

# UNOFFICIAL COPY

This Instrument prepared by and when  
recorded please mail to:



Richard Indyke  
221 North LaSalle Street  
Suite 1200  
Chicago, Illinois 60601

Doc#: 0707545090 Fee: \$40.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/16/2007 01:12 PM Pg: 1 of 9

## SECOND MORTGAGE

THIS SECOND MORTGAGE made this 11<sup>th</sup> day of January, 2007, by **885 E. 87<sup>TH</sup> LLC** (herein called "Mortgagor") to **FRANK MIRABELLA, PONNA-JOË MIRABELLA, AND GENEVIEVE M. MIRABELLA**, (herein, together with their successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, collectively called the "Mortgagee"),

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, the Mortgagor's promissory note (herein called the "Note") dated the date hereof, in the principal sum of **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)** bearing interest at the rate specified therein, and in any event the balance of the indebtedness if not sooner paid due and payable to the order of the Mortgagee on February 1, 2008 and otherwise as provided in the Note dated January 11, 2007 which is incorporated by reference and made apart hereof; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in the Note provided, are herein called the "Indebtedness Hereby Secured."

WHEREAS, Mortgagor, may ask Mortgagee to grant one or more loans to Mortgagor in addition to the loan described above, Mortgagee may, before this Second Mortgage is discharged, make additional loans if requested by Mortgagee; this second Mortgage will protect Mortgagee from possible losses that might result from the Mortgagor's failure to fulfill its obligations to pay the amounts of any of those additional loans including interest, only if the Notes Secured Hereby refer to this Second Mortgage. Additional loans made by Mortgagee may be called "Future Advances". The principal amount that Mortgagor may owe to Mortgagee under the Note and under all notes for Future Advances, not including the amounts spent by Mortgagee to protect the value of the Property and Mortgagor's rights in the Property, may not be greater than the sum of the first mortgage recorded at the office of the Cook County Recorder of Deeds in the principal sum of \$97,500.00 and the Note secured by this second mortgage, at any time before the final discharge of this Mortgage.

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other Indebtedness hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) and in consideration of the premises and Ten Dollars (\$10.00) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby GRANT, RELEASE, REMISE, ALIEN, MORTGAGE and CONVEY unto the Mortgagee all and sundry the property (herein together with the property mentioned in the next succeeding paragraphs hereto, called the "Premises") described in Exhibit A attached hereto and made a part hereof.

TOGETHER with, and including within the term "Premises," as used herein, any and all improvements, tenements, buildings, easements, fixtures, privileges, reservations, allowances, hereditaments and appurtenances now or hereafter thereunto belonging or pertaining; any and all rights and estates in reversion or remainder; all rights of Mortgagor in or to

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adjacent sidewalks, alleys, streets and vaults; and any and all rights and interests of every name and nature now or hereafter owned by the Mortgagor, forming a part of and or used or used in connection with the real estate and - or the operation and convenience of the buildings and improvements located thereon, including (by way of enumeration but without limitation) all furniture, furnishings and equipment used or useful in the operation of the real property or improvements thereon or furnished by Mortgagor to tenants thereof; all building materials located at the said real estate and intended to be incorporated in improvements now or hereafter to be constructed thereon, whether or not incorporated therein; all machines, machinery, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, power, sprinkler, protection, waste removal, refrigeration and ventilation, and all floor coverings, screens, storm windows, blinds, awnings, stoves, refrigerators, dishwashers, disposal units, range hoods and blowers; in each case now or hereafter placed in, on or at the Premises (it being understood that the enumeration of any specific articles of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated), but not including tenants trade fixtures.

AND TOGETHER WITH all of the rents, income, receipts, revenues, issues and profits thereof and therefrom; AND all of the land, estate, property and rights hereinabove described and hereby conveyed and intended so to be, whether real, personal or mixed, and whether or not affixed or annexed to the real estate are intended to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate and for the purposes hereof shall be deemed to be real estate conveyed and mortgaged hereby.

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness hereby Secured shall be duly and punctually paid and all of the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor or to be performed or observe shall be strictly performed and observed, then this Mortgage and this estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

AND IT FURTHER AGREED THAT:

1. **Payment of Indebtedness.** The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Note, and all other Indebtedness Hereby secured, as the same become due, and will duly perform and observe all the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.
2. **Maintenance, Repair, Restoration, Prior Liens, Parking, Etc.** The Mortgagor will (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purpose; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof; (c) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof; and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Mortgagee; (d) complete, within a reasonable time, any building or buildings now or at any time in the process of erection upon the Premises; (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof; (f) make no material alterations in the Premises, except as required by law or municipal ordinance; (g) suffer or permit no change in the general nature of the occupancy of the Premises without the Mortgagee's prior written consent, (h) pay all operating costs of the Premises; (i) initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent and (j) provide, improve, grade, surface and thereafter maintain, clean, repair, police and adequately light parking areas within the Premises as may be required by local zoning authorities, codes or other laws whichever may be greater, together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and will reserve and use all such parking areas solely and

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exclusively for the purpose of providing ingress, egress, and parking facilities for automobiles and other passenger vehicles of Mortgagor or tenants or invitees of tenants of the Premises; and Mortgagor will not reduce, build upon, obstruct, redesignate or relocate any such parking areas, sidewalks, aisles, streets, driveways, sidewalk cuts or paved areas or rights-of-way or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises without the prior written consent of the Mortgagee.

3. **Taxes.** The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee, duplicate receipts therefor. To prevent default thereunder, the Mortgagor will pay in full under protest in the manner provided by statute, any Taxes which the Mortgagor may desire to contest; provided, however, that if deferment of payment of any such Taxes is required to conduct contest or review, the Mortgagor shall deposit the full amount hereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, with the Mortgagee. In any event, Mortgagor shall (and if Mortgagor shall fail so to do, the Mortgagee may, but shall not be required to, and for the purpose may use the monies deposited as aforesaid) pay all Taxes, notwithstanding such contest, if in the opinion of the Mortgagee, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed. In the event that any law or court decree has of the effect of deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by the mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness hereby Secured or the holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor. Nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise, or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. **Insurance Coverage.** The Mortgagor will insure and keep the premises insured including liability insurance, the Mortgagor will deliver renewal policies not less than ten (10) days prior to the respective dates of expiration.

5. **Condemnation.** The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain, or by condemnation including damages to grade. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness Hereby Secured then most remotely to be paid, whether due or not, or to require the Mortgagor to restore or rebuild the Premises, in which event, the proceeds shall be held by the Mortgagee and used to reimburse the Mortgagor for the cost of such rebuilding or restoring.

6. **Mortgagee's Performance of Mortgagor's Obligations.** In case of default therein, the Mortgagee either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein or required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment, and may, but shall not be required to, complete construction, furnishing and equipping of the improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such Improvements or to pay any such operating costs and expenses thereof or to keep the Premises and Improvements operational and usable for its intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the



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Legal Description

LOTS 1, 2 AND 3 IN THE SUBDIVISION OF LOT 1 OF BLOCK 1 AND THE NORTH 1/2 OF LOT 2 IN BLOCK 1 OF DAUPHIN PARK, A SUBDIVISION OF THAT PART OF THE NORTH 3/4 OF THE WEST 1/2 OF SECTION 2, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF THE ILLINOIS CENTRAL RAILROAD RIGHT OF WAY IN COOK COUNTY, ILLINOIS.

ALSO

THE NORTH 1/2 OF LOT 2 IN BLOCK 1 IN DAUPHIN PARK, A SUBDIVISION OF THAT PART OF THE NORTH 3/4 OF THE WEST 1/2 OF SECTION 2, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPLE MERIDIAN LYING WEST OF THE ILLINOIS CENTRAL RR RIGHT OF WAY IN COOK COUNTY, ILLINOIS.

PERM TAX#

25-02-100-046-0000

25-02-100-047-0000

25-02-100-048-0000

25-02-100-049-0000

Property of Cook County Clerk's Office

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SECURED PROMISSORY NOTE

Chicago, Illinois

January 11, 2007

Property Address: 885 E. 87<sup>th</sup> Street, Chicago, Illinois

**FOR VALUE RECEIVED 885 E. 87<sup>th</sup> LLC and DEGRAZIA INVESTMENTS, LLC** (hereinafter collectively referred to as "MAKER") unconditionally promises to pay, to the order of **FRANK MIRABELLA, DONNA-JOE MIRABELLA, AND GENEVIEVE M. MIRABELLA**, at their principal place of business at 3314 South Normal Chicago, Illinois, and (hereinafter collectively referred to as "LENDER"), in the manner provided hereinafter, the principal sum of **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)**, with interest thereon, as follows:

**1.1 PAYMENT**

(a) from date hereof on the principal sum remaining from time to time unpaid at the Interest Rate of Twenty-Five (25%) per cent per annum payable

(b) The entire unpaid principal balance and all accrued interest thereon, if not sooner paid, shall be due and payable on February 1, 2008 (the "Maturity Date").

(c) Maker shall make all payments hereunder to lender at above address.

(d) All payments made hereunder shall be applied first to the payment of accrued interest and the remainder, if any, shall be applied to the principal balance hereunder. The interest rate hereunder shall be based upon a 360 day year.

(e) Maker shall not pay a prepayment penalty if this note is paid in full or in part before maturity date.

**2.1 SECURITY**

The payment of this Note is secured by a certain Second Mortgage; executed by 885 E. 87<sup>th</sup> LLC of even date ("the Collateral").

**3.1 DEFAULT**

(a) In the event of a default hereunder, the full amount of the principal then due will thereafter accrue interest at 30%, the Default Rate which shall continue in effect until all principal and interest due and owing has been paid to Lender or until Maker shall have cured any such default to the satisfaction of Lender or until the entry of a judgment by a Court of competent jurisdiction.

(b) If the Maker fails to pay any amount when due and payable hereunder; or Maker fails to perform any other obligation of Maker as contained in this Note or any other instrument now or hereafter given as security for this Note, or any other indebtedness Maker now has or will have with Lender until the full payment of this Loan; or any warranty, representation or statement made by or on behalf of Maker and contained herein or in any financial statements given to Lender in connection with the granting of this Loan is false or misleading in any material respect, Maker shall be deemed in default hereunder and Lender may require Maker to immediately pay the full principal balance hereunder and all unpaid interest, late charges or other fees as permitted hereby without delay.

(c) Further events of Default shall be defined as follows:

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(i) occurrence of any Default under the First Mortgage of this Note and Mortgage (as defined therein) or if the right to foreclose the Mortgage shall accrue to Lender; or

(ii) Maker without the prior written consent of Lender, create, effect, contract for, consent to or permit any Prohibited Transfer. Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or agreement to do any of the foregoing) of any of the following properties, right or interests which occurs, is granted, accomplished, attempted or effectuated shall constitute a "Prohibited Transfer":

(iii) the Premises or any part thereof or interest therein, excepting only sales or other dispositions of personal property located on the Premises which are permitted under the terms of the Mortgage;

(iv) the commencement of the construction of improvements on the Premises or any act that may give rise to a mechanic's lien;

(v) the failure of Maker to pay when due, any taxes levied against the Premises covered by the Mortgage.

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by Maker or any third party, by operation of law or otherwise; provided, however, that the foregoing provisions of this paragraph shall not apply (i) to the Mortgage or any liens expressly permitted in the Mortgage; (ii) to the lien of current taxes and assessments not in default; or (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests as the case may be, in the Maker or any beneficiary of Maker by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee.

(d) The remedies of Lender as provided herein or in the Mortgage, shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall arise. Failure of Lender, 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 Lender, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by Lender 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 Lender's rights or remedies hereunder. Except as otherwise specifically required herein, notice of the exercise of any right or remedy granted to Lender by this Note is not required to be given.

(e) If: (i) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceedings; (ii) if any attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note (iii) if an attorney is retained to protect or enforce the lien of the Mortgage (iv) if an attorney is retained to represent Lender in any other proceedings whatsoever in connection with this Note, the Mortgage, or any property subject thereto, then Maker shall pay to Lender all attorneys' fees, costs and expenses incurred in connection therewith, in addition to other amounts due hereunder.

(f) From and after the occurrence of a Default, Lender is expressly authorized to apply payments made under this Note as Lender may elect against any and all amounts, or portions thereof, then due and payable hereunder or under the Mortgage, the outstanding principal balance due under this Note, the unpaid and accrued interest due under this Note, or any combination of the foregoing.

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(g) Maker agrees to (i) waive presentment and demand for payment notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (ii) waive all notices in connection with the delivery and acceptance hereof; (iii) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (iv) consent to any and all extensions of time, renewals, waivers or modifications that may be granted by Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution; (v) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such obligors or security shall not affect the liability of Maker for the payment hereof; (vi) waive any right of set off and/or recoupment against Lender which it may have in connection with any claims against Lender and not resort to such claims as a defense against payment of this Note; and (vii) waive and renounce any and all redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof.

#### 4.1 MISCELLANEOUS TERMS AND CONDITIONS.

(a) Time is of the essence hereof.

(b) Maker agrees that: (i) this instrument and the rights and obligations of all parties hereunder shall be governed by and construed under the substantive laws of the State of Illinois, without reference to the conflict of laws principles of such state.

(c) Upon any endorsement, assignment, or other transfer of this Note by Lender or by operation of law, the term "Lender," as used herein, shall mean such endorsee, assignee, or other transferee or successor to lender then becoming the holder of this Note. This Note shall inure to the benefit of Lender and its successors and assigns and shall be binding upon the undersigned and its successors and assigns. The term "Maker" as used herein, shall include the respective successors, assigns, legal and personal representatives, executors, administrators, devisees, legatees and heirs of Maker. Maker waives any rights of redemption in premises in any action brought by Lender to foreclose the mortgage granted in the premises.

(d) The parties hereto intend and believe that each provision in this Note comports with all applicable law. However, if any provision in this Note is found by a court of law to be in violation of any applicable law, and if such court shall declare such provision of this note to be unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Note shall be construed as if such unlawful, void or unenforceable provision were not contained therein, and that the rights, obligations and interests of the Maker and the holder hereof under the remainder of this Note shall continue in full force and effect; provided, however, that if any provision of this Note which is found to be in violation of any applicable law concerns the imposition of interest hereunder, the rights, obligations and interests of Maker and Lender with respect to the imposition of interest hereunder shall be governed and controlled by the provisions of the following paragraph.

(e) All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable laws. If, from any circumstances whatsoever, fulfillment of any provision hereof, or the Mortgage at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if under any circumstances the holder hereof shall ever receive as interest an amount which



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would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

(f) Any notice, demand or other communication which any party may desire or may be required to give to any other party shall be in writing and shall be deemed given if and when personally delivered, or if mailed, on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth below, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to Lender:

Frank Mirabella  
3411 South Normal Avenue  
Chicago Illinois 60622

If to Maker:

885 E. 87<sup>th</sup> LLC  
c/o Michael Passarelli  
908 W. 31<sup>st</sup> Street  
Chicago, Illinois 60608

(g) Lender may negotiate the transfer of this Note and pursuant thereto all or any part of the security given for payment of this Note to the transferee or holder hereof who shall succeed to the rights of Lender. Upon such negotiation or transfer Lender shall be relieved and discharged from any liability or responsibility in connection with this Note or any such security transferred therewith.

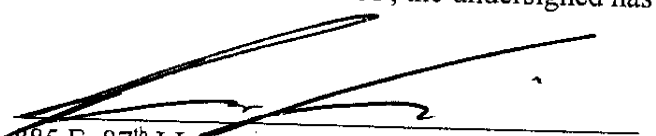
(h) This Note shall be binding upon the Maker and Maker's successors, assigns, transferees, heirs and personal representatives.


(i) Venue - This Note is submitted by Maker to Lender at Lender's principal place of business and shall be governed by the laws of the State of Illinois and any litigation arising out of this Note shall be maintained in the Circuit Court of Cook County, Illinois.

(j) The undersigned hereby warrants to Lender that the Loan is and will be a business purpose loan within the foregoing exception to the Illinois Usury Law and the undersigned covenants to Lender that the undersigned will at all times use the proceeds of the Loan in accordance with that exception.

(k) If the Loan should ever be deemed to be usurious and not within the foregoing exception, based upon misrepresentations of the undersigned, the undersigned will pay all of Lender's attorney's fees and expenses incurred by Lender in connection with Lender's defense of such usury claims including all costs of all appeals in connection therewith

IN WITNESS WHEREOF, the undersigned has executed this Note on the date above written.

  
885 E. 87<sup>th</sup> LLC  
Michael Passarelli for DeGrazia Investments  
its manager

  
DeGrazia Investments LLC  
Michael Passarelli  
its member/manager



