

PREPARED BY AND MAIL TO:

Douglas A. Hanson, Esq.
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1603 Orrington Avenue
Suite 1190
Evanston, IL 60201



00928387

JUNIOR MORTGAGE

THIS JUNIOR MORTGAGE ("Mortgage") is made this 27th day of October, 2000, by and between Michael H. Sir ("Mortgagor") and Calogero Incandela ("Mortgagee").

WITNESSETH:

THAT, WHEREAS, the Mortgagor is justly indebted to the Mortgagee in the principal sum of THIRTY THOUSAND AND 00/00THS DOLLARS (\$30,000.00), evidenced by that certain installment note in that amount executed by the Mortgagor of even date with this Mortgage, made payable to the order of Calogero Incandela and delivered to the Mortgagee (the "Note"), in and by which Note the Mortgagor promises to pay the principal sum and interest at the rate and in installments as provided in the Note, with a final payment of the balance, if not sooner paid, to be due on the 1st day of May, 2002, and all of the principal and interest are payable at such place as the holder of the Note may, from time to time in writing appoint, and in the absence of such appointment, then to Calogero Incandela 4527 S.E. 6th Ct., Apt. #2, Cape Coral, FL 33904.

THIS MORTGAGE IS A JUNIOR MORTGAGE.

NOW, THEREFORE, the Mortgagor, to secure the payment of the principal sum of money and interest in accordance with the terms, provisions and limitations of this Mortgage and of the Note secured by the Mortgage, and any substitutions and replacements of such balance, to protect the security of this Mortgage or discharge the obligations of the Mortgagor under this Mortgage, and the performance of the covenants and agreements contained in this Mortgage by the Mortgagor to be performed, and also in consideration of the sum of TEN AND 00/100THS DOLLARS (\$10.00) in hand paid and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, does, by these presents, GRANT, BARGAIN, SELL, ASSIGN, RELEASE, ASSIGN, TRANSFER, REMISE, CONVEY AND MORTGAGE unto the Mortgagee, and his successors and assigns forever, and represents and warrants to Mortgagee and grants to Mortgagee and his successors and assigns forever, a continuing security interest in and to the following described real estate and all of its estate, right, title and interest therein, situate, lying and being in the County of Cook and State of Illinois, to-wit:

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LOT 1 IN BLOCK 3 IN NILS F. OLSON'S SUBDIVISION OF ALL THAT PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECITON 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 13-36-308-017

COMMONLY KNOWN AS: 3105-07 W. CORTLAND, CHICAGO, IL 60651

which is referred to in this Mortgage as the "Premises" **TOGETHER** with all improvements, tenements, easements, hereditaments, fixtures, and appurtenances hereunto belonging and all rents, issues and profits thereof and during all such times as the Mortgagee may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily, and all apparatus, equipment or articles now or hereafter used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled, and ventilation including (without restricting the foregoing), screens, storm doors and windows, floor coverings, awnings, and water heaters, except all equipment and other personal property used at the Premises which are not fixtures or are used in the business operated at the Premises. All of the foregoing are declared to be a part of said real estate whether physically attached to the Premises or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in the Premises by the Mortgagee or its successors or assigns shall be considered as constituting part of the real estate.

TO HAVE AND TO HOLD the Premises unto the Mortgagee, its successors and assigns forever, for the purposes herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Maintenance, Repair and Restoration of Improvements; Payment of Prior Liens; Insurance, Etc.** The Mortgagee shall promptly (a) at its option: (i) repair, restore or rebuild any buildings or improvements hereafter on the Premises which may become damaged or be destroyed or, (ii) place funds in escrow at a licensed Illinois title company in an amount equal to the then current outstanding principal balance of the indebtedness secured by this Mortgage; (b) keep said Premises in good condition and repair, without waste, and free from mechanics' liens or claims for lien not expressly subordinated to the lien of this Mortgage, normal wear and tear excepted; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien of this Mortgage, and upon request, exhibit satisfactory evidence of the discharge of such prior lien to 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 of record with respect to the Premises and the use thereof; (f) keep all buildings and improvements now or in the future situated on the Premises insured against loss or damage by fire, lightning or windstorm under policies providing for payment by the insurance companies of monies sufficient either to pay the cost of replacing or repairing the buildings and improvements or to pay in full the indebtedness secured by this Mortgage all in companies with Best's rating of A or better, under insurance policies payable, in case of loss or damage, to Mortgagee, such rights to be evidenced by the standard mortgage clause

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to be attached to each policy; and to deliver a certificate evidencing such clause to the Mortgagee upon issuance and renewal; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note secured hereby. Notwithstanding the above, the Mortgagor shall have the right to contest those items mentioned in clauses (b) and (e) in this Paragraph 1, so long as the Mortgagor posts security with the Mortgagee, or a title company, necessary in the reasonable discretion of the Mortgagee to protect Mortgagee's security granted hereby and to pay off said item in the event the contest is unsuccessful. The Mortgagor shall not be entitled to interest on any such funds posted as security.

2. Representations and Covenants. The Mortgagor hereby represents and covenants to the Mortgagee that:

2.1. Validity of Loan Instruments. (a) The execution, delivery and performance by the Mortgagor of the Note, this Mortgage, and all additional security documents, and the borrowing evidenced by the Note (1) are within the powers of the Mortgagor (2) have been duly authorized by all requisite actions, (3) have received all necessary governmental approval; and (4) do not violate, to the best of the Mortgagor's knowledge, any provision of any law, any order of any court or agency of government or any indenture, agreement or other instrument to which the Mortgagor is a party, or by which it or any portion of the Premises is bound, or be in conflict with, result in a breach of, or constitute with due notice and/or lapse of time a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of its property or assets, except as contemplated by the provisions of this Mortgage and any additional documents securing the Note; and (b) the Note, this Mortgage and any additional documents securing the Note, when executed and delivered by the Mortgagor, will constitute the legal, valid and binding obligations of the Mortgagor, if any, in accordance with their respective terms.

2.2. Other Information. All information, papers, reports, balance sheets, statements of profit and loss, and data delivered by the Mortgagor to the Mortgagee, its agents, employees, representatives or counsel in respect of the Mortgagor, and all other documents securing the payment of the Note secured by this Mortgage are accurate and correct in all material respects and complete insofar as completeness may be necessary to give the Mortgagee a true and accurate knowledge of the subject matter.

2.3. Litigation. There is not now pending against or affecting the Mortgagor or others obligated under the terms of this Mortgage and all other documents securing the payment of the Note, nor, to the knowledge of the Mortgagor, is there threatened any action, suit or proceeding at law or in equity or by or before any administrative agency which, if adversely determined, could materially impair or affect the financial condition or operation of the

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Mortgagor or the Premises.

3. **Payment of Taxes.** Subject to the Mortgagor's right to contest, the Mortgagor shall pay before any penalty attaches, all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises when due, and shall, upon written request, furnish to the Mortgagee duplicate receipts therefor. To prevent default under this Mortgage, the Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which the Mortgagor may desire to contest.
4. **Prepayment Penalties.** Mortgagor may prepay the indebtedness secured by this Mortgage in whole or in part at any time without penalty or notice.
5. **Mortgagee's Performance of Defaulted Acts.** In case of default (after the expiration of all applicable cure periods), the Mortgagee may, but need not, make any payment or perform any act required of the Mortgagor in any form and manner deemed expedient. In such event, if the Mortgagee makes any such payment or performs any such act, the Mortgagee must give notice to the Mortgagor that Mortgagee is doing so at the time the Mortgagee acts. By way of illustration and not in limitation of the foregoing, the Mortgagee may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any part of the Premises; complete construction; make repairs; collect rents; prosecute collection of any sums due with respect to the Premises; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Premises. All monies paid for any of the purposes authorized in this Mortgage and all expenses paid or incurred in connection with, including reasonable attorneys' fees, and any other monies advanced by the Mortgagee to protect the Mortgage Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable upon the performance by the Mortgagee, so long as notice is simultaneously delivered to the Mortgagor with interest thereon as the Default Rate.
6. **Grace Period.** Monthly installments of interest only as set forth in the Note secured by this Mortgage are due on the first (1st) day of each month. Any installment of interest not received by the Mortgagee on or before the fifteenth (15th) day of the month in which such installment is due (the "grace period") shall incur a late payment penalty of five percent (5%) per month of the principal and interest of such delinquent installment for each and every subsequent calendar month, or portion thereof, that such installment remains outstanding; provided, however, that nothing in this Paragraph shall affect the accruing of interest at the rate hereinabove set forth due on any principal amount outstanding until paid, and nothing in this Paragraph contained shall authorize the Mortgagee to collect or demand any payment which would result in the imposition of interest in excess of the maximum amount allowed by law.

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7. Acceleration of Indebtedness in Case of Default.

7.1. **Event of Default.** A default shall occur if one or more of the following events ("Events of Default") shall occur: (a) if default be made for fifteen (15) days in the due and punctual payment of said Note, either of principal or interest or in the payment of any sum required to be paid by the Mortgagor or the maker of the Note required or set forth in the Note or pursuant to this Mortgage; or (b) if the Mortgagor shall file a petition in voluntary bankruptcy or under Title 11 of the United States Code or any other similar law, statute or regulation, state or federal, whether now or hereafter existing, or answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within sixty (60) days as provided below; or (c) if the Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgagor for all of its property or the major part of its property in any involuntary proceedings, or any court shall have taken jurisdiction of the property of the Mortgagor, or the major part of its property in any involuntary proceedings for the reorganization, dissolution, liquidation or winding up of the Mortgagor and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days; or (d) if the Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; or (e) if default shall be made in the due observance or performance of any other of the covenants, agreements or conditions contained in this Mortgage and required to be kept or performed or observed by the Mortgagor; or (f) if any material representation made by the Mortgagor or others in, under or pursuant to the Note, this Mortgage shall prove to have been false or misleading in any material aspect as of the date on which such representation was made; or (g) there is an event of default under the Security Agreement additionally collateralizing repayment of the debt secured hereby; or (h) if the holder of a mortgage or of any other lien on the Premises (without hereby implying Mortgagee's consent to any such mortgage or other lien) institutes foreclosure proceedings or other proceedings for the enforcement of its remedies thereunder, then, upon the occurrence of any such Event of Default, and in every such case, the whole of said principal sum hereby secured shall, at once, at the option of the Mortgagee, become immediately due and payable, together with accrued interest thereon, without notice to the Mortgagor.

7.2. **Cure Periods.** With respect to monetary defaults, the Mortgagor shall have ten (10) days after receiving notice from the Mortgagee of

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such monetary default to cure said default. With respect to non-monetary defaults, the Mortgagor shall have thirty (30) days after receiving notice from the Mortgagee of such non-monetary default to cure said default. In the event any non-monetary default cannot be cured within thirty (30) days after said notice, the Mortgagor must take reasonable steps to cure said default within said thirty (30) days and continue to act reasonably and diligently until said default is cured, but in no event shall the cure period exceed one hundred twenty (120) days.

8. **Foreclosure; Expense of Litigation.** When the indebtedness, or any part of the indebtedness, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof, and in the event of the default in the payment of the amount due under the Note, the owner of such Note may accelerate the payment of same and may institute proceedings to foreclose this Mortgage for the entire amount then unpaid with respect to the Note. In any suit to foreclose the lien hereof, there shall be allowed and included an additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) or procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Paragraph mentioned, and such expense and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with interest at the Default Rate, defined below, and shall be secured by this Mortgage.

8.1. This Mortgage may be foreclosed once against all, or successively against any portion or portions of the Premises, as the Mortgagee may elect. This Mortgage and this right of foreclosure shall not be impaired or exhausted by one or any foreclosure or by one or any sale, and may be foreclosed successively and in parts, until all of the Premises have been foreclosed against and sold.

8.2. Any costs and expenses reasonably incurred in connection with any litigation affecting the debt or the Mortgagee's title to the Premises shall be added to and be a part of the indebtedness secured by this

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Mortgage. All such amounts shall be payable by the Mortgagor to the Mortgagee upon formal demand, and if not paid, shall be included as a part of the mortgage debt and shall include interest at the Default Rate, defined below, from the dates of their respective expenditures. Notwithstanding the above, the Mortgagor shall not be liable for the Mortgagee's attorneys' fees if the Mortgagor is successful in a dispute between the Mortgagor and the Mortgagee concerning impairment of the security interest granted by this Mortgage.

8.3. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Paragraph; second, all other items which, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest as provided in this Mortgage; third, all principal and interest remaining unpaid on the Note in the order of priority described in the Note; fourth, any overplus to the Mortgagor, his successors or assigns, as their rights may appear.

8.4. After an Event of Default, the Mortgagee shall have the right and option to commence a civil action to foreclose the lien on this Mortgage and to obtain an order or judgment of foreclosure and sale, subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

9. **Due on Sale or Encumbrance; Subordination.** In the event the Mortgagor, or in the event the Mortgagor is a land trust and the beneficiary thereof, shall otherwise suffer or permit its or his legal or beneficial interest in the Premises to become vested in or become encumbered by any person or persons, firm or corporation who was not, at the date of execution of this Mortgage, so vested with a legal or beneficial interest in the Premises, or the mortgagee of a note secured by an encumbrance on the Premises, then, and in any such event, unless the same shall be done with the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, the happening shall constitute a default under this Mortgage, and the Mortgagee shall be authorized and empowered, at its option, and without affecting the lien created by this Mortgage or the priority of this lien, to declare without notice all sums secured by this Mortgage immediately due and payable. Notwithstanding the above, this Mortgage and the rights of the Mortgagee created by this Mortgage

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are subject and subordinate to all encumbrances currently existing on the premises and to all future such encumbrances where the proceeds of any such future encumbrance will be used to enhance the value of the premises.

10. **Security Agreement.** The Mortgagor further covenants and agrees that this Mortgage shall operate as a security agreement under the provisions of the Uniform Commercial Code, as now or hereafter amended, with respect to the equipment used and owned by the Mortgagor in the operation of the Premises, or any replacements thereof, or additions thereto, and all proceeds thereof, and the Mortgagor will execute and deliver such financing statements as the Illinois Uniform Commercial Code requires with respect to such security and that the Mortgagor will execute and deliver from time to time such further instruments, including renewal mortgages, security agreements, financing statements, certificate extensions and renewals thereof and such other documents as may be required by the Mortgagee to preserve, confirm and maintain the lien of this Mortgage on the equipment used in the operation of the Premises, whether now or hereafter acquired, and the Mortgagor shall pay to the Mortgagee on demand, any reasonable expenses incurred by the Mortgagee in connection with the preparation and filing of any such documents.
11. **Usury Laws, Etc.** The Mortgagor represents and agrees that the proceeds of the Note will be used for business purposes only and that the principal obligation secured by this Mortgage constitutes a business loan within the purview of the usury laws of the State of Illinois.
12. **No Liability on Mortgagee.** Notwithstanding anything contained in this Mortgage, the Mortgagee shall not be obligated to perform or discharge, and does not by this Mortgage undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether under this Mortgage, under any lease affecting the Premises, under any contract relating to the Premises or otherwise, and the Mortgagor shall and does agree to indemnify against and hold the Mortgagee harmless of and from: any and all liability, loss or damage which the Mortgagee may incur under or with respect to any portion of the Premises or under or by reason of its exercise of rights under this Mortgage; and any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any of the contracts, documents or instruments affecting any portion of the Premises or affecting any rights of the Mortgagor to the Premises except for those arising out of the Mortgagee's gross negligence or willful misconduct. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers granted to it in this Mortgage, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagor incur any such liability, loss or damage under any of the leases affecting the Premises or under or by reason of this Mortgage, or in the defense of any claims or

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demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount of such expenditures, including costs, expenses and reasonable attorneys' fees.

13. E. P. A. Compliance.

13.1. The Mortgagor covenants that any buildings and other improvements constructed on, under or above the subject real estate will be used and maintained in accordance with the applicable E.P.A. regulations and the use of said buildings by the Mortgagor, or the Mortgagor's lessees, will not unduly or unreasonably pollute the atmosphere with smoke, fumes, noxious gases or particulate pollutants in violation of any such regulations; and in case the Mortgagor (or said lessees) are served with notice of violation by any such E.P.A. Agency or other municipal body, that it will immediately cure such violations and abate whatever nuisance or violation is claimed or alleged to exist. To the best of Mortgagor's knowledge, there have not been and are not now any underground tanks on any portion of the Premises.

13.2. Mortgagor hereby agrees to indemnify, defend and hold the Mortgagee harmless from and against any claims, damages, actions, liabilities, causes of action, suits, investigations and judgments of any nature whatsoever, including without limitation, attorneys' fees and expenses, incurred by the Mortgagee in connection with any breach of the representations and warranties set forth in this Paragraph 14. The foregoing indemnity shall survive the pay off of the loan evidenced by the Note.

14. **Incorporation.** The terms of the Note secured by this Mortgage are incorporated into this Mortgage by reference and are specifically made a part of this Mortgage and shall be binding upon the Mortgagor, its successors and assigns.

15. **Junior Mortgage Covenant.** This Mortgage is a Junior Mortgage the lien of which is Junior and subordinate to the existing mortgages encumbering the premises (collectively, the "Senior Mortgages"). It is a covenant hereof that if either of the Senior Mortgages or the notes secured thereby shall be in default for any reason or should any suit be commenced to foreclose either of the Senior Mortgages or for the exercise of any remedies under the Senior Mortgages or any suit be commenced to enter judgment on either of said notes, such default or commencement of foreclosure, or commencement of the exercise of remedies, or the commencement of suit, shall constitute an Event of Default under this mortgage on account of which the whole of the indebtedness secured hereby shall at once, at the option of the Mortgagee, become immediately due and payable without notice to the Mortgagor. The Mortgagor covenants and agrees to comply with all of the terms and provisions of the aforesaid Senior Mortgages. Nothing contained herein shall require the Mortgagee to perform the terms or provisions contained in the Senior Mortgages required to be performed by Mortgagor, his successors and assigns. The Mortgagor further covenants and agrees

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2000-11-27 16:32:01
Cook County Recorder 41.50

SCHUYLER, ROCHE & ZWIRNER, P.C.
1603 ORRINGTON AVENUE
SUITE 1190
EVANSTON, ILLINOIS 60201
847/491-9760 - TELEPHONE
847/491-0658 - FACSIMILE

MEMORANDUM

TO: MARIO MORENO
FROM: DEBRA ARREOLA
RE: DOCUMENT TO BE RECORDED
DATE: November ²⁷~~16~~, 2000
CLIENT/MATTER: MICHAEL SIR/PURCHASE 3105-07 CORTLAND
CLIENT/MATTER NUMBER: 27785-2
FEE: \$41.50

41.50

Mario:

Please have the enclosed JUNIOR MORTGAGE recorded at the Cook County Recorder's Office.
Have the copy stamped with the recording number and returned to me.

Thanks.