

Form 77 Secured Promissory Note and Security Agreement

SECURED PROMISSORY NOTE

Amount: \$ _____

Date: _____

For value received, _____ (“Borrower”) hereby covenants and promises to pay to _____ (“Lender”) _____ Dollars (\$ _____) in lawful money of the United States of America, together with interest thereon computed from the date hereof at the rate of ten percent (10%) per annum, on an actual day/365 day basis. All interest, principal, and other costs hereunder shall be due and payable to the holder (“Holder”) of this Promissory Note (this “Note”) on or before _____ (the “Due Date”).

Payments of principal and interest will be made in legal tender of the United States of America. Borrower shall have the right to prepay without penalty all or any part of the unpaid balance of this Note at any time. Borrower shall not be entitled to re-borrow any prepaid amounts of the principal, interest, or other costs or charges. All payments made pursuant to this Note will be first applied to accrued and unpaid interest, if any, then to other proper charges under this Note, and the balance, if any, to principal.

This Note is secured by a security interest in Borrower’s assets, as more particularly described in the Security Agreement attached to this Note.

This Note shall be paid as follows: monthly payments of \$ _____ shall be made upon this Note on the first day of each month, commencing with the date of _____, and shall continue until _____ (the “Repayment Date”), at which time all sums due hereunder shall be paid.

Notwithstanding anything in this Note to the contrary, the entire unpaid principal amount of this Note, together with all accrued but unpaid interest thereon and other unpaid charges hereunder, will become immediately all due and payable without further notice at the option of the Holder if Borrower fails to timely make any payment hereunder when such payment becomes first due and such failure continues for a period of ten days after written notice from Holder to Borrower.

If any amount payable to Holder under this Note is not received by Holder on or before the Due Date, then such amount (the “Delinquent Amount”) will bear interest from and after the Due Date until paid at an annual rate of interest equal to the greater of (i) fifteen percent (15%) or (ii) the maximum rate then permitted by law (the “Default Rate”). If the maximum rate then permitted by law is lower than 15%, the maximum legal rate shall be the Default Rate.

All rights, remedies, undertakings, obligations, options, covenants, conditions, and agreements contained in this Note are cumulative and no one of them will be exclusive of any other. Any notice to any party concerning this Note will be delivered as set forth in the Financing Agreement.

Borrower for itself and its legal representatives, successors, and assigns expressly waives presentment, protest, demand, notice of dishonor, notice of nonpayment, notice of maturity, notice of protest, presentment for the purpose of accelerating maturity, and diligence in

collection and consents that Holder may extend the time for payment or otherwise modify the terms of payment or any part or the whole of the debt evidenced hereby.

The prevailing party in any action, litigation, or proceeding, including any appeal or the collection of any judgment concerning this Note, will be awarded, in addition to any damages, injunctions, or other relief, and without regard to whether or not such matter be prosecuted to final judgment, such party's costs and expenses, including reasonable attorneys' fees, and Lender shall be entitled to recover all of its attorneys' fees and costs should Lender place this Note in the hands of an attorney for collection.

_____ (“Borrower”)

Signature _____

SECURITY AGREEMENT ACCOMPANYING SECURED PROMISSORY NOTE

Date _____

This Security Agreement is made on this _____ day of _____ between _____ (“Borrower”) and _____ (“Lender”).

1. Security Interest. Borrower grants to Lender a “Security Interest” in the following property (the “Collateral”):

The Security Interest shall secure the payment and performance of Borrower's promissory note of even date herewith in the principal amount of _____ Dollars (\$_____) and the payment and performance of all other liabilities and obligations of Borrower to Lender of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

2. Covenants. Borrower hereby warrants and covenants:

- a. The parties intend that the collateral is and will at all times remain personal property despite the fact and irrespective of the manner in which it is attached to realty.
- b. The Borrower will not sell, dispose, or otherwise transfer the collateral or any interest therein without the prior written consent of Lender, and the Borrower shall keep the collateral free from unpaid charges (including rent), taxes, and liens.
- c. The Borrower shall execute alone or with Lender any Financing Statement or other document or procure any document, and pay the cost of filing the same in all public offices wherever filing is deemed by Lender to be necessary.

- d. Borrower shall maintain insurance at all times with respect to all collateral against risks of fire, theft, and other such risks and in such amounts as Lender may require. The policies shall be payable to both the Lender and the Borrower as their interests appear and shall provide for ten (10) days' written notice of cancellation to Lender.
 - e. The Borrower shall make all repairs, replacements, additions, and improvements necessary to maintain any equipment in good working order and condition. At its option, Lender may discharge taxes, liens, or other encumbrances at any time levied or placed on the collateral, may pay rent or insurance due on the collateral, and may pay for the maintenance and preservation of the collateral. Borrower agrees to reimburse Lender on demand for any payment made or any expense incurred by Lender pursuant to the foregoing authorization.
3. Default. The Borrower shall be in default under this Agreement if it is in default under the Note. Upon default and at any time thereafter, Lender may declare all obligations secured hereby immediately due and payable and shall have the remedies of a Lender under the Uniform Commercial Code. Lender may require the Borrower to make it available to Lender at a place that is mutually convenient. No waiver by Lender of any default shall operate as a waiver of any other default or of the same default on a future occasion. This Agreement shall inure to the benefit of and bind the heirs, executors, administrators, successors, and assigns of the parties. This Agreement shall have the effect of an instrument under seal.

_____ (“Borrower”)

Signature _____

Date _____