

# UNOFFICIAL COPY

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## AGREEMENT

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THIS AGREEMENT dated as of this 27 day of May, 1988, by and between Tower Associates, an Illinois limited partnership ("Tower"), whose post office address is 660 LaSalle Place, Highland Park, Illinois 60035, Harris Trust and Savings Bank, not personally but solely as Trustee under Trust Agreement dated December 10, 1984 and known as Trust No. 43036 (the "Mortgagor"), whose post office address is 111 West Monroe Street, Chicago, Illinois 60603 and FBS MORTGAGE CORPORATION, Nevada corporation, its successors and assigns ("FBS"), whose post office address is 2550 University Avenue West, St. Paul, Minnesota 55114.

### RECITALS

A. FBS has made a first mortgage loan to Mortgagor evidenced by a Promissory Note (the "First Mortgage Note") dated April 14, 1986, in the original principal amount of One Million One Hundred Twenty-Five Thousand and 00/100 Dollars and secured by a Mortgage dated April 14, 1986, and recorded in the office of the Cook County Recorder of Deeds on April 15, 1986, as Document No. 86144493 (the "First Mortgage") on certain real property and the improvements thereon located in Cook County, Illinois and legally described on Exhibit "A" attached hereto (the "Premises"). Tower is the sole beneficiary of the Mortgage.

B. Mortgagor is in default under the terms of the First Mortgage Note and the First Mortgage and the primary tenant located in the Premises, Industrial Electronics Service Co., an Illinois corporation (the "Tenant") is in default in its payment of rent.

C. Mortgagor and Tower are proposing to enter into a Settlement Agreement dated May 27, 1988 (the "Settlement Agreement") with Tenant in the matter of Tower Associates and Harris Trust and Savings Bank, not personally but solely a/t/u/t/a dated 12/10/84 Trust No. 43036, Plaintiffs, vs. Industrial Electronics Service Co., Kayhan International, Ltd. and Metrocom, Defendants, filed in the Circuit Court of Cook County, Illinois, County Department, Law Division as Case No. 88L50358 and have requested the consent of FBS. FBS has agreed to give its consent provided: (i) Tower assigns to FBS as additional security for the First Mortgage Note, the proceeds of a certain Promissory Note (the "Settlement Note") dated April 20, 1988, in the principal amount of One Hundred Sixty-One Thousand and 00/100 Dollars (\$161,000.00) made by Tenant and Metrocom, Inc., an Illinois corporation ("Metrocom"), as makers, in favor of Tower, as holder, which establishes the payments required by the Settlement Agreement, and (ii) the Settlement Agreement requires all payments on the Settlement Note be made to Tower and FBS, jointly.

D. Mortgagor and FBS desire to amend the First Mortgage Note and First Mortgage to provide for the deferral and repayment of the interest payments now in arrears under the terms of the First Mortgage Note.

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NOW THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tower and FBS agree as follows:

1. Assignment Tower hereby grants, transfers, assigns and sets over unto FBS all of the right, title and interest of Tower in and to the proceeds of the Settlement Note. It is understood that this assignment of proceeds as effected hereby is an absolute assignment which is effective as at the date hereof and, upon demand by Assignee to the Tenant, or any party liable for any of the payments under the Settlement Note, Tenant or such party shall be, and is hereby authorized and directed to, pay to or upon the order of Assignee, and without inquiry of any nature, all payments then owing or thereafter accruing under the Settlement Note.

2. Secured Obligations This assignment of the proceeds of the Settlement Note is made to secure payment and performance of all indebtedness, obligations and liabilities of the Mortgagor to FBS, as evidenced by the First Mortgage Note.

3. Consent and Delivery of Settlement Agreement Concurrently with the execution of this Agreement, Tower and Mortgagor have entered into and FBS hereby consents to the execution of the Settlement Agreement and the delivery thereof to Tenant, Kayhan International, Ltd. and Metrocom.

4. Initial Payments Payments in the following amounts shall be deposited with Rosenthal and Schanfield as escrowee for FBS at the time the Settlement Agreement is executed and delivered to be disbursed as follows: (a) \$16,093.92 to be paid to the Cook County Assessor in payment of real estate taxes which are due and payable on the Premises, and (b) \$10,596.09 to be paid to FBS for the May payment due and owing on the First Mortgage Note.

5. Monthly Payments All monthly payments of principal and interest paid to FBS on the Settlement Note shall be applied by the FBS to the monthly payment on the First Mortgage Note due and owing on the first (1st) day of the month next following the month in which the payment on the Settlement Note is received. All payments shall be applied first to interest at the rate then in effect under the terms of the First Mortgage Note and then to principal, except that if any advance made by FBS under the terms of any instruments securing the First Mortgage Note is not repaid on demand, any payments received, at the option of FBS, may first be applied to repay such advances, plus interest thereon at the rate then in effect under the terms of the First Mortgage Note, and the balance, if any, shall be applied on account of any installments then due.

6. Default in Monthly Payments Any default under the terms of the Settlement Note shall not relieve the Mortgagor from making the full monthly payment due and owing on the First Mortgage Note.

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7. Amendment to First Mortgage Note. The First Mortgage Note is hereby amended to increase the outstanding principal amount by Thirty Thousand Nine Hundred Thirty-Seven and 50/100 Dollars (\$30,937.50) which equals the three (3) months of monthly payments of interest which are in arrears. In addition the First Mortgage Note is hereby amended to permit the prepayment in whole or in part of the outstanding principal balance of the indebtedness secured by the First Mortgage Note at any time without the payment of a premium or penalty. The amount of the monthly payments of interest on the First Mortgage Note shall increase to \$10,596.09. On or before April 1, 1989, the Mortgagor shall pay on the First Mortgage Note the increased principal amount of Thirty Thousand Nine Hundred Thirty-Seven and 50/100 Dollars (\$30,937.50). Failure to pay such amount shall be deemed an Event of Default under the First Mortgage and shall permit FBS to exercise all the remedies available to it thereunder. In all other respects, the First Mortgage Note remains unchanged. Tower and Mortgagor hereby agree to pay all costs and expenses of FBS in connection with reviewing and approving the Settlement Agreement and in obtaining a date-down endorsement to FBS's Mortgagee's Policy of Title Insurance which increases the loan amount by \$30,937.50 and insures the priority of the First Mortgage.

8. Amendment to First Mortgage. The First Mortgage is hereby amended so that all references in the First Mortgage to the First Mortgage Note shall be changed to refer to the First Mortgage Note as amended hereby. In all other respects, the First Mortgage remains unchanged.

9. Warranties and Representations of Tower.

9.1 Power and Authority. Tower has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

9.2 Enforceability. This Agreement is the valid and binding obligation of Tower, enforceable against Tower according to its terms.

9.3 Payee of Settlement Note. Tower warrants and represents to FBS that it is the sole payee under the Settlement Note and that it has not and will not assign its rights or endorsed the Settlement Note to any other party.

10. Release of Security Interest. In the event that the First Mortgage Note is paid in full and further that all the terms and conditions of the First Mortgage Note and First Mortgage are satisfied, this Agreement shall be and become void and of no effect excepting that FBS hereby agrees to notify Tenant in writing that all subsequent payments on the Settlement Note should be made to Tower, solely.

11. Miscellaneous.

11.1 Agreement Binding. This Agreement shall be binding upon the beneficiaries, heirs, estates, personal representatives, successors and assigns of the Tower and FBS

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11.2 Severability. In the event that one or more provisions of this Agreement should be declared to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions herein shall not in any way be affected or impaired thereby.

11.3 Survival of Representations. All covenants, agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement.

11.4 Notices. Any notice required hereunder shall be deemed to be given when deposited in the U.S. Mail, proper postage prepaid, addressed to the Tower or FBS at the address(es) set forth herein. Any changes in a party's address may be made by giving written notice to the other parties pursuant to this Section.

11.5 Governing Law. This Agreement shall be construed, interpreted and governed according to the laws of the State of Minnesota.

This Agreement is executed by Mortgagor, not personally but as Trustee aforesaid, in the exercise of the power and authority conferred upon and fixed in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be constituted as creating any liability on said Mortgagor as Trustee as aforesaid, or on said Mortgagor, personally, to pay the First Mortgage Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by the FBS and by every person now or hereafter claiming any right or security thereunder. It is understood and agreed that Mortgagor, individually or as Trustee, shall have no obligation to see to the performance or non-performance of any of the covenants or promises herein contained, and shall not be liable for any action or non-action taken in violation of any of the covenants herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above.

TOWER ASSOCIATES,  
an Illinois limited partnership

By: 

Its: General Partner

HARRIS TRUST AND SAVINGS BANK,  
not personally but solely as trustee under  
Trust dated December 10, 1984 and known as  
Trust No. 43036

By: 

Its: Vice President

ATTEST:

  
Assistant Secretary

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FBS MORTGAGE CORPORATION,  
a Nevada corporation

By: Terry Bunkers  
Its: Vice President

ROSENTHAL AND SCHANFIELD,  
Escrowee

By: [Signature]  
Its: \_\_\_\_\_

COOK COUNTY CLERK  
1988 JUN 14 PM 12:59

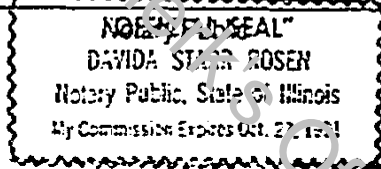
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STATE OF ILLINOIS )  
                                  ) ss.  
COUNTY OF COOK )

Before me, a Notary Public in and for the County and State aforesaid, personally appeared David Rosenthal known to me and known to be the General Partner of TOWER ASSOCIATES, an Illinois limited partnership, who acknowledged that he executed the within and foregoing instrument as his own free and voluntary act and as the free and voluntary act of said Partnership, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of June, 1988.

[Signature]



My Commission Expires:  
\_\_\_\_\_

STATE OF ILLINOIS )  
                                  ) ss.  
COUNTY OF COOK )

I, DAWN M. LESNIAK, a Notary Public in and for said county in the state aforesaid, do hereby certify that HERMAN A. KOLE, the President of Harris Trust and Savings Bank ("Bank") and KENNETH E. DEWITT, the Assistant Secretary of said Bank, personally known to me to be the said persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth; and the said Assistant Secretary did also then and there

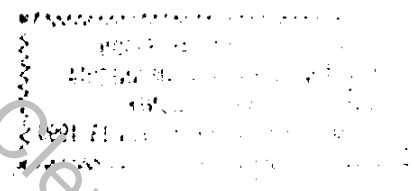
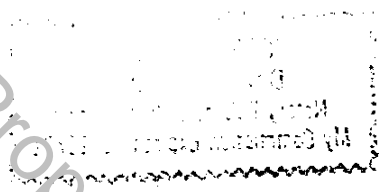
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## EXHIBIT 'A'

### Legal Description

Lot 8 in Schaumburg Industrial Park Unit No. 1 being a Subdivision of part of the West 1/2 of the South West 1/4 of Section 12, and part of the West 1/2 of the North West 1/4 of Section 13, both in Township 41 North, Range 10, East of the Third Principal Meridian, in Cook County, Illinois, as shown on Plat recorded October 2, 1964 as Document No. 19263036, except that part described as follows:

Beginning at the intersection of the southerly Right of Way line of Tower Road, with the Easterly property line of said Lot 8; thence West along the said Southerly Right of Way line a distance of 75 feet to a point; thence Southeasterly a distance of 101.55 feet to a point on the said easterly property line; thence North a distance of 68.46 feet to the Point of Beginning.

1321 TOWER ROAD  
SCHAMBURG, ILL.

07-12-300-010

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

TOWER ASSOCIATES and HARRIS TRUST AND SAVINGS BANK, not personally but solely a/t/a dated 12/10/88 a/k/a Trust No. 40036.

Plaintiffs.

v.

NO. 88 L 50358

INDUSTRIAL ELECTRONICS SERVICE CO., KAYHAN INTERNATIONAL, LTD. and METROCOM INC.,

Defendants.

AGREED JUDGMENT  
ORDER

THIS CAUSE coming on to be heard on the stipulation and agreement of the parties hereto, and Plaintiff, Tower Associates, representing that it is the holder of a certain Promissory Note dated April 20, 1988 and made by Defendants, Industrial Electronics Service Co. and Metrocom Inc., which note is in default which has not been timely cured, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That a Judgment of liability for default by Industrial Electronics Service Co. and Metrocom, Inc. in their obligations under that certain Promissory Note dated April 20, 1988 made by Industrial Electronics Service Co. and Metrocom Inc. be and is hereby entered in favor of Plaintiff, Tower Associates, and against said Defendants.

2. The amount of damages, which amount shall be established by affidavit of Plaintiff, Tower Associates, shall be the unpaid principal balance of said Promissory Note, plus interest on said balance from the date of default at the rate of ten percent (10%) per annum, plus late charges and plus all reasonable costs of collection, including, without limitation, reasonable attorneys' fees and expenses.

AGREED AS TO FORM AND SUBSTANCE AND THE ENTRY OF THIS ORDER IS HEREBY REQUESTED:

INDUSTRIAL ELECTRONICS SERVICE CO.

METROCOM INC.

By \_\_\_\_\_  
Its President

By \_\_\_\_\_  
Its President

Atty No. 90170  
Name Frederick V. Lochbihler  
Attorney for CHAPMAN AND CUTLER  
Address Industrial Electronics Service Co. .... 19.....  
111 West Monroe Street  
City Chicago, Illinois 60603  
Telephone (312) 845-3000

ENTER:

.....  
Judge Judge's No.

MORGAN M. FINLEY, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

EXHIBIT A

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## PROMISSORY NOTE

\$161,000.00

Chicago, Illinois  
April 20, 1988

FOR VALUE RECEIVED, Industrial Electronics Service Co., an Illinois corporation ("IESCO"), and Metrocom Inc., an Illinois corporation ("Metrocom") (IESCO and Metrocom being herein together called the "Maker"), promise to pay to the order of Tower Associates, an Illinois limited partnership or the then-current owner and Holder of this Note (Tower Associates and each successive from time to time owner and holder of this Note being herein together called the "Holder"), at 660 LaSalle Place, Highland Park, Illinois 60035, or at such other place as the then Holder hereof may designate in writing served upon IESCO from time to time, the principal sum of One Hundred Sixty-One Thousand and No/100 Dollars (\$161,000.00), payable monthly in 23 equal payments of Seven Thousand and No/100 Dollars (\$7,000.00) each, beginning on May 15, 1988 and continuing each and every month thereafter to and including March 15, 1990.

This Note is given by the Maker in consideration of that certain agreement reached to settle the lawsuit captioned Tower Associates, an Illinois limited partnership, as sole beneficiary under Harris Trust and Savings Bank Trust No. 43036 (u/t/a dated 12/10/84), and Harris Trust and Savings Bank, not personally but solely a/t/u/t/a dated 12/10/84 a/k/a Trust No. 43036, v. Industrial Electronics Service Co. and Kayhan International, Ltd., and now pending in the Circuit Court of Cook County, Illinois (the "Lawsuit"), which lawsuit relates to a Lease (the "Lease") between IESCO and Tower. Maker further acknowledges that it will be of substantial financial benefit to Maker to deliver this Note to the Holder as an accord, satisfaction and settlement of any and all claims, obligations, debts and damages relating to or arising out of the Lease.

Time is of the essence hereof.

In the event of the occurrence of any of the following events (an "Event of Default") then, at the option of the Holder hereof, the principal sum remaining unpaid hereon shall be immediately due and payable without notice of default, presentment, demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or other notices or demands of any kind whatsoever, all of which are hereby expressly waived by the undersigned: (a) default in the payment of principal when due on this Note, provided, however, that in the event of such default, Holder shall give Maker written notice (delivered via Federal Express to W. Ebert, Metrocom Inc., 727 North Church Road, Elmhurst, Illinois 60126) of the default (a copy of which notice shall be mailed to John A. Kujawa, Esq., Chapman and Cutler, 111

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**EXHIBIT B**



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West Monroe Street, Chicago, Illinois 60603, provided that failure to deliver such copy to John A. Kujawa, Esq. should in no way create a defect and otherwise void the delivery of notice to Maker) and Maker shall have five (5) days from the date of delivery of such notice (which delivery date shall be deemed to be the date of delivery to Federal Express of such notice) within which to cure a default; (b) filing by or against any of the undersigned of a petition in bankruptcy or for relief under any bankruptcy or similar laws, or for a receiver for such person or any property of such person, provided, however, that if the petition is filed against any of the undersigned, the undersigned shall have thirty (30) days within which to have the petition dismissed, in which event the default shall be cured; (c) insolvency or cessation of business or assignment for the benefit of creditors, of any of the undersigned; or (d) attachment, seizure, foreclosure or sequestration of or with respect to any property of any of the undersigned. Acceptance of payment in arrears shall not waive or affect the right of Holder to accelerate this Note.

This Note may be prepaid at any time and from time to time in whole or in part without notice and without prepayment premium or penalty. No partial prepayment shall operate to defer or reduce the scheduled monthly payments provided for herein, and each and every such payment shall be paid in full when due until this Note shall have been paid in full.

No delay or omission on the part of the Holder hereof in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note.

Upon the occurrence of an Event of Default which is not cured as provided above, any principal not paid when due hereunder shall bear interest from the date of default until paid at a rate of ten percent (10%) per annum. Payment of principal and/or interest shall be made at the address of the Holder set forth at the beginning of this Note, or at such other place as Holder may from time to time in writing appoint.

Without limiting the provisions of the preceding paragraph, in the event any installment of principal and/or interest is not paid on the due date thereof, Maker promises to pay a late charge of One Hundred and No/100 Dollars (\$100.00) to defray the expenses incident to handling any such delayed payment.

Upon the occurrence of an Event of Default which is not cured as provided above, the Holder may request, without notice, that the Court enter an Agreed Judgment Order in the form attached hereto as Exhibit A. The original Agreed Judgment Order shall be executed contemporaneously with this Promissory Note and held in escrow pending an uncured Event of Default by Bernard P.

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Edelman, Esq., Rosenthal and Schanfield, Mid-Continental Plaza, Suite 4620, 55 East Monroe Street, Chicago, Illinois 60603, counsel of record in the Lawsuit for Holder. The Agreed Order shall be returned to Maker upon satisfaction of the obligations under this Promissory Note. The Maker agrees to pay all reasonable costs and expenses of collecting or attempting to collect any and all amounts due hereunder, including, without limitation, reasonable attorneys' fees and expenses, whether or not suit is filed hereon.

The Maker irrevocably authorizes any attorney of record in the Circuit Court of Cook County to appear for Maker, in such court at any time and from time to time after payment is due, whether by acceleration or otherwise, and confess a judgment without process against the Maker in favor of the Holder for such sum as may appear to be unpaid and owing thereon together with interest, costs and reasonable attorneys' fees, and to waive and release all errors which may intervene in such proceeding and consent to immediate execution upon such judgment, hereby ratifying and confirming all that said attorney may do by virtue hereof.

Where the context permits, the plural term shall include the singular, and vice versa.

INDUSTRIAL ELECTRONICS SERVICE CO.,  
an Illinois corporation

By \_\_\_\_\_  
Its President

METROCOM INC., an Illinois  
corporation

By \_\_\_\_\_  
Its President

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2. All the provisions of the Settlement Agreement are hereby ratified, and each party hereby shall perform the provisions of such Agreement.

3. This Court shall have personal and subject matter jurisdiction in connection with the enforcement of this Agreed Order, as well as the Settlement Agreement.

4. That this cause, having been settled, be and is hereby dismissed with prejudice and without costs, each party to bear their own costs.

ENTER:

\_\_\_\_\_  
JUDGE

DATED: \_\_\_\_\_

Agreed as to form and substance and the entry of this Order is hereby requested.

INDUSTRIAL ELECTRONICS SERVICE  
CO.

TOWER ASSOCIATES

By \_\_\_\_\_  
Its President

By \_\_\_\_\_

KAYHAN INTERNATIONAL, LTD.

HARRIS TRUST AND SAVINGS BANK,  
not personally but solely  
a/t/u/r/a dated 12/10/1984  
a/x/a Trust No. 43036

By \_\_\_\_\_

By \_\_\_\_\_

METROCOM INC.

By \_\_\_\_\_  
Its President

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

TOWER ASSOCIATES, an Illinois limited )  
partnership, as sole beneficiary under )  
Harris Trust and Savings Bank Trust )  
No. 43036 (u/t/a dated 12/10/84) and )  
HARRIS TRUST AND SAVINGS BANK, not )  
personally but solely a/t/u/t/a dated )  
12/10/84 a/k/a Trust No. 43036 )

Plaintiffs, )

v. )

INDUSTRIAL ELECTRONICS SERVICE CO. and )  
KAYHAN INTERNATIONAL, LTD., )

Defendants. )

No. 88 L 50358

AGREED ORDER

THIS MATTER coming to be heard before this Honorable Court for trial, the Court having personal and subject matter jurisdiction with respect to the entry of this Agreed Order, and the Plaintiffs and Defendants having agreed to the entry and terms of this Agreed Order and to a certain Settlement Agreement dated April \_\_\_\_\_, 1988, by and among Tower Associates, Harris Trust and Savings Bank, not personally but solely as Trustee under Trust Agreement dated December 10, 1984 and known as Trust No. 43036, Industrial Electronics Service Co., Kayhan International, Ltd., and Metrocom Inc. (the "Settlement Agreement"), and the Court being fully advised in the premises,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiffs are hereby granted possession of the real estate that is the subject of this action and commonly known as 1321 Tower Drive, Schaumburg, Illinois.

**EXHIBIT A**

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## EXHIBIT "B"

### SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_ day of April, 1988, by and among Tower Associates, an Illinois limited partnership ("Tower"), Harris Trust and Savings Bank, not personally but solely as Trustee under Trust Agreement dated December 10, 1984 and known as Trust No. 43036 ("Landlord"), Industrial Electronics Service Co. ("IESCO"), an Illinois corporation, Metrocom Inc. ("Metrocom"), an Illinois corporation, and Kayhan International, Ltd. ("Kayhan"), an Illinois corporation.

### W I T N E S S E T H:

WHEREAS, Landlord and Tower have filed a joint action for possession for rent and damages against IESCO under a certain Lease (the "Lease") between IESCO and Tower and against Kayhan under a certain Sub-lease (the "Sub-lease") between IESCO and Kayhan in a suit captioned Tower Associates, an Illinois limited partnership, as sole beneficiary under Harris Trust and Savings Bank Trust No. 43036 under Trust Agreement dated December 10, 1984 and Harris Trust and Savings Bank, not personally but solely as Trustee under Trust Agreement dated December 10, 1984 and known as Trust No. 43036 v. Industrial Electronics Service Co. and Kayhan International, Ltd., Case No. 88 L 50358, and now pending in the Circuit Court of Cook County, Illinois (the "Lawsuit"); and

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WHEREAS, the parties desire to compromise, settle and conclude the lawsuit and all other claims, controversies and causes of action which they may have against each other upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and of Ten and No/100 Dollars (\$10.00) IN HAND PAID and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the parties hereto agree as follows:

1. The parties agree to move the entry of the Agreed Order, attached as Exhibit A hereto.

2. Concurrently with the execution and delivery hereof, IESCO and Metrocom shall:

- a. Deliver to Tower a check, in the amount of \$7,250.00, payable to the order of Tower;
- b. Execute and deliver to Tower a Promissory Note (the "Note") in the form attached hereto as Exhibit B.

3. Concurrently with the execution and delivery hereof, Kayhan shall:

- a. Deliver to Tower a cashier's or certified check, in the amount of \$10,744.67, payable to the order of Tower;
- b. Execute and deliver a lease (the "New Lease") in the form attached hereto as Exhibit C.

4. Concurrently with the execution and delivery hereof, Tower shall execute and deliver to Kayhan the New Lease.

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5. Upon IESCO's compliance with all the terms and conditions in Paragraph 2 above and Kayhan's compliance with all the terms and conditions in Paragraph 3 above, the Lease shall be deemed terminated and of no further force or effect, and IESCO, Tower and Landlord shall have no further rights or liability thereunder. Upon Kayhan's compliance with all the terms and conditions in Paragraph 3 above and Tower's compliance with all the terms and conditions in Paragraph 4, the Sub-lease shall be deemed terminated and of no further force or effect, and IESCO, Kayhan, Tower and Landlord shall have no further rights or obligations thereunder.

6. Tower and Landlord, for themselves and their successors, affiliates, assigns, present and former partners, officers, directors, shareholders, employees, agents, attorneys, trustees, beneficiaries, and all other persons and entities acting on their respective behalves, hereby release and forever discharge IESCO and Kayhan, and their successors, subsidiaries, affiliates, assigns, present and former officers, directors, shareholders, employees, agents, attorneys, and all other persons and entities acting on their respective behalves, from any and all claims, debts, demands, suits, actions and causes of action of whatever kind or nature, including but not limited to claims for business interruption, rents, and security deposit returns, whether in law or in equity, that Tower or Landlord or any of their successors, affiliates, assigns, present and former partners, officers, directors, shareholders, employees, agents,

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attorneys, trustees, beneficiaries, or any other persons or entities who have or have had any interest in any of the matters set forth in the Lawsuit, may now have, at any time prior hereto ever had or hereafter may have or could assert against IESCO or Kayhan, or any of their successors, subsidiaries, affiliates, assigns, present and former officers, directors, shareholders, employees, agents, attorneys, or any other persons and entities acting on their respective behalves, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Agreement, arising out of, set forth in or connected with the Lawsuit, the Lease, the Sub-lease or the particular premises referenced in the complaint in the Lawsuit.

7. IESCO and Kayhan, for themselves and their successors, subsidiaries, affiliates, assigns, present and former officers, directors, shareholders, employees, agents, attorneys, and all other persons and entities acting on their respective behalves, hereby release and forever discharge Tower and Landlord, and their successors, affiliates, assigns, present and former partners, officers, directors, shareholders, employees, agents, attorneys, trustees, beneficiaries, and all other persons and entities acting on their respective behalves, from any and all claims, debts, demands, suits, actions and causes of action of whatever kind or nature, including but not limited to claims for business interruption, rents, and security deposit returns, whether in law or in equity, that IESCO or Kayhan or any of their successors, subsidiaries, affiliates, assigns, present and former

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4/15/2010 10:10:00 AM



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officers, directors, shareholders, employees, agents, attorneys, or any other persons or entities who have or have had any interest in any of the matters set forth in the Lawsuit, may now have, at any time prior hereto ever had or hereafter may have or could assert against Tower or Landlord or any of their successors, affiliates, assigns, present and former partners, officers, directors, shareholders, employees, agents, attorneys, trustees, beneficiaries, or any other persons or entities acting on their respective behalves, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Agreement arising out of, set forth in or connected with the Lawsuit, the Lease, the Sub-lease or the particular premises referenced in the complaint in the Lawsuit.

8. IESCO, for itself and its successors, subsidiaries, affiliates, assigns, present and former officers, directors, shareholders, employees, agents, attorneys, and all other persons and entities acting on its respective behalf, hereby releases and forever discharges Kayhan, and its successors, subsidiaries, affiliates, assigns, present and former officers, directors, shareholders, employees, agents, attorneys, and all other persons and entities acting on its respective behalf, from any and all claims, debts, demands, suits, actions and causes of action of whatever kind or nature, including but not limited to claims for business interruption, rents, and security deposit returns, whether in law or in equity, that IESCO or any of its successors, subsidiaries, affiliates, assigns, present and former officers,

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directors, shareholders, employees, agents, attorneys, or any other persons or entities who have or have had any interest in any of the matters set forth in the Lawsuit, may now have, at any time prior hereto ever had or hereafter may have or could assert against Kayhan, or any of its successors, subsidiaries, affiliates, assigns, present and former officers, directors, shareholders, employees, agents, attorneys, or any other persons and entities acting on its respective behalf, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Agreement arising out of, set forth in or connected with the Lawsuit, the Lease, the Sub-lease or the particular premises referenced in the complaint in the Lawsuit.

9. Kayhan, for itself and its successors, subsidiaries, affiliates, assigns, present and former officers, directors, shareholders, employees, agents, attorneys, and all other persons and entities acting on its respective behalf, hereby releases and forever discharges IESCO, and its successors, subsidiaries, affiliates, assigns, present and former officers, directors, shareholders, employees, agents, attorneys, and all other persons and entities acting on its respective behalf, from any and all claims, debts, demands, suits, actions and causes of action of whatever kind or nature, including but not limited to claims for business interruption, rents, and security deposit returns, whether in law or in equity, that Kayhan or any of its successors, subsidiaries, affiliates, assigns, present and former

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officers, directors, shareholders, employees, agents, attorneys, or any other persons or entities who have or have had any interest in any of the matters set forth in the Lawsuit, may now have, at any time prior hereto ever had or hereafter may have or could assert against IESCO, or any of its successors, subsidiaries, affiliates, assigns, present and former officers, directors, shareholders, employees, agents, attorneys, or any other persons and entities acting on its respective behalf, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Agreement arising out of, set forth in or connected with the Lawsuit, the Lease, the Sub-lease or the particular premises referenced in the complaint in the Lawsuit.

10. The foregoing releases shall not in any way affect or impair the parties' obligations to comply with or rights to enforce compliance with the provisions of this Agreement, or the Agreed Order, the Note or the New Lease referenced above.

11. Neither this Agreement nor the receipt by Landlord or Tower of payments as provided for herein, shall be deemed to be a waiver by Landlord or Tower of any defaults by Kayhan, IESCO or Metrocom under the Note or the New Lease.

12. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, assigns and personal representatives.

13. This Agreement represents the entire agreement of the parties and there are no other representations, promises or agreements.

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14. This Agreement may be executed in multiple counterparts, and each counterpart shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

INDUSTRIAL ELECTRONICS SERVICE  
CO.

By \_\_\_\_\_  
Its President

KAYHAN INTERNATIONAL, LTD.

By \_\_\_\_\_

TOWER ASSOCIATES

By \_\_\_\_\_

HARRIS TRUST AND SAVINGS BANK,  
not personally but solely as  
Trustee under Trust  
Agreement dated December 10,  
1984 also known as Trust No.  
43036

By \_\_\_\_\_

METROCOM INC.

By \_\_\_\_\_  
Its President

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