agrees to pay and perform, all of the payment and performance obligations of the Transferor under the Note, the Loan Agreement, the Mortgage and all of the other Loan Documents in accordance with their respective terms and conditions, as modified by this Agreement, which assumption includes, without limitation, payment of all sums due under the Note (subject (as is provided in the Note) to the provisions entitled "Non-recourse/ Conditions and Exceptions to Non-recourse," which are contained in the Loan Agreement). The Transferee hereby accepts and agrees to all representations, warranties, covenants, and agreements of the Transferor set forth in the Note, the Loan Agreement, the Mortgage, and all of the other Loan Documents, as modified by this Agreement, and agrees to be bound thereby.
  
2. Transferor's Representations and Warranties. The Transferor represents and warrants to the Bank as of the date of this Agreement that:
  - (a) The recitals contained in this Agreement are true and correct.
  
  - (b) The Note has an unpaid principal balance of \$893,221.15 as of February 27, 2004, and prior to default bears interest at the rate of four and eighty-two hundredths percent (4.82 %) per annum;
  
  - (c) The Note requires that monthly payments of principal and interest each in the amount of \$4,772.31 be made on or before the first day of each month, continuing to and including December 1, 2007, when all sums due under the Loan Documents will be immediately due and payable in full;
  
  - (d) The Mortgage is a valid first lien on the Project for the full unpaid principal amount of the Loan and all other amounts as stated in the Mortgage;
  
  - (e) There are no defenses, offsets or counterclaims to the Note, the Loan Agreement, the Mortgage, or any of the other Loan Documents;
  
  - (f) There are no defaults by the Transferor under the provisions of the Note, the Loan Agreement, the Mortgage, or any of the other Loan Documents.

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(g) All provisions of the Note, the Loan Agreement, the Mortgage, and all of the other Loan Documents, are in full force and effect;

(h) There are no subordinate liens of any kind covering or relating to the Project, nor are there any mechanics' liens or liens for unpaid taxes or assessments encumbering the Project, nor has notice of a lien or notice of intent to file a lien been received; and

The Transferor understands and intends that the Bank will rely on the representations and warranties contained herein.

3. Transferee's Representations and Warranties. The Transferee represents and warrants to the Bank as of the date of this Agreement that:

(a) All of the representations and warranties made by Transferor in Paragraph 2 above are true and correct;

(b) All financial statements, profit and loss statements, statements as to ownership and other statements or reports previously or hereafter given to the Bank by or on behalf of the Transferee are and shall be true, complete and correct as of the date thereof. There has been no material adverse change in the financial condition or the results of the operation of the Transferee since the latest financial statements of the Transferee that have been delivered to the Bank; and

(c) All of the representations and warranties of the Transferee that are made in the General Certificate and Agreement of Transferee dated as of the date of this Agreement (the "Transferee Agreement") are true and correct as of the date of this Agreement.

The Transferee understands and intends that the Bank will rely on the representations and warranties contained herein.

4. Consent by the Bank. The Bank hereby consents to the transfer of the Project from the Transferor to the Transferee, and to the assumption by the Transferee of all of the obligations of the Transferor under the Note, the Loan Agreement, the Mortgage, and all of the other Loan Documents, subject to the terms and conditions set forth in this Agreement. The Bank's consent to the transfer of the Project to the Transferee is not intended to be and shall not be construed as a consent to any subsequent transfer which requires the Bank's consent pursuant to the terms of the Mortgage.

5. Amendment and Modification of Loan Documents. As additional consideration for the Bank's entering into this Agreement, the Transferee and the Bank hereby agree to (and Transferor hereby consents to), a modification and amendment of the Loan Documents as follows:

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(a) The Loan Agreement. (i) Subsection (d) of Section 7.8 of the Loan Agreement is hereby amended and restated in its entirety to read as follows, and a new subsection (e) is hereby added to Section 7.8 of the Loan Agreement, reading as follows:

(d) When requested by Bank, such further information as Bank may reasonably request relating to Borrower, any financial statements and/or the operation of the Project or any other parcel of real estate owned by the Borrower other than the Project.

(e) Within thirty (30) days after the filing thereof, a complete copy of Borrower's federal income tax return, and all schedules and attachments thereto.

(ii) Section 7.11 of the Loan Agreement is hereby amended and restated in its entirety, so that hereafter it will read as follows:

7.11 Borrower Notices. Borrower shall promptly give notice in writing to Bank of (i) the occurrence of any Event of Default, (ii) any change in the name of Borrower, and in the case of a reorganization, any change in name, identity or corporate structure, (iii) any loss through fire, theft, liability or property damage, or (iv) Borrower's acquisition of any ownership or beneficial or other interest in any other parcel of real estate, and thereafter shall provide the Bank with such information relating thereto as the Bank may reasonably request.

(b) Amendment to Mortgage. To further confirm that the Mortgage continues to secure all of the "Obligation" (as defined in the Mortgage), the Transferee hereby:

(i) mortgages, grants, assigns, remises, releases, conveys and warrants to Bank, all of Transferee's present and future estate, right, title and interest in and to all of the "Mortgaged Property" (as that term is defined in the Mortgage) to secure all of the "Obligation" (as that term is defined in the Mortgage);

(ii) absolutely transfers and assigns to the Bank all right, title and interest of Transferee in and to all of the "Leases" (as that term is defined in the Mortgage) and "Rents" (as that term is defined in the Mortgage) to secure all of the "Obligation" (as that term is defined in the Mortgage); and

(iii) grants a security interest in all of the Transferee's "Personal Property" (as that term is defined in the Mortgage) to secure all of the "Obligation" (as that term is defined in the Mortgage).

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- (c) Limitation of Amendment. Except as expressly stated herein, all terms and conditions of the Loan Documents, including the Note, the Loan Agreement, and the Mortgage, shall remain unchanged and in full force and effect.
- (d) Further Assurances. Transferee agrees at any time and from time to time upon request by the Bank to take, or cause to be taken, any action and to execute and deliver any additional documents which, in the opinion of the Bank, may be necessary in order to assure to the Bank the full benefits of the amendments contained in this Paragraph 5.
6. No Impairment of Lien. Nothing set forth herein shall affect the priority or extent of the lien of any of the Loan Documents, nor, except as expressly set forth herein, release or change the liability of any party who may now be or after the date of this Agreement, become liable, primarily or secondarily, under the Loan Documents. Except as expressly modified hereby, the Note, the Loan Agreement, the Mortgage and the other Loan Documents shall remain in full force and effect and this Agreement shall have no effect on the priority or validity of the liens set forth in the Mortgage or the Loan Documents, which are incorporated herein by reference.
7. Conditions Precedent. This Agreement shall become effective subject to the execution and delivery hereof by the parties hereto, and the execution and delivery of the following documents each in form and substance satisfactory to the Bank:
- (a) Endorsement to Loan Policy of Title Insurance. An endorsement to the Loan Policy of Title Insurance insuring the Mortgage (the "Loan Title Policy"), amending the effective date thereof through the date of this Agreement, and insuring the Mortgage, as amended by this Agreement, as a first mortgage on the Project, which endorsement shall not reveal the existence of any fact or state of title that might, in the Bank's sole discretion, adversely affect the rights, remedies or lien priority of the Bank pursuant to the Mortgage;
- (b) UCC Financing Statements. Such Uniform Commercial Code Financing Statements to be filed naming the Transferee, as Debtor, and the Bank, as Secured Party, as the Bank may request (the filing of which is hereby authorized by the Transferee), and such Uniform Commercial Code Financing Statement Amendments to the Financing Statements filed naming the Transferor, as Debtor, and the Bank, as Secured Party as the Bank may request (the filing of which is hereby authorized by the Transferor and the Transferee).
- (c) Documents Evidencing the Transfer. A copy of the documents evidencing the transfer of the Project from the Transferor to the

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Transferee, including, without limitation, a Deed to the Project from the Transferor to the Transferee.

(d) An Assignment of Management Agreement. An Assignment of Management Agreement with respect to each manager of the Project, or any portion thereof, and of each Management Agreement with respect to the Project, or any portion thereof, and a copy any such Management Agreement.

(e) The Transferee Agreement. The Transferee Agreement executed by the Transferee in favor of the Bank, together with the satisfaction of all of the terms and conditions set forth therein.

(f) Transferee's Organizational Documents. If Transferee or if any partner or member in Transferee is other than a natural person: (i) a copy of the organizational documents for that entity; (ii) evidence of the proper formation and good standing of that entity in the state of its organization, (iii) to the extent required by law, evidence of qualification or registration of that entity in the State of Illinois, if Illinois is not the state of its organization, and (iv) proper resolutions, authorizations, certificates, and such other documents as Bank may require, relating to the existence and good standing of that entity and the authority of any person executing documents on behalf of that entity. If the Transferee or any partner or member in Transferee is other than a natural person, and is a trust, a copy of the trust agreement and such other documents as Bank may require, relating to the existence of the trust and the authority of any person executing documents on behalf of the trust. No change shall be made to any organizational documents previously submitted to Bank without Bank's prior written approval.

(g) Transferor's Authorization Documents. If required by Bank, proper resolutions, authorizations, certificates, and such other documents as Bank may require, relating to the authority of any person executing documents on behalf of Transferor or any partner or member in Transferee (if other than a natural person).

(h) Evidence of Insurance. Evidence, in form and substance satisfactory to the Bank (including, without limitation, certificates of insurance) that all policies of insurance required by Section 5.3(e) of the Loan Agreement or by any other provision of any of the Loan Documents, have been amended to reflect the interest of the Transferee therein and the removal of the Transferor, and that all other insurance requirements set forth in the Loan Documents are continuing to be fully met.

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- (i) Other Documents. Such other documents as the Bank may reasonably request.
8. Transfer Fee. The Transferee and the Transferor jointly and severally agree to pay a transfer fee to the Bank equal to the sum of one-quarter percent (1/4%) of the current principal balance outstanding under the Note in consideration of the Bank entering into this Agreement.
9. Financial Information. The Transferee represents and warrants to the Bank that all financial information and information regarding the management capability of the Transferee provided to the Bank was true and correct as of the date provided to the Bank and remains materially true and correct as of the date of this Agreement.
10. Addresses. Transferee's address for notice hereunder and under the Loan Documents is hereby amended to be:
- Hermitage Berteau, L.L.C.  
3654 N. Lincoln Avenue  
Chicago, IL 60613
- Transferor's address for notice hereunder and under the Loan Documents is:
- Restoration Specialists, L.L.C.  
3654 N. Lincoln Avenue  
Chicago, IL 60613
11. Complete Release. The Transferee and the Transferor unconditionally and irrevocably release and forever discharge the Bank and its successors, assigns, agents, directors, officers, employees, and attorneys (collectively, the "Released Parties") from all "Claims" (defined below). Notwithstanding, the foregoing, the Transferor shall not be responsible for any Claims arising from the action or inaction of the Transferee, and the Transferee shall not be responsible for any Claims arising from the action or inaction of Transferor. As used in this Agreement, the term "Claims" shall mean any and all possible claims, demands, actions, costs, expenses and liabilities whatsoever, known or unknown, at law or in equity, originating in whole or in part, on or before the date of this Agreement, which the Transferor, or any of its respective partners, members, officers, agents or employees, may now or hereafter have against any one, more, or all of the Released Parties, if any, and irrespective of whether any such Claims arise out of contract, tort, violation of laws, or regulations, or otherwise in connection with any of the Loan Documents, including, without limitation, any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable thereto and any loss, cost or damage, of any kind or character, arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of any one, more, or all

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Released Parties, including any requirement that the Loan Documents be modified as a condition to the transactions contemplated by this Agreement, any charging, collecting or contracting for prepayment premiums, transfer fees, or assumption fees, any breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of any other duty, breach of funding commitment, undue influence, duress, economic coercion, violation of any federal or state securities or Blue Sky laws or regulations, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Note, but in each case only to the extent permitted by applicable law. The Transferor and the Transferee agree that the Bank has no fiduciary or similar obligation to the Transferor or Transferee and that the relationship between the Bank and the Transferor and between the Bank and the Transferee is strictly that of creditor and debtor. This release is accepted by the Bank for itself and on behalf of the other Released Parties pursuant to this Agreement and shall not be construed as an admission of liability on the part of either the Bank or any of the other Released Parties. The Transferor and the Transferee hereby represent and warrant to the Bank that they are the current legal and beneficial owners of all Claims, if any, released hereby and have not assigned, pledged or contracted to assign or pledge any such Claim to any other person.

12. Miscellaneous.

- (a) This Agreement shall be construed according to and governed by the laws of Illinois without regard to its conflicts of law principles.
- (b) If any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable, in whole or in part, it will be deemed omitted to that extent and all other provisions of this Agreement will remain in full force and effect.
- (c) No change or modification of this Agreement shall be valid unless the same is in writing and signed by all parties hereto.
- (d) Except as otherwise expressly provided in this Agreement, the Bank hereby reserves all rights and remedies it may have against all parties who may be or may hereafter become primarily or secondarily liable for the repayment of any of the obligations of the Transferee under any of the Loan Documents.
- (e) The captions contained in this Agreement are for convenience of reference only and in no event define, describe or limit the scope or intent of this Agreement or any of the provisions or terms hereof.



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(f) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

(g) This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

(h) THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

13. **WAIVER OF SPECIAL DAMAGES. THE TRANSFEROR AND THE TRANSFEREE EACH WAIVE, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER FROM THE BANK IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.**
14. **JURY WAIVER. THE TRANSFEROR, THE TRANSFEREE AND THE BANK EACH HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THEM ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT, ANY OTHER LOAN DOCUMENT OR ANY RELATIONSHIP BETWEEN OR AMONG THE TRANSFEROR, THE TRANSFEREE, OR THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ENTER INTO THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

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**TRANSFEROR:**

RESTORATION SPECIALISTS, L.L.C.

By: L.G. PROPERTIES, CO., Manager

By: *Philip Pappas* (Seal)

Name: Philip Pappas

Title: President

Date: March 5, 2004

**TRANSFeree:**

HERMITAGE-BERTEAU, L.L.C.

By: L.G. PROPERTIES, CO., Manager

By: *Philip Pappas* (Seal)

Name: Philip Pappas

Title: President

Date: March 5, 2004

**BANK:**

BANK ONE, NA, a national banking association having its main office in Chicago, Illinois

By: *John C. Grand* (Seal)

Name: John C. Grand

Title: Vice President

Date: March 5, 2004

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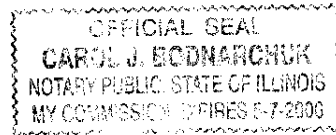
STATE OF ILLINOIS )  
 )SS:  
COUNTY OF Cook )

I, Carol Bodnarchuk, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that the foregoing instrument was acknowledged before me on March 10, 2004, by Philip Pappas, as President of L.G. Properties, Co., an Illinois corporation, as manager of Restoration Specialists, L.L.C., an Illinois limited liability company, on behalf of L.G. Properties, Co., as manager of Restoration Specialists, L.L.C.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

Carol Bodnarchuk  
Notary Public

My Commission Expires: 5/7/06



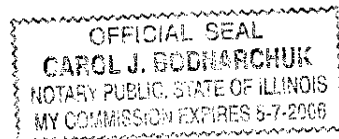
STATE OF ILLINOIS )  
 )SS:  
COUNTY OF Cook )

I, Carol Bodnarchuk, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that the foregoing instrument was acknowledged before me on March 10, 2004, by Philip Pappas, as President of L.G. Properties, Co., an Illinois corporation, as manager of Hermitage-Berteau, L.L.C., a Delaware limited liability company, on behalf of L.G. Properties, Co., as manager of Hermitage-Berteau, L.L.C.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

Carol Bodnarchuk  
Notary Public

My Commission Expires: 5/7/06



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STATE OF ILLINOIS        )  
  )SS:  
COUNTY OF Cook        )

I, Maria Rozado, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that the foregoing instrument was duly acknowledged before me on March 5, 2004, by John C. Grand, as the Vice President of Bank One, NA, a national banking association having its main office in Chicago, Illinois, on behalf of the national banking association.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.



[Signature]  
Notary Public

My Commission Expires:   /  /  

This Instrument Prepared By: Thomas L. Williams, Attorney  
1Bank One Plaza, 20th Floor  
Mail Code IL1-0120  
Chicago, IL 60670

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**EXHIBIT A**  
**to**  
**ASSUMPTION AGREEMENT**

All of that real estate located at 2116-18 West Berteau Avenue, Chicago, in Cook County, Illinois, the Tax Property Identification Number of which is 14-18-312-039-0000, which is more particularly described as follows:

LOT 16 IN HARM'S SUBDIVISION OF THAT PART EAST OF THE CENTER OF OAKLEY AVENUE OF LOT 3 OF BLOCK 1 OF W.B. OGDEN'S SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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**EXHIBIT B**  
**to**  
**ASSUMPTION AGREEMENT**

1. Promissory Note dated December 16, 2002, in the original principal amount of \$907,500.00, made by Restoration Specialists, L.L.C., an Illinois limited liability company, payable to the order of Bank One, NA, a national banking association having its main office in Chicago, Illinois.
2. Loan Agreement dated as of December 16, 2002, by and between Restoration Specialists, L.L.C., an Illinois limited liability company, and Bank One, NA, a national banking association having its main office in Chicago, Illinois.
3. Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of December 16, 2002, executed by Restoration Specialists, L.L.C., an Illinois limited liability company, in favor of Bank One, NA, a national banking association having its main office in Chicago, Illinois, and which was recorded in the official records of Cook County, State of Illinois on December 30, 2002, as Instrument No. 0021457405.
4. The Environmental Indemnity Agreement dated as of December 16, 2002, executed by Restoration Specialists, L.L.C., an Illinois limited liability company, in favor of Bank One, NA, a national banking association having its main office in Chicago, Illinois.
5. UCC Financing Statement No. 6379923, filed on January 13, 2003, with the Secretary of State of Illinois, listing Restoration Specialists, L.L.C., as Debtor, and Bank One, NA, a national banking association in Chicago, Illinois, as Secured Party.
6. All other documents executed in connection with the Loan.