

**MORTGAGE**

STEPHEN M. HOVANEK and LISA HOVANEK (the "Borrower") mortgages and warrants to STEPHEN J. HOVANEK and MILDRED HOVANEK (the "Lender"), to secure the repayment of Secured Obligations as defined hereinbelow, the said mortgage being dated and duly signed, sealed, and acknowledged by the Borrower, shall be deemed and held to be good and sufficient mortgage to the Lender, their assigns and successors, with warranty from the Borrower and his legal representatives, of perfect title in the Borrower, and against all previous encumbrances.

**ARTICLE 1**

**Recitals**

1.01.

- a) The Borrower has executed and delivered to the Lender a Mortgage Note ("Note"), a copy of which appears as Exhibit "A", bearing the same date as this Mortgage, promising to pay to the Lender the principal sum of Two Hundred Ninety-Five Thousand and no/100 Dollars (\$295,000.00) in lawful money of the United States of America, payment as provided therein. The terms of the Note are incorporated into this Mortgage by this reference.
- b) The notes and obligations of Borrower in Section 1.01(a) and throughout this Agreement shall be collectively referred to as "Secured Obligations."

**Mortgage of Property**

1.02. In consideration of the Secured Obligations of Borrower, and as security for repayment to the Lender of the principal, interest and any other sums provided for in the Secured Obligations, and as security for performance of the agreements and conditions contained in the Secured Obligations, the Borrower mortgages and warrants to the Lender the real estate described as follows:

Lot 20, Trees II, Unit No. 1, as shown in Plat Book 73, Page 9, in Lake County, Indiana.

together with:

all rights, privileges, interests, easements, hereditaments, appurtenances, fixtures, and improvements now or hereafter belonging, appertaining, attached to, or used in connection with, the real estate, and all the rents, issues, income and profits thereof.

All of the above-mentioned real estate, improvements, and other property and interests will be referred to in this instrument as the "Mortgaged Property."

**ARTICLE 2**

**COVENANTS OF BORROWER**

**Warranty of Title**

2.01. The Borrower has good and marketable fee simple title to the Mortgaged Property, free and clear of all liens, encumbrances, and charges.

**Payment and Performance**

2.02. The Borrower will pay to the Lender, in accordance with the terms of the Secured Obligations, the principal interest and all other sums, and will perform and comply with all the agreements, conditions, covenants, provisions, and stipulations of the Secured Obligations.

**Maintenance of Mortgaged Property**

2.03. The Borrower will not commit or permit the commission of waste in or about the Mortgaged Property. The Borrower will maintain the Mortgaged Property in good condition and repair, reasonable wear and tear excepted. The Borrower will make, when necessary, all repairs of every nature.

Borrower shall introduce no hazardous substance (as defined in Section 191(14) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601(14)) upon or into the Mortgaged Property. Furthermore, Borrower shall not use, generate, treat, store, dispose of or otherwise introduce any such hazardous substance, into or on the

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Mortgaged Property. Borrower shall neither cause nor permit any future, unlawful physical (including without limitation, environmental, natural, artificial, or structural) or chemical hazard or potential hazard (including, without limitation, the presence, accumulation or storage of any toxin, toxic waste, toxic effluent or discharge condition in, on or affecting the Mortgaged Property or the health of persons in or about the Mortgaged Property) on or about the Mortgaged Property. Borrower shall not conduct or permit any unlawful activity upon the Mortgaged Property, or cause or permit the Mortgaged Property to be used in violation of any law.

#### **Condemnation Awards**

2.04. All awards made to the Borrower by any governmental or other lawful authorities for Mortgaged Property taken or damaged through exercise of eminent domain, or for any easement taken in the Mortgaged Property, including any awards for changes of grade of streets, are assigned to the Lender, who is authorized to collect and receive the proceeds from the authorities and to give proper receipts for those awards. The Lender will apply these payments (after deduction of attorney fees and other costs of collecting the funds) toward the payment of the amount owed on this Mortgage and the Secured Obligations, even though the amount owed may not then be due and payable. The Borrower agrees, on request, to make any assignments or other instruments needed to assign the awards to the Lender, free and clear of any encumbrances. The Borrower agrees to give the Lender immediate notice of the actual or threatened commencement of any eminent domain proceedings affecting the Mortgaged Property, and will give the Lender copies of any papers served on the Borrower in connection with those proceedings. The Borrower shall not make any settlement for damages sustained without the Lender's prior written approval, which approval shall not be unreasonably withheld. Borrower's obligation to make payments shall not abate until the entire Secured Obligations, together with all obligations of Borrower to Lender, have been paid in full.

#### **Insurance**

2.05. At all times during the period of this Mortgage, Borrower shall: (a) keep the improvements located upon the Mortgaged Property insured under fire, vandalism, flood, tornado and all perils on a replacement cost basis, and (b) obtain standard liability insurance with coverages in amounts not less than Three Hundred Thousand Dollars (\$300,000) per person and Three Hundred Thousand Dollars (\$300,000) per occurrence, and (c) pay premiums on such insurance policies as they become due. Such policies of insurance shall be carried with a company or companies reasonably approved by Lender and properly authorized by the State of Indiana to engage in such business. Borrower shall provide Lender with such proof of insurance coverage as Lender from time to time shall reasonably request. Except as otherwise agreed in writing, any insurance proceeds received as payment for any loss of, or damage to, the Mortgaged Property covered by such insurance, shall be applied to restoration and repair of the loss or damage in such fashion as Lender reasonably may require, unless such restoration and repair is not economically feasible, or there exists an uncured event of default by Borrower under this Mortgage on the date of receipt of such proceeds. In either of such events, the proceeds may be applied, at Lender's option, toward prepayment of the Secured Obligations, with any excess to be paid to Borrower. Borrower assumes all risk of loss with respect to improvements on the Mortgaged Property from and after the closing date.

#### **Taxes and Other Charges**

2.06. The Borrower will pay all taxes, assessments, water and sewer rents, and other charges or claims assessed, levied, or filed against the Borrower, or the Mortgaged Property, or that, by law, may have priority over the Secured Obligations secured by this Mortgage, which accrue after the closing. These expenses will be paid when due and payable and before interest or penalties accrue. Upon request, the Borrower will provide the Lender with receipts for payments of these amounts no later than the payment dates. If the Borrower, in good faith and by appropriate legal action, contests the validity or amount of any item, the Borrower may establish on her books or by deposit of cash with the Lender, as the Lender may elect, a reserve for the payment in an amount equal to or less than the item as required by the Lender. If a reserve is established, the Borrower will not be required to pay the item or to produce the required receipts while the reserve is maintained and so long as the contest that operates to prevent collection has not been terminated or discontinued adversely to the Borrower, and is maintained and prosecuted with diligence.

Borrower shall pay for utility service extended to the Mortgaged Property including, but not limited to, gas, electric, water, and waste disposal, from and after the date of possession by Borrower.

The parties hereto agree to pay any penalties, whether in the form of interest or otherwise, in connection with the late or untimely payment of such taxes, assessments or charges, for which they are responsible under this Section 2.06.

## Compliance With Law and Regulations

**2.07.** The Borrower will comply with all laws, ordinances, regulations, and orders of all federal, state, municipal, and other governmental authorities relating to the Mortgaged Property.

### Inspections

**2.08.** The Lender, and any persons authorized by the Lender, will have the right at any time, on reasonable notice to the Borrower, to enter the Mortgaged Property at a reasonable hour to inspect and photograph its condition and state of repair.

### Declaration of No Set-Off

**2.09.** Within ten (10) days after a request by the Lender, the Borrower will certify to the Lender, or to any proposed assignee of this Mortgage, in a duly acknowledged writing, the amount of principal, interest and other charges owing on the Secured Obligations. The Borrower will also indicate whether there are any set-offs or defenses against the Mortgage.

### Defaults and Right to Remedy

**2.10.** If the Borrower fails to pay taxes, assessments, water and sewer charges, other lienable claims (not including contested claims), or insurance premiums, fail to make necessary repairs, permit waste, or otherwise fail to comply with her obligations under the Mortgage, the Note, or the Secured Obligations, then the Lender, at his election and without notice to the Borrower, has the right to make any payment or expenditure that the Borrower should have made, or that the Lender deems advisable, to protect the security of this Mortgage or the Mortgaged Property. Any payment by the Lender will not prejudice the Lender's rights or remedies under this Mortgage. All sums, as well as costs, advanced by the Lender pursuant to this Mortgage will be due immediately from the Borrower to the Lender, will be secured by this Mortgage, and will bear interest at three percent (3%) over the prime rate as published in the Wall Street Journal for the applicable period per year from the date of payment by the Lender until the date of repayment.

### Personal Liability

**2.11.** The Borrower agrees to be personally liable for all indebtedness secured by this Mortgage in accordance with its terms, the terms of the Note, and the terms of the Secured Obligations.

### Responsibility for Injury or Damage

**2.12.** Borrower assumes all risk and responsibility for injury or damage to person or property arising from Borrower's use, control and ownership of the Mortgaged Property and any improvements thereon.

## ARTICLE III

### Default and Remedies

#### Events of Default

**3.01.** Any of the following will constitute an "Event of Default" if after ten (10) days notice is sent the following remain uncured:

- a) Failure of the Borrower to pay any installment of principal or interest, or any other sum, on the date it is due under the Secured Obligations;
- b) The Borrower's failure to perform any of the other agreements, conditions, or covenants in the Secured Obligations;
- c) The entry of a decree by a court having jurisdiction over the Mortgaged Property with respect to the Borrower in an involuntary case under the federal bankruptcy laws, or any other applicable federal or state bankruptcy, insolvency, or similar laws;
- d) The appointment of a receiver, liquidator, custodian, trustee, or similar official for any substantial part of the Borrower's property;
- e) A court-ordered winding-up or liquidation of the Borrower's affairs;
- f) The commencement by the Borrower of a voluntary case under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency, or similar laws;

- g) The consent by the Borrower to the appointment of a receiver, liquidator, trustee, custodian, or similar official for any substantial part of the Borrower's property;
- h) The Borrower making any assignment for the benefit of creditors, or the failure of the Borrower generally to pay her debts as they become due; and
- i) If a final judgment for the payment of money is rendered against the Borrower in an amount greater than Five Thousand Dollars (\$5,000.00), and within sixty (60) days after the entry, the judgment has not been discharged or execution stayed pending appeal, or if within sixty (60) days after the expiration of any stay, the judgment has not been discharged.

### **Remedies**

#### **3.02.**

a) If an Event of Default occurs and is not cured pursuant to Section 3.01, the entire unpaid balance of principal, accrued interest, and all other sums secured by this Mortgage will become immediately due and payable on written notice to the Borrower.

b) When the entire indebtedness under the Secured Obligations becomes due and payable because of maturity or because of any Event of Default, then the Lender may institute an action of mortgage foreclosure, or take any other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security that the law may allow. The Lender may proceed to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the rate stipulated in the Secured Obligations, and all other sums due in accordance with the provisions of the Secured Obligations. This amount includes all sums that may have been loaned by the Lender to the Borrower after the date of this Mortgage, and all sums that may have been advanced by the Lender for taxes, water or sewer rents, other lienable charges or claims, insurance, repairs, maintenance, and all costs of the suit. The Borrower authorize the Lender at its option to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property. The Borrower will not assert the failure to make any tenants parties to the foreclosure proceedings as a defense to proceedings instituted by the Lender to recover the indebtedness secured by this Mortgage or any deficiency remaining unpaid after the foreclosure sale. The Borrower will not be prevented from asserting at any proceedings disputing the amount of the deficiency or the sufficiency of any bid at the foreclosure sale that any tenants adversely affect the value of the Mortgaged Property.

c) When the entire indebtedness under the Secured Obligations becomes due and payable, because of maturity or because of any Event of Default, the Lender may enter into possession of the Mortgaged Property, with or without legal action. In the alternative, the Lender will be entitled to appointment of a receiver without regard to the solvency of the Borrower or any other person liable for the debt secured by this Mortgage, and regardless of whether the Lender has an adequate remedy at law. Either the Lender or a receiver may rent the Mortgaged Property for any period and on any terms and conditions that the Lender or receiver may see fit. The Lender or the receiver may collect rents, and, after deducting all costs of collection and administration expense, apply the net rentals to the payment of taxes, water and sewer rents, other lienable charges and claims, and insurance premiums, and to the maintenance, repair, or restoration of the Mortgaged Property, or to the reduction of the principal or interest, as the Lender or the receiver may elect. For that purpose, the Borrower shall assign to the Lender all rentals due under any existing or future lease of the Mortgaged Property, as well as all rights and remedies provided in the lease or at law or in equity for the collection of the rentals. Any lease or leases entered into by the Lender or the receiver pursuant to this Paragraph 3.02 will survive foreclosure of the Mortgage and repayment of the debt, unless the lease provides otherwise.

### **Attorney Fees**

3.03. If the Lender becomes a party to any suit or proceeding precipitated by the Borrower's ownership of the Mortgaged Property or the Borrower's conduct which affects the Mortgaged Property, the lien created by this Mortgage, or the Lender's interest in the Mortgaged Property, or if the Lender engages counsel to collect any of the indebtedness or to enforce performance of the agreements or covenants of the Secured Obligations, the Lender's costs, expenses, and reasonable attorney fees will be paid by the Borrower, on demand, with interest at the rate provided in the Note. Until paid, they will be deemed to be part of the indebtedness evidenced by the Secured Obligations and secured by this Mortgage.

## **ARTICLE IV**

### **Additional Provisions**

#### **Satisfaction of Mortgage**

4.01. If the Borrower pays the Lender all sums secured by this Mortgage in accordance with the provisions of the Note, then the Lender will provide Borrower with a release of mortgage or other evidence of satisfaction as requested by Borrower.

### **Assignment**

4.02. Except as provided otherwise in this instrument, the Lender may assign this Mortgage, together with any and all notes or bonds representing the obligation of the Borrower to make payments, at any time without the prior consent of the Borrower. However, the Lender must give the Borrower actual notice of any assignment by certified mail, return receipt requested, before the due date of the next installment payment that is to be paid after the effective date of the assignment. The Lender also agrees to give the Borrower actual notice of any assignment or endorsement of the note that is being executed in connection with this mortgage; the Lender must give this notice by certified mail, return receipt requested, thirty days before the effective date of the assignment or endorsement. Failure to provide the Borrower with any notice as required in this Paragraph 4.02 shall make the assignment null, void, and of no legal effect. The Lender further agrees to indemnify and hold the Borrower harmless from any loss to any person incurred because of the Lender's failure to give the notices required by this Paragraph 4.02.

4.03. Without the prior written consent of the Lender which shall not be unreasonably withheld, the Borrower will not cause or permit any sale, exchange, transfer, lease, or conveyance ("transfer") of any part of the Mortgaged Property, or any interest in it, voluntarily or by operation of law other than sales in the ordinary course by the Borrower. If the Borrower is a corporation, any change in the ownership of the corporate stock of the Borrower or the issuance of additional stock that results in the transfer of control and management of the Borrower will be deemed to be a transfer of the Mortgaged Property within the meaning of this Article. If the Borrower is a partnership, any change in the ownership of partnership interests of the Borrower will be deemed to be a transfer of the Mortgaged Property within the meaning of this Article.

4.04. No assignment, sale, exchange, transfer, lease or conveyance shall operate to relieve either party from liability hereon.

### **Notices**

4.05. All notices permitted or required under this Mortgage will be in writing, and will be sent by registered or certified mail, postage prepaid, addressed to the addresses at the addressee set forth in this Mortgage, or at such other address as the addressee may designate in writing from time to time.

### **State Law to Apply**

4.06. This Mortgage shall be construed under and in accordance with the laws of the State of Indiana. State or Federal Courts in Indiana shall have exclusive jurisdiction.

### **Amendment**

4.07. This Mortgage cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.

### **Parties Bound**

4.08. This Mortgage will be binding on and inure to the benefit of the parties and its respective heirs, personal representatives, successors, and assigns.

### **Joint and Several Liability**

4.09. All agreements, covenants and other provisions, affecting the Borrower will be joint and several, and will bind and affect all persons who are defined as "the Borrower" as fully as though all of them were specifically named wherever the word "the Borrower" is used.

### **Interest Rate**

4.10. Regardless of any provision in this Mortgage, the Borrower's liability for interest will not exceed the limits imposed by the then applicable usury law. If any clause in this Mortgage requires interest payments in excess of the highest rate permitted by the then applicable usury law, the clause in question will be deemed to require payment at the highest rate allowed by that law.

### **Waiver of Default**

4.11. No waiver by Lender of any default of Borrower, or any extension of the due date of any payment hereunder, or the acceptance by Lender of any payment after its due date, shall in any manner operate as a waiver of any default thereafter occurring; and the same shall not effect the right of Lender to continue enforcement of any of the provisions of this Mortgage once the enforcement has commenced.

### **Waiver of Notice**

4.12. Borrower expressly waives any requirement of a declaration of default, or notice thereof, by Lender, and Lender shall not be obligated to provide Borrower with any such declaration or notice.

### **Indemnity**

4.13. Except in the case of claims arising solely from the acts or omissions of the Lender, Borrower shall indemnify Lender against all claims arising from the conduct or management of, or from any work or thing whatsoever done in or about, the Mortgaged Property or any building or structure thereon or the equipment thereof during the period of this Mortgage:

- (i) arising during such period from any condition of any street or sidewalk adjoining the premises or pertinent thereto;
- (ii) arising from any act or negligence, whether in whole or in part, of Borrower or any of Borrower's agents, contractors or employees;
- (iii) arising from any accident, injury, or damages whatsoever, however caused, to any person or persons or to the Mortgaged Property of any person, persons, corporation, or corporations occurring during such period, on, in, or about the Mortgaged Property or on or under the streets or sidewalks adjacent thereto;
- (iv) arising as a consequence of Borrower's breach of any of the provisions under this Mortgage.

Borrower shall also indemnify Lender against all costs, attorney fees, and liabilities incurred in or about any such claim or in or about any such action or proceeding brought thereon, and in case of any action or any such claim, Borrower shall, upon notice from Lender, resist or defend such action or proceedings by counsel satisfactory to Lender.

### **Entire Agreement**

4.14. This Mortgage contains all the terms and provisions of the parties' agreement for the Mortgage of the Mortgaged Property, and no oral statements or representations are made a basis of, or have served as an inducement to the parties to enter into this Mortgage.

### **Severability**

4.15. If any part, term or provision of this Mortgage is adjudged to be illegal or in conflict with any law the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid.

### **Counterparts**

4.16. This Mortgage may be executed in any number of counterparts, each of which shall constitute an original for all purposes.

### **Rules of Construction**

4.17. This Mortgage has been prepared by Borrower's attorney and Lender has read same in its entirety and have had ample opportunity to submit same to Lender's attorney for consideration. No rule of law or evidence construing the document against the preparer thereof shall be invoked or applied in the event that the meaning of any of the terms or provisions of this Mortgage shall become disputed.

Captions

4.18. The captions preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and will not constitute a part of this Mortgage, nor will they in any way affect its meaning, construction, or effect.

BORROWER:

*Stephen M. Hovanec*  
STEPHEN M. HOVANEC

*Lisa Hovanec*  
LISA HOVANEC

Acknowledgement

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF Lake )

Before me, a Notary Public in and for said County and State, on this 25 day of January 1996, personally appeared STEPHEN M. HOVANEC and LISA HOVANEC and acknowledged the execution of the above and foregoing Mortgage to be a voluntary act and deed.

Witness my hand and Notarial Seal.

*Greg A. Bower*  
Notary Public  
Greg A. Bower  
Printed Name

My Commission Expires:  
10-19-96

My County of Residence:  
Lake

This instrument prepared by SPANGLER, JENNINGS & DOUGHERTY, P.C., GREG A. BOUWER, Attorney at Law.

**NEGOTIABLE MORTGAGE NOTE**

\$295,000

Merrillville, Indiana

January 5, 1996

FOR VALUE RECEIVED, Stephen M. Hovanec and Lisa Hovanec ("Maker"), promises to pay to the order of Stephen J. Hovanec and Mildred Hovanec (collectively, "Holder"), the sum of Two Hundred Ninety-Five Thousand and no/100 Dollars (\$295,000.00) together with interest thereon at the rate of six (6.00%) percent per annum on the balance from time to time outstanding. The Note shall be paid as follows: See attached Exhibit A.

Interest on the Note shall commence on January 5, 1996.

The entire balance (including both principal and interest) of this Note is due \_\_\_\_\_.

All amounts due under this Note are payable at par in lawful money of the United States of America, at 1963 E. 69th Avenue, Merrillville, IN 46410 or at such other address as Holder may direct.

The occurrence of any of the following shall constitute an event of default under this Note: (1) the failure of Maker to make any payment when due under this or any other obligations to Holder if ten (10) days after the date the payment is due, such payment has not been received by the Holder (time is of the essence of this Note); (2) the institution of proceedings by Maker under any state insolvency law or under any federal bankruptcy law; (3) the institution of proceedings against Maker under any state insolvency law or under any federal bankruptcy law, if such proceedings are not dismissed within thirty (30) days; (4) Maker becoming insolvent or generally failing to pay their debts as they become due; (5) the existence of a material misrepresentation of financial condition in any oral or written statement made to any present or previous Holder; (6) the instigation of legal proceedings against Maker for the violation of a criminal statute or for failure to pay state or federal taxes; (7) the decline of the market value of collateral securing this Note below the amount outstanding hereunder and other obligations of Maker, unless maker tenders sufficient additional collateral acceptable to Holder; (8) the issuance of an attachment against property of Maker unless removed, by bond or otherwise, within ten (10) days; (9) the entry of judgments against Maker for payment of money in amounts aggregating greater than Twenty Thousand Dollars (\$20,000) that remain unsatisfied as of the fifth day prior to the first day under which execution may issue; (10) the occurrence of a default under the



terms of any agreement, loan agreement, security agreement, deed of trust, or similar document to which Maker and Holder are both parties or to which any property securing this Note is subject; (11) the occurrence of any event or presence of any condition that causes Holder in good faith to feel insecure regarding the likelihood of its receiving orderly and complete payment according to the terms of this Note without proceeding against any collateral or seeking payment from any surety or guarantor.

Upon the occurrence of an event of default, as defined above, Holder may, at their option and without notice, declare all principal and interest provided for under this Note, and any other obligations of Maker to Holder, to be presently due and payable, and Holder may enforce any remedies available to Holder under any documents securing or evidencing debts of Maker to Holder. Holder may waive any default before or after it occurs and may restore this Note in full effect without impairing the right to declare it due for a subsequent default, this right being a continuing one. Upon default, the remaining unpaid principal balance of the indebtedness evidenced hereby and all expenses due Holder shall bear interest at three percent (3%) over the prime rate as published in the Wall Street Journal for the applicable period per annum.

All amounts received for payment of this Note shall be first applied to any expenses due Holder under this Note or under any other documents evidencing or securing obligations of Maker to Holder, then to accrued interest, and finally to the reduction of principal.

Maker waives demand, presentment, protest, notice of dishonor, and all other notices that might otherwise be required by law. All parties hereto waive the defense of impairment of collateral and all other defenses of suretyship.


Maker agrees to pay reasonable attorney fees and all court and other reasonable costs that Holder may incur in the course of efforts to collect the debt evidenced hereby or to protect Holders' interest in any collateral securing the same.

The validity and construction of this Note shall be determined according to the laws of Indiana applicable to contracts executed and performed within that state. If any provisions of this Note should for any reason be invalid or unenforceable, the remaining provisions hereof shall remain in full effect.

The provisions of this Note may be amended or waived only by instrument in writing signed by the Holder and Maker and attached to this Note.

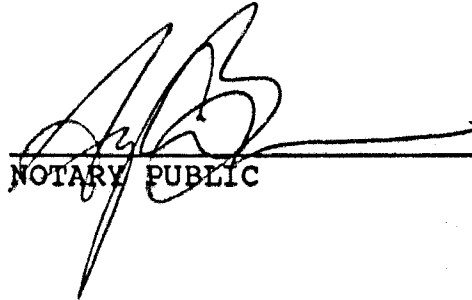
This Note may be prepaid in full or in part.

Words used herein indicating gender or number shall be read as context may require.

  
STEPHEN M. HOVANEC

  
LISA HOVANEC

SUBSCRIBED TO AND SWORN TO BEFORE ME THIS 20 DAY OF January,  
1996.

  
NOTARY PUBLIC