

# UNOFFICIAL COPY

## LOAN AND SECURITY AGREEMENT



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Eugene "Gene" Moore Fee: \$62.50  
Cook County Recorder of Deeds  
Date: 07/09/2004 10:40 AM Pg: 1 of 20

This Loan and Security Agreement is executed July 7, 2004 by and between Brian K. Mahoney and Michelle L. Mahoney, married ("Borrowers"), and WINDSTONE FINANCIAL SERVICES, INC. ("Lender").

### FACTS:

Borrowers has requested that Lender lend to Borrowers, Brian K. Mahoney and Michelle L. Mahoney, Five Thousand Dollars (\$5,000.00) (the "Loan") to be secured by real estate owned by Borrowers, which real estate is described in Exhibit A attached hereto and made a part hereof the ("Property"). The Loan is to be evidenced by Borrowers' Note to Lender in the amount of the Loan, and the Note is to be secured by this Loan and Security Agreement (the "Agreement"). In order to induce Lender to make the requested Loan and to further assure Lender repayment of the Loan, Borrowers' agreed to grant a lien to Lender on the vehicle owned by Borrowers.

In consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in order to induce Lender to make and disburse the Loan, the parties agree as follows:

#### 1. Definitions

When used herein, the following terms shall have the following meanings:

1.1 "Ancillary Agreements" shall mean all Security Documents and all agreements, instruments and documents, including without limitation, notes, guaranties, subordination agreements, financing statements, and all other written matter whether heretofore, now, or hereafter executed by or on behalf of Borrowers or any other Person and/or delivered to Lender or any Participant with respect to this Agreement.

1.2 "Charges" shall mean all governmental taxes, levies, assessments, charges, liens, claims, expenses, fees, costs, or encumbrances upon and/or relating to: (A) the Collateral; (B) the Indebtedness; (C) Borrowers' employees, payroll, income and/or gross receipts; (D) Borrowers' ownership and/or use of any of its assets; or (E) any other aspect of Borrowers' business, including without limitation, the charges listed in Paragraph 6.1.

1.3 "Collateral" shall mean all of the property and interests in property described in Paragraph 4.1 of this Agreement and all other property and interests in property that shall, from time to time, secure the Indebtedness.

1.4 "Default" shall mean the occurrence or existence of any one or more of the events described in Paragraph 7.1 of this Agreement.

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1.5 **“Event of Default”** shall mean any event or condition which, upon occurrence or with the passage of time, or upon the giving of notice, or both, would constitute a Default.

1.6 **“Fees and Expenses”** shall mean all fees and expenses described in Paragraph 6.1(C).

1.7 **“Financials”** shall mean the financial statements of Borrowers heretofore delivered to Lender or such other financial statements of Borrowers to be delivered to Lender pursuant to this Agreement. All financial statements shall include an income statement, a balance sheet, and a summary of cash flows.

1.8 **“Guarantor”** shall mean any Person who now or hereafter guarantees all or any part of the Indebtedness.

1.9 **“Indebtedness”** shall mean all of Borrowers’ liabilities, obligations and indebtedness to Lender of any and every kind and nature (including, without limitation, interest, charges, expenses, attorney’s fees and other sums chargeable to Borrowers by Lender, future advances made to or for the benefit of Borrowers and obligations of performance), whether arising under the Note, this Agreement or under any of the Ancillary Agreements.

1.10 **“Note”** shall mean the Note of Borrowers in the amount described in Paragraph 2.1 of this Agreement and dated of even date herewith, given to Lender to evidence the loan to Borrowers from Lender.

1.11 **“Person”** shall mean any individual, sole proprietorship, partnership, corporation, institution or other entity, party, government or governmental body.

1.12 **“Property”** or **“Properties”** shall mean all interests of Borrowers in the real estate, which title is attached as Exhibit “A”.

1.13 **“Security Documents”** shall mean this Agreement, other agreements, instruments, documents, or written materials necessary or requested by Lender to perfect and maintain perfected Lender’s security interest in the Collateral.

1.14 **“Term”** shall have the meaning ascribed to it in Paragraph 2.5 of this Agreement.

1.15 **Accounting Terms.** Any accounting terms used in this Agreement which are not specifically defined shall have the meanings customarily given them in accordance with generally accepted accounting principles.

1.16 **Other Terms.** All other terms contained in this Agreement not otherwise defined in this Paragraph 1 or in any other paragraph of this Agreement shall, unless the context indicates otherwise, have the meanings provided for by the Uniform Commercial Code of the State of Illinois (the “Code”) to the extent the same are used or defined therein.

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## 2. **Loan: General Terms**

2.1 **Loan.** Subject to the terms and conditions set forth in this Agreement, Lender shall loan to Borrowers the principal sum of Eleven Thousand Two Hundred Seventy-Five Dollars (\$11,275.00) (the "Loan"). The Loan shall be evidenced by a Note (the "Note") in the form attached hereto as Exhibit B and shall be payable as provided therein. The Loan shall be evidenced by and be repayable with interest in accordance with the terms of this Agreement and the Note made by Borrowers payable to the order of Lender, which shall be dated on or before the date of the first disbursement of the Loan.

2.2 **Advances to Constitute One Loan.** All loans and advances made by Lender to Borrowers under this Agreement at any time shall constitute one loan and all indebtedness and obligations of Borrowers to Lender under this Agreement shall constitute one general obligation of Borrowers secured by the Collateral.

2.3 **Interest Rate and Payment.** Borrowers shall pay Lender interest on the outstanding principal balance of the Loan plus Indebtedness accruing thereunder at the rate stated in the Note. After maturity (whether by lapse of time, acceleration, or otherwise) accrued interest shall be due and payable upon demand. Interest on the Loan shall be computed on the basis of a year of 360 days and charged for the actual number of days elapsed.

2.4 **Default Rate of Interest.** After the Maturity Date or upon and after the occurrence of a Default hereunder or under any of the Ancillary Agreements and the expiration of all applicable cure or grace periods, the outstanding principal balance of the Loan plus Indebtedness accruing thereunder shall bear interest from time to time at a rate per annum (the "Default Rate") equal to Three percent (3%) per annum in excess of the stated fixed rate in effect from time to time until all amount due under the Note or hereunder are fully paid.

2.5 **Term of Agreement.** This Agreement shall be in effect until all amounts due Lender have been fully paid in accordance with the terms hereof. All amounts due Lender under this Agreement or the Note shall be due six (6) months from the date of this Agreement (the "Term"), unless sooner paid, or upon acceleration as provided herein or in the Note. This Agreement may also be terminated by Lender upon the occurrence of an Event of Default as provided in Paragraph 7.1 of this Agreement. Upon the effective date of termination, all of the Indebtedness shall become immediately due and payable without further notice or demand.

2.6 **Late Payment Charge.** Any payment not received within ten (10) days of the due date thereof shall be subject to a late charge equal to five per cent (5%) of the delinquent payment.

2.7 **Optional Prepayment.** The Loan may be prepaid upon the terms and conditions set forth in the Note.

2.8 **Incorporation of Terms of Ancillary Agreements.** Concurrently with the execution hereof, Borrowers and Guarantor will execute the Note and a Mortgage (the "Mortgage") for the collateral securing the Note and Borrowers' obligations to Lender under this

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Agreement. All obligations of Borrowers under the Note and all of the terms, provisions, undertakings, conditions precedent, warranties, representations, rights, and remedies of Lender under the Note and the Mortgage are incorporated into this Agreement by reference.

**2.9 Payment Terms.** All of the Indebtedness shall be payable to Lender on the due date specified in the Note at the address set forth therein. Charges and other Fees and Expenses shall be payable as and when provided in this Agreement or the Ancillary Agreements. Payments will be applied first to accrued and unpaid interest, then to Charges and other Fees and Expenses, then to principal. Borrowers irrevocably waives the right to direct the application of payments and collections received by Lender from or on behalf of Borrowers.

### 3. Disbursement of Loan Proceeds

Prior to the disbursement by Lender of any proceeds of the Loan pursuant to this Agreement, the following conditions precedent must be satisfied:

**3.1 Title Insurance.** Borrowers shall have provided Lender with an ALTA Mortgage Loan Policy or Policies. The Title Policy shall insure the Mortgage (for its full amount or for so much of the Loan as has been disbursed) as a second lien on the Property.

**3.2 Insurance.** Borrowers shall have delivered to Lender insurance policies with premiums prepaid or certificates for such insurance, with issuing companies, coverages and amounts adding Windstone Financial Services, Inc. as an additional insured, insuring the Property against loss or damage by fire and such other hazards as may be requested by Lender, including, without limitation, extended coverage, vandalism, and malicious mischief coverage and other insurance as set forth in the Mortgage.

**3.3 Application of Proceeds.** If requested by Lender, Lender shall have received evidence satisfactory to it that the proceeds of the Loan are being applied in accordance with the provisions of this Agreement.

**3.4 Delivery of Ancillary Agreements.** Borrowers shall execute and deliver or cause to be executed and delivered to Lender, as evidence of and as security for all obligations under this Agreement, all documents reasonably required by Lender.

**3.5 Accuracy of Representations and Warranties.** The representations and warranties of Borrowers made herein shall be true and correct as though made on and as of the date of such disbursement.

**3.6 No Material Adverse Change.** There shall have been no material adverse change in the financial condition of Borrowers or any Guarantor from the financial condition reflected on the financial statements of Borrowers and any Guarantor last provided to Lender.

**3.7 No Event of Default.** There shall exist no Event of Default and no event or condition which, with the giving of notice or lapse of time, or both, would constitute a Default.

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## 4. Collateral: General Terms

4.1 **Grant of Security Interest.** In order to secure the timely and full performance of the obligations of Borrowers to Lender under this Agreement and the Note and any and all interest accruing thereon, and any and all extensions, renewals, or refinancing thereof, in addition to the security interest granted in the Mortgage, Borrowers hereby grants to Lender a security interest in the Property, and all other Collateral described herein.

4.2 **Disclosure of Security Interest.** Borrowers shall make appropriate entries upon its financial statements and books and records disclosing Lender's security interest in the Collateral.

4.3 **Inspection.** Lender (by any of its officers, employees and/or agents) shall have the right, at any time or times during Borrowers' usual business hours, upon reasonable prior notice, to inspect the Collateral, all records related thereto (and to make copies of and extracts from such records) and the premises upon which any of the Collateral is located, and to verify the amount, quality, quantity, value and condition of or the Collateral, or any other matter relating thereto.

4.4 **Filing and Recording; Perfection.** Borrowers shall execute and deliver, or cause to be executed and delivered, to Lender at any time or times hereafter, all Security Documents that Lender may reasonably request, in form and substance acceptable to Lender, and shall pay the costs of any recording or filing of the same and take whatever other actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon Lender's request, Borrowers will deliver to Lender any and all of the documents and instruments evidencing or constituting the Collateral or any part thereof, together with an appropriate endorsement or assignment thereof satisfactory to Lender. Borrowers irrevocably appoints Lender as the agent and attorney-in-fact of Borrowers to execute such documents and take such actions as Lender deems necessary to preserve and perfect Lender's security interest in the Collateral. The foregoing power of attorney shall not be construed as authorizing Lender or its attorney to confess judgment on behalf of Borrowers.

4.5 **Rights of Lender.** Lender shall not be liable for failure to collect or realize upon any Collateral or any part thereof, or for any delay in so doing, nor shall it be under any obligation to take any action whatsoever with regard thereto.

5. **Warranties And Representations** As an inducement to Lender to make the Loan, Borrowers jointly and severally represents and warrants to Lender as follows:

### 5.1 General Representations.

A. To the best of Borrowers' knowledge Borrowers are not in violation of any applicable statute, rule, regulation or ordinance of any governmental entity, in any respect materially and adversely affecting the Collateral or Borrowers' business.

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- B. Borrowers are not in default under any indenture, loan agreement, mortgage, lease, franchise agreement or other agreement of any kind to which it is a party or by which it is or may be bound.
- C. The execution, delivery and performance by Borrowers of this Agreement and the Ancillary Agreements shall not, by their execution or performance, the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law, rule or regulation or a breach of any provision contained in any agreement, instrument, indenture or other document to which Borrowers are now a party or by which it is or may be bound.
- D. There is no claim, litigation, proceeding, or governmental investigation, pending or, to the best knowledge of Borrowers, threatened, against Borrowers, the Property or relating to his business, or the ability of Borrowers to perform under this Agreement, except for a personal injury suit was filed by a construction worker.
- E. Borrowers have filed with the proper government agencies, all tax returns and reports required to be filed by Borrowers and all federal, state and local income, property, franchise, sales, use, occupation, excise or other taxes which are due on the date hereof have been paid.
- F. Borrowers' use of the proceeds of any advances made by Lender to Borrowers pursuant to this Agreement are, and will continue to be, legal and proper uses and such uses are consistent with all applicable laws and statutes, as in effect as of the date hereof
- G. Borrowers: (1) has capital sufficient to carry on its business and transactions and all businesses and transactions in which it is about to engage; (2) is solvent and able to pay its debts as they mature; and (3) Borrowers owns property the fair saleable value of which is greater than the amount required to pay Borrowers' debts.
- H. Borrowers is not a party to any contract or agreement or subject to any charge, corporate restriction, judgment, decree or order materially and adversely affecting its business, property, assets, operations or condition.
- I. The Financials fairly present the assets, liabilities and financial condition and results of operations of Borrowers as of the dates thereof; there are no omissions or other facts or circumstances which are or may be material, and there has been no material and adverse change in the assets, liabilities or financial or other condition of Borrowers since the dates of the Financials.
- J. Neither this Agreement nor any document, financial statement, credit information, certificate or statement provided to Lender by Borrowers contains, or will contain, any untrue statement of a material fact or omits, or will omit, to state a material fact necessary to make the statements made not misleading.

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**5.2 Representations and Warranties to be Continuing.** All of the representations and warranties of Borrowers contained in this Agreement and the Ancillary Agreements shall be true at the time of Borrowers' execution of this Agreement and the Ancillary Agreements and will be true at the date of the initial disbursement and at the dates of all subsequent disbursements of the Loan. All representations, warranties, covenants, and agreements made herein or in any certificate or other document delivered to Lender by or on behalf of Borrowers shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf, and shall survive the making of any or all of the disbursements contemplated hereby and shall continue in full force and effect as long as there remains unperformed any obligation to Lender hereunder or under any of the Ancillary Agreements.

## 6. **Default, Rights and Remedies on Default.**

**6.1 Event of Default.** The occurrence of any one or more of the following events shall constitute an Event of Default:

- A. Borrowers fails to pay any amount due hereunder or under the Note, whether by acceleration or otherwise, the principal (or any part(s) thereof including any required prepayment) of the Note or any installment of interest on the Note or any other sum due and payable under this Agreement or any of the Ancillary Agreements, and such failure to pay continues for more than three (3) days after written notice thereof, which notice may be given by telefacsimile transmission as provided in Paragraph \_\_\_\_\_;
- B. Borrowers or any Guarantor of the Indebtedness fails or neglects to perform, keep, or observe any other term, provision, condition or covenant contained in this Agreement or in the Ancillary Agreements or any other agreements between Lender and Borrowers or any Guarantor, which Borrowers or Guarantor is required to perform, keep or observe and the same is not cured to Lender's satisfaction within thirty (30) days after Lender gives Borrowers notice identifying such Default;
- C. A default shall occur under any agreement, document or instrument, other than this Agreement or any of the Ancillary Agreements, now or hereafter existing, to which Borrowers is a party, if such default has a material effect upon the operation of Borrowers' business or a material effect upon any of the covenants, representations or warranties contained in this Agreement or the Ancillary Agreements;
- D. All or substantially all of the Collateral or Borrowers' other assets are attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors, an application is made by any person other than Borrowers for the appointment of a receiver, trustee, or custodian for the Collateral, or any of Borrowers' other assets; any case or proceeding is filed by or against Borrowers for its dissolution, liquidation, or termination; Borrowers ceases to conduct its business as now conducted or is enjoined,

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restrained or in any way prevented by court order from conducting all or any material part of its business affairs; or a petition under any paragraph or chapter of the Bankruptcy Code or any similar law or regulation is filed by or against Borrowers or any Guarantor of the Indebtedness and the same is not dismissed within ninety (90) days after the application therefor;

E. A notice of lien, levy or assessment is filed of record with respect to all or any substantial portion of Borrowers' assets by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, or any taxes or debts owing to any of the foregoing becomes a lien or encumbrance upon the Collateral and such lien or encumbrance is not released within thirty (30) days after its creation;

F. Borrowers becomes insolvent or fails generally to pay its debts as they become due;

G. Any guaranty of the Loan is repudiated, becomes unenforceable, or any Guarantor becomes incapable of performance of such guaranty provided that such incapacity adversely affects Borrowers or Guarantors, as a group, ability to perform within the Bank's reasonable determination;

H. Any statement, representation, warranty, report, financial statement, or certification, made or delivered by Borrowers, or any of its agents, or by any Guarantor to Lender in or pursuant to this Agreement or any of the Ancillary Agreements proves to be untrue in any material and adverse respect at any time when such representation, warranty or certification is operative or applicable hereunder; and in such case such representation and warranty continues to be untrue for ten (10) days; or

I. There is any material adverse change in the condition or business (financial or otherwise) of Borrowers or any Guarantor that, in the reasonable opinion of Lender, materially impairs Lender's security or materially increases Lender's risk relative to the risks inherent at the date hereof.

**6.2 Default under Ancillary Agreement.** Any Default which occurs under this Agreement shall constitute a default under the Ancillary Agreements.

**6.3 Delay of Exercise of Remedies.** With respect to any non-monetary default that is not cured within the applicable cure period, or within thirty (30) days if no cure period is otherwise specified, Lender will delay the exercise of its rights and remedies hereunder provided: (1) Borrowers commences the cure of such Default within the applicable cure period; (2) thereafter Borrowers diligently pursues the cure of such Default with all reasonable diligence; and (3) Lender's interests are not materially and adversely affected by Borrowers' failure to cure.

**6.4 Remedies.** After the occurrence of any Event of Default which has not been cured within the applicable grace or cure periods, Borrowers shall be deemed to be in Default hereunder. After the occurrence of a Default, in addition to all the rights and remedies conferred



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upon Lender by law or equity or by the terms of any of the Ancillary Agreements, Lender shall have the right to do any or all of the following, concurrently or successively, without further notice to Borrowers:

A. Declare the Note immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Ancillary Agreements to the contrary notwithstanding;

B. Terminate Lender's obligations under this Agreement to extend credit of any kind or to make any disbursement, whereupon the commitment and obligations of Lender to extend credit or to make disbursements hereunder shall terminate; and

C. Pursue any and all rights and remedies of a secured party under the Code or other applicable law, all of which rights and remedies shall be cumulative, and none exclusive, to the extent permitted by law, in addition to any other rights and remedies contained in this Agreement and in all of the Ancillary Agreements. Borrowers waives all demands, notices, and advertisement of any kind (except the notice of time and place of public or private sale) to or upon Borrowers or any other person. Lender shall have the right, upon any such sale or sales, public or private, to purchase the whole or any part of the Collateral, free of any right or equity of redemption in Borrowers, which right or equity is hereby expressly waived or released. Lender shall apply the net proceeds of any such collection or sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the safekeeping or otherwise of any and all of the Collateral in any way relating to the rights of Lender hereunder, including reasonable attorneys' fees and legal expenses, to the payment, in whole or in part, of the Note in such order as Lender may elect and Borrowers shall remain liable for any deficiency remaining unpaid after such application, and only after so paying over such net proceeds and after the payment by Lender of any other amount required by any provision of law, including, without limitation, Section 9-504(1)(c) of the Code. Lender shall account for the surplus, if any, to Borrowers. Borrowers agrees that Lender need not give more than ten (10) days' notice of the time and place of any public sale or of the time after which a private sale or other intended disposition is to take place and that such notice is reasonable notification of such matters.

6.5 **Notice of Sale.** Any notice required to be given by Lender of a sale, lease, other disposition of the Collateral or any other intended action by Lender, which is deposited in the United States mail, postage prepaid and duly addressed to Borrowers at the address set forth in Paragraph 7.19 of this Agreement ten (10) days prior to such proposed action shall constitute commercially reasonable and fair notice thereof to Borrowers.

## 7. General Provisions

7.1 **Attorneys' Fees and Expenses; Lender's Out-of-Pocket Expenses.** If, at any time or times, whether prior or subsequent to the date hereof, and regardless of the existence of a Default or any Event of Default, Lender employs counsel for advice or other representation or incurs legal and/or other costs and expenses in connection with:

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A. The preparation, negotiation and execution of this Agreement, all Ancillary Agreements, and amendment or modification of this Agreement or the Ancillary Agreements or any sale or attempted sale of any interest herein to a Participant;

B. Any litigation, contest, dispute, suit, proceeding or action (whether instituted by Lender, Borrowers or any other Person) in any way relating to this Agreement, the Ancillary Agreements, or Borrowers' business; and/or

C. Any attempt to enforce any rights of Lender or any Participant against Borrowers or any other Person which may be obligated to Lender by virtue of this Agreement or the Ancillary Agreements, including, without limitation, the Account Debtors, then, in any such event, the reasonable attorneys' fees arising from such services and all reasonably incurred expenses, costs, charges, and other fees of such counsel or of Lender shall be payable on demand by Borrowers to Lender and shall be additional Liabilities hereunder.

7.2 **Sale of Interest.** Borrowers hereby consents to Lender's participation, sale, assignment, transfer or other disposition, at any time or times hereafter, of this Agreement, or the Ancillary Agreements, or of any portion thereof, including, without limitation, Lender's right, title, interest, remedies, powers, and/or duties hereunder thereunder.

7.3 **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.4 **Entire Agreement.** This Agreement and the Ancillary Agreements constitute the entire agreement between the parties. This Agreement supersedes any other agreement made by Lender with or for the benefit of Borrowers.

7.5 **Conflict of Terms.** The provisions of the Ancillary Agreements are incorporated in this Agreement by this reference. If any provision contained in this Agreement is in conflict with or inconsistent with any provision in any of the Ancillary Agreements, the provision contained in this Agreement shall govern and control.

7.6 **Amendment.** This Agreement and the Ancillary Agreements may not be modified, altered or amended without the prior written consent of Lender.

7.7 **Waivers by Borrowers.** Borrowers waives: (A) presentment, demand, and protest, notice of protest, notice or presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contact rights, documents, instruments, chattel paper and guaranties at any time held by Lender on which Borrowers may in any way be liable and hereby ratifies and confirms whatever Lender may do in this regard; and (B) the benefit of all valuation, appraisal, extension and exemption laws.

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Borrowers acknowledges that it has been advised by counsel of its choice with respect to this Agreement and the transactions evidenced by this Agreement.

**7.8 Waiver by Lender.** Lender's failure, at any time or times hereafter, to require strict performance by Borrowers of any provision of this Agreement shall not constitute a waiver of any Event of Default or any Default of Borrowers or affect or diminish any right of Lender thereafter to demand strict performance by Borrowers under this Agreement or the Ancillary Agreements. No Default by Borrowers under this Agreement, the Note or the Ancillary Agreements shall be deemed to have been suspended or waived by Lender unless such suspension or waiver is in writing and signed by an officer of Lender. No notice to or demand on Borrowers in any case shall, in itself, entitle Borrowers to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender to any other or further action in any circumstances without notice or demand.

**7.9 Rights and Remedies Cumulative.** Lender's rights and remedies, whether set forth in this Agreement, in the Ancillary Agreements, or in any other writing, are not exclusive of any right or remedy provided by law; all such rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy.

**7.10 Assignment.** Borrowers may not sell, assign or transfer this Agreement, or the Ancillary Agreements or any portion thereof including, without limitation, Borrowers' right, title, interest, remedies, powers, and/or duties hereunder or thereunder. Any assignment or encumbrance, or purported assignment or encumbrance of any of the foregoing shall, except to the extent expressly permitted by this Paragraph, be void and of no effect for any purpose whatsoever.

**7.11 Binding Effect.** This Agreement and the Ancillary Agreements shall be binding upon and inure to the benefit of the respective parties hereto and their respective successors and permitted assigns. This Agreement is made for the sole benefit of Borrowers and Lender and no other Person or Persons shall have any benefits, rights or remedies under or by reason of this Agreement.

**7.12 Form of Documents.** All documents and other matters required by any of the provisions of this Agreement to be submitted or provided to Lender shall be in form and substance satisfactory to Lender and its counsel.

**7.13 Further Assurances.** Borrowers agrees that, at any time or from time to time, upon the written request of Lender, it will execute and deliver all such further documents and do all such other acts and things as Lender may reasonably request.

**7.14 Paragraph Titles.** The paragraph titles contained in this Agreement are for convenience of reference only and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

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7.15 **Gender and Number:** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter, shall including all of the other genders, and the use of the singular or the plural shall include the use of the other as the identity of the person or persons may require.

7.16 **Usury Laws.** If the Loan or the Indebtedness is or becomes subject to a law which sets maximum rate of interest or loan charge, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits of any applicable usury statute or any other law, then *ipso facto*: (A) any interest or loan charge shall be reduced by the amount necessary to reduce the interest or loan charge to the legal limit, and Borrowers shall pay such amount according to the provisions of the Note, and (B) any sums already collected from Borrowers that exceed the permitted limits will, if required by such law, be refunded to Borrowers by either reducing the principal balance under the Note or by making direct payment to Borrowers, at Lender's election. In no event shall Borrowers, its successors or assigns, be bound to pay for the use, forbearance or detention of the Indebtedness interest in excess of the legal rate, and the right to demand any such excess shall be and hereby is waived. This provision shall control every other provision of this Agreement, the Mortgage, the Note, or any of the Ancillary Agreements.

7.17 **Indemnity.** In the event Lender is named in any action brought against Borrowers for actions occurring during the period of the Loan or subsequent to the execution of this Agreement or any Ancillary Agreement by Borrowers and the closing of the Loan, Borrowers shall indemnify and hold Lender fully harmless for any and all claims arising out of or resulting from any such claim, including any and all costs of defending such action and reasonable attorney's fees incurred in connection therewith.

7.18 **Regulatory Requirements.** This Agreement is subject to full compliance with all applicable state and federal laws and regulations that may govern Lender and to compliance with all formal directives of state and federal agencies implementing and enforcing such laws and regulations.

7.19 **Notices.** Any notice, claim, request, or demand which any party hereto may be permitted or required to give to any other party hereto shall be in writing, and shall be deemed given: (a) if and when personally delivered; (b) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth below; (c) on the second (2nd) business day after being deposited in United States registered or certified mail, postage prepaid; or (d) on the date of transmission if sent by telefacsimile transmission (provided that the sender retains proof of such transmission and mails a copy of such notice by regular mail not later than the next business day). All notices shall be addressed to a party at its address set forth herein or at such other place as such party may have designated for itself by notice in writing in accordance herewith. Service or delivery of courtesy copies shall not be required to make any notice hereunder valid.

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If to Borrowers: Brian K.Mahoney  
Michelle L. Mahoney  
3445 Euclid Avenue  
Berwyn, Illinois 60402

if to Lender: Windstone Financial Services, Inc.  
3924 West Devon  
Suite 200  
Lincolnwood, IL 60712

with a copy to: Richard L. Kruse  
Smith Kruse & Nicolau  
3924 West Devon  
Suite 200  
Lincolnwood, IL 60712

7.20 **Time of the Essence.** Time is of the essence of this Agreement and the Ancillary Agreements and of every part hereof and thereof. The obligations of Lender hereunder shall be of no further force or effect if disbursement of the Loan does not occur on or before July 12, 2004.

7.21 **Governing Law.** This Agreement shall be interpreted, in accordance with the laws of the State of Illinois. Borrowers hereby consents to the jurisdiction of any state or federal court located within Cook County, Illinois. Borrowers hereby waives trial by jury and waives any objection Borrowers may have based on improper venue or *forum non conveniens* to the conduct of any proceeding instituted hereunder.

Property of Cook County Clerk's Office

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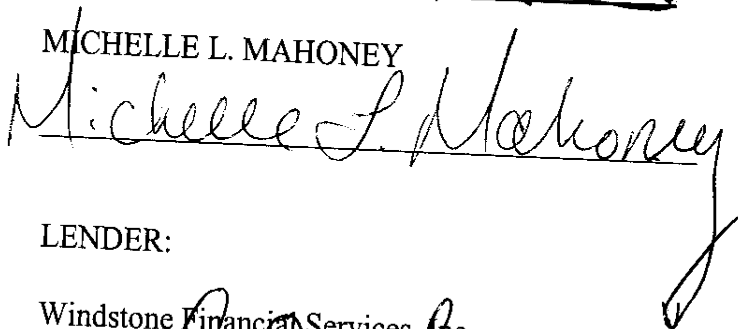
IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year specified at the beginning hereof.

BORROWERS:

BRIAN K. MAHONEY



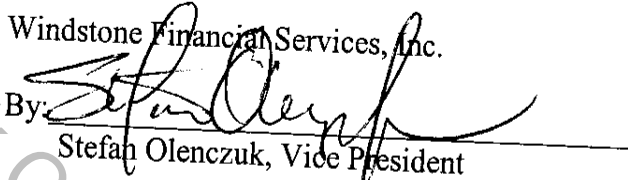
MICHELLE L. MAHONEY



LENDER:

Windstone Financial Services, Inc.

By:



Stefan Olenczuk, Vice President

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## EXHIBIT A

Lot 49 and the South  $\frac{1}{2}$  of Lot 50 in Block 13 in Berwyn, a Subdivision in Section 31, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Commonly Known As: 3445 Euclid Avenue, Berwyn, Illinois 60402

Parcel ID Number: 16-31-231-025-0000

Property of Cook County Clerk's Office

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## PROMISSORY NOTE

\$5,000.00

Lincolnwood, Illinois  
July 7, 2004

1. Agreement to Pay. FOR VALUE RECEIVED, the undersigned, Brian K. Mahoney and Michelle L. Mahoney, hereby promises to pay to the order of Windstone Financial Services, Inc., in the manner hereinafter provided, the principal sum of Five Thousand Dollars (\$5,000.00) on or before July 7, 2005, which may be extended by the mutual agreement of the parties hereto, in writing, (hereinafter referred to as the "Maturity Date"), together with interest at a weekly rate equal to one (1%) percent, per week, on the balance of principal advanced hereunder and remaining, from time to time, unpaid. Interest payments shall be made every week on Tuesday of each week, in the amount of \$50.00.
2. Application of Payments. All payments received on account of the indebtedness evidenced by this Note shall be applied (1) to payment of late charges described in Section 5 hereof; (2) to interest at the Default Rate as defined in Section 4 hereof; and (3) the remainder (if any) shall be applied to the principal balance remaining unpaid hereunder.
3. Method and Place of Payment. All such payments of principal and interest are to be paid in lawful money of the United States of America and shall be made at such place as the legal holder of this Note, may from time to time in writing appoint, and in the absence of such appointment, at the office of Windstone Financial Services, Inc.
4. Default. If default be made in the payment of any interest herein provided for, or the principal sums evidenced hereby, or any part thereof, or any other sums payable pursuant to the terms of this Note or pursuant to the terms of any collateral or security agreement executed in connection with this Note, or if default be made in the performance of any covenant or agreement contained in this Note or any collateral or security agreement executed in connection with this Note, at the time when performance is required by any such document, then or at any time thereafter, at the option of the holder of this Note, the whole of the principal sum then remaining unpaid hereunder, together with all interest accrued thereon, shall immediately become due and payable without notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity made by the holder hereof or from and after the due date for the performance of any such covenants or conditions irrespective of any declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at the default interest rate (herein referred to as the "Default Rate") equal to sixteen (16%) percent or



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the highest lawful rate, whichever is the lesser, provided that there shall be no automatic reduction to the highest lawful rate as to any maker hereof barred by law from availing itself in any action or proceeding of the defense of usury, or any maker barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any reason is exempt from the operation or any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights the holder may, in the event of any such default, be entitled to shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

5. Late Charge. A late charge of five (5%) percent of each installment past due for more than ten (10) days shall be paid to the holder hereof in order to defray part of the cost of collection. Such payment shall be due and payable on the eleventh (11th) day after any such applicable payment is due. The payment of any such late fee will not affect the rights of the holder hereof to pursue any remedies available to it.

6. Costs of Enforcement. In the event that this Note is placed in the hands of an attorney-at-law for collection after maturity, or upon default, or in the event that proceedings are instituted or threatened in connection herewith, or if the holder is made a party to any such proceeding, or in the event that this Note is placed in the hands of an attorney-at-law to enforce any of the rights or requirements contained herein or any other collateral or security agreement or mortgage executed in connection with this Note, the undersigned hereby agrees to pay all reasonable costs of collecting or attempting to collect this Note, or any costs of protecting or enforcing such rights, including, without limitation, reasonable attorneys' fees (whether or not suit is brought), in addition to all principal, interest and other amounts payable hereunder; all of which shall be secured by any collateral or security agreement or mortgage securing payment hereof.

7. Interest Limitation. In the event the several interest provisions hereof or any exactions provided for herein or in any instrument(s) securing this Note shall result, at any time during the life of the loan, in an effective rate of interest which, for any month, transcends the limit of the usury or any other law applicable to the loan evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, without further agreement or notice between or by any party hereto, be applied upon principal immediately upon receipt of such monies by the holder hereof, with the same force and effect as though the payer had specifically designated such extra sums to be so applied to principal and the holder hereof had agreed to accept such extra payment(s) as a premium-free prepayment. Notwithstanding the foregoing, however, the holder may at any time and from time to time elect when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirements of the preceding sentence.

8. Waiver. To the extent permitted by law, the undersigned and all endorsers, guarantors and all persons liable or to become liable on this Note waive: (i)

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presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note; (ii) all applicable appraisal, valuation and exemption rights; and consent to any and all renewals and extensions in the time of payment hereof, and agree, further, that at any time and from time to time without notice, the terms of payment herein may be modified or the security described in any document securing this Note released, in whole or in part, or increased, changed or exchanged by agreement between the holder hereof and any owner of the property affected by said document securing this Note, without in anyway affecting the liability of any party to this instrument or any person liable or to become liable with respect to any indebtedness evidenced hereby.

9. Holder's Actions. The remedies of the holder hereof as provided herein or in any collateral or security agreement or mortgage executed in connection with this Note shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of the holder hereof, and may be exercised as often as occasion therefor shall arise. Failure of the holder hereof, for any period of time or on more than one occasion, to exercise its option to accelerate the Maturity Date of this Note shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent default. No act of omission or commission of the holder hereof, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same and any such waiver or release is to be effected only through a written document executed by the holder hereof and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of the holder's rights or remedies hereunder. Except as otherwise specifically required herein, notice of the exercise of any right or remedy granted to the holder hereof by this Note is not required to be given.

10. Disbursement. Funds representing the proceedings of the indebtedness evidenced hereby which are disbursed for any purpose permitted hereunder by any holder hereof by mail, wire transfer or other delivery to the undersigned, to escrows or otherwise for the benefit of the undersigned, for all purposes, shall be deemed outstanding hereunder and to have been received by undersigned as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such wire transfer, mailing or delivery and until repaid, notwithstanding the fact that such funds may not at any time have been remitted by such escrows to undersigned or for its benefit. Funds paid hereunder shall be deemed received on the next business day if not received by 2:00 p.m. local time at the location where payments hereunder are to be made.

11. Business Loan. The maker hereof acknowledges that the proceeds of the within Note will be used for the purposes specified in Section 6404(1)(c) of Chapter 18 of the 1981 Illinois Revised Statues; and that the principal obligation secured hereby constitutes a business loan within the purview and operation of said section.

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12. Prepayment. Prepayments of the indebtedness evidenced hereby, in whole or in part, shall be permitted at any time and from time to time without prior notice without penalty or premium.

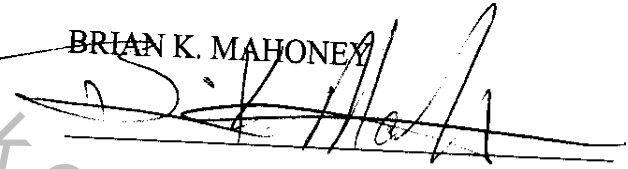
13. Notices. All notices required or permitted to be given hereunder to the undersigned shall be given to the maker at 3445 Euclid Avenue, Berwyn, Illinois 60402

14. Time. Time is of the essence of this Note and each of the provisions hereof.

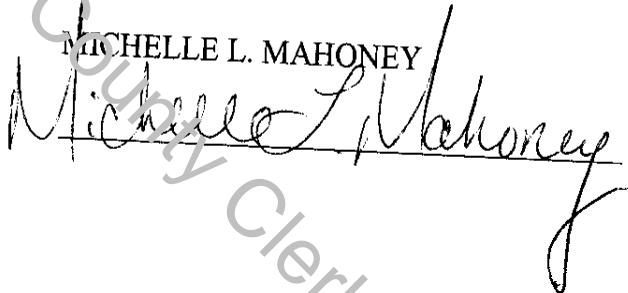
15. Captions. The captions to the Sections of this Note are for convenience only and shall not be deemed part of the text of the respective Sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

16. Governing Law. This Note has been negotiated in, has been executed and delivered in, is payable in and shall be governed by the laws of the State of Illinois.

BRIAN K. MAHONEY



MICHELLE L. MAHONEY



Return to  
Smith Kruse & Nicolau  
3924 W Devon  
Ste 200  
Lincolnwood, IL 60712



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## EXHIBIT B

Term Note

