

SECOND MORTGAGE FOR TERM LOAN



0010063762

THIS SECOND MORTGAGE dated as of December 8, 2000 is made Michael V. Raimo ("Mortgagor"), in favor of Robert Krueger and Dan Wood whose address is 4103 St. Charles Road, Bellwood, Illinois 60104 (herein, together with its successors and assigns, including each and every holder of the Secured Note hereinafter referred to, called the "Mortgagee") and has reference to the following:

WHEREAS, the Mortgagor has executed and delivered to the Mortgagee a Promissory Note of even date herewith in the original principal amount of SEVENTEEN THOUSAND NINE HUNDRED AND NO/100THS DOLLARS (\$17,900.00) (the "Secured Note");

WHEREAS, this Second Mortgage is given to secure the Secured Note, which is to be used to finance the acquisition of the property hereinafter described, and this Mortgage secures not only the indebtedness from the Mortgagor to the Mortgagee existing on the date of the Mortgage, but also from future advances pursuant to any agreement of the parties, whether such advances are obligatory or are to be made at the option of the Mortgagee, or otherwise, as are made within twenty years from the date of the Mortgage, to the same extent as if such future advances were made on the date of execution of this Mortgage, even though there may be no future advance made or contemplated at the time of the execution of this Mortgage;

Prepared by and after recording return to:

Keith W. Harrington
Dranas, Harrington & Wilson
77 W. Washington, Suite 920
Chicago, Illinois 60602

Property Common Address:

10008 S. Western
Chicago, Illinois
60643

78-82-140
3 All
B#
DB
No Abstract

20
51
P

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

NOW, THEREFORE, to secure payment of the Indebtedness and in consideration of One Dollar (\$1.00) in hand paid, receipt whereof is hereby acknowledged, Mortgagor does hereby grant, remise, release, alien, convey and mortgage to Mortgagee, its successors and assigns, the real estate commonly known as 10008 S. Western, Chicago, Illinois whose legal description is set forth in Exhibit A hereto. Such real estate, together with the property described in the next succeeding paragraph, is herein called the "Mortgaged Property";

TOGETHER WITH all right, title and interest, including the right of use or occupancy, which Mortgagor may now have or hereafter acquire in and to:

- a) any lands occupied by streets, alleys, or public places adjoining said Mortgaged Property or in such streets, alleys, or public places adjoining said Mortgaged Property or in such streets, alleys, or public places;
- b) all improvements, tenements hereditaments, gas, oil, minerals, easements, fixtures and appurtenances, and all other rights and privileges thereunto belonging or appertaining;
- c) all apparatus, machinery, equipment, and appliances (*whether single units or centrally controlled*) of Mortgagor now or hereafter used to supply heat, gas, air conditioning, water, light, power, ventilation or refrigeration or to treat or dispose of refuse or waste;
- d) all screens, window shades, blinds, wainscoting, storm doors and windows, floor coverings and awnings of Mortgagor;
- e) all apparatus, machinery, equipment and appliances of Mortgagor used or useful for or in connection with the maintenance and operation of said real estate or intended for the use or convenience of tenants, other occupants, or patrons thereof;
- f) all items of furniture, furnishings, equipment and personal property used or useful in the operation of the Mortgaged Property;
- g) all replacements and substitutions for the foregoing whether or not any of the foregoing is or shall be on or attached to the Mortgaged Property; and
- h) all proceeds of the foregoing.

It is mutually agreed, intended and declared, that all of the aforesaid property owned by Mortgagor

shall, so far as permitted by law, be deemed to form a part and parcel of said real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage.

It is also agreed that if any of the property herein mortgaged is a fixture or of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a fixture filing and/or a Security Agreement, as the case may be, and Mortgagor agrees to execute, deliver and file or refile any financing statement, continuation statement, or other instruments Mortgagee may require from time to time to perfect or renew such security interest under the Uniform Commercial Code. Mortgagee's filing of one or more separate fixture filing financing statement shall in no way impair Mortgagee's security interest in said fixtures.

The lien of this Mortgage, including without limitation all security interests created hereunder shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.

As additional security for the repayment of the Indebtedness, Mortgagor has executed and delivered to Mortgagee that certain Collateral Assignment of Rents dated of even date herewith (*the "Assignment"*) which, among other things, pledges and assigns to Mortgagee all the rents, issues and profits of the Mortgaged Property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (*including all deposits of money as advance rent, for security or as earnest money or as down payment for the purchase of all or any part of the Mortgaged Property, subject to any applicable requirements of law or any contract pursuant to which said earnest money or loan payment was deposited*) under any and all present and future leases, contracts or other agreements relative to the ownership or occupancy of all or any portion of the Mortgaged Property. The terms and provisions of the Assignment are hereby incorporated by reference.

Nothing herein contained shall be construed as constituting the Mortgagee as a mortgagee-in-possession in the absence of the taking of actual possession of the Mortgaged Property by the Mortgagee. In the exercise of the powers herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by Mortgagor.

TO HAVE AND TO HOLD the Mortgaged Property, properties, rights and privileges hereby conveyed or assigned, unto Mortgagee, its successors and assigns, forever for the uses and purposes herein set forth. Mortgagor hereby releases and waives all right under and by virtue of the Homestead Exemption Laws of the State of Illinois, and Mortgagor hereby covenants that as of the date of this Mortgage, Mortgagor is or will soon be well-seized of said real estate and Mortgaged Property in fee simple, and full legal and equitable title to the Mortgaged Property, with good right, full power and lawful authority to sell, assign, convey, and mortgage the same, and that it is free and clear of encumbrances, except for encumbrances of record consented to by Mortgagee, and that Mortgagor will forever defend the same against all lawful claims.

The following provisions shall constitute an integral part of this Mortgage:

1. **Payment of Indebtedness and Performance of Covenants.** Mortgagor agrees to pay, when due or declared due, all of the Indebtedness secured hereby and to duly and punctually observe all of the terms, provisions, conditions, covenants and agreements on Mortgagor's part to be performed or observed as provided in this Mortgage or in the Secured Note and all other documents which evidence, secure or guarantee the Indebtedness.
2. **Representations.** Mortgagor hereby covenants and represents that:
 - a) Mortgagor is duly authorized to make and enter into this Mortgage and to carry out the transactions contemplated herein.
 - b) This Mortgage has been duly executed and delivered pursuant to authority legally adequate therefor; Mortgagor has been and is authorized and empowered by all necessary persons having the power of direction over it to execute and deliver this Mortgage; this Mortgage is a legal, valid and binding obligation of Mortgagor, enforceable in accordance with its terms, subject to bankruptcy and other law, decisional or statutory, of general application affecting the enforcement of creditors' rights, and to the fact that the availability of the remedy of specific performance or of injunctive relief in equity is subject to the discretion of the court before which any proceeding therefor may be brought.
 - c) Mortgagor is not now in default under any instruments or obligations relating to the Mortgaged Property and no party has asserted any claim of default against Mortgagor relating to the Mortgaged Property.
 - d) The execution and performance of this Mortgage and the consummation of the transactions hereby contemplated will not result in any breach of, or constitute a default under, any articles of incorporation, by-laws, articles of organization, partnership agreement, mortgage, lease, bank loan, or credit agreement, trust indenture, or other instrument to which Mortgagor is a party or by which it may be bound or affected; nor do any such instrument impose or contemplate any obligations which are or may be inconsistent with any other obligations imposed on Mortgagor under any other instrument(s) heretofore or hereafter delivered by Mortgagor.
 - e) To the best of Mortgagor's knowledge, after diligent inquiry by Mortgagor, there are no actions, suits, or proceedings (*including, without limitation, any condemnation or bankruptcy proceedings*) pending or threatened against or affecting Mortgagor or the Mortgaged Property, or which may adversely affect the validity or enforceability of this Mortgage, at law or in equity, or before or by any governmental authority; Mortgagor, on its actual knowledge, states that it is not in default with respect to any writ, injunction, decree or demand of any court or any governmental authority affecting the Mortgaged Property.
 - f) Mortgagor has made a physical investigation of the Mortgaged Property, and no Environmental Conditions (*as defined in Section 3(c) hereof*) are present on or affect

the Mortgaged Property.

- g) All statements, financial or otherwise, submitted to Mortgagee in connection with this transaction are true and correct in all respects and fairly present the financial condition of the parties or entities covered by such statements as of the date hereof.
- h) The execution of this Mortgage does not subject the Mortgaged Property to the reporting requirements under the Illinois Responsible Property Transfer Act ("IRPTA") or the Mortgagor will prepare and record all necessary documents required under IRPTA and do all things necessary to comply with the provisions of IRPTA.
- i) Mortgagor's use and operation of the Premises shall comply with all applicable zoning laws, regulations and ordinances (including health and safety laws). The Premises are zoned to permit the current operation and use of the Premises. Mortgagor will not initiate or acquiesce in a zoning reclassification without Lender's consent.

3. **Maintenance, Repair, and Compliance with Law, etc.**

- a) Mortgagor agrees: (i) not to abandon the Mortgaged Property; (ii) to keep Mortgaged Property in good, safe and insurable condition and repair and not to commit or suffer waste; (iii) to refrain from impairing or diminishing the value of the Mortgaged Property or this Mortgage; and (iv) to cause the Mortgaged Property to be managed in a competent and professional manner.
- b) Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (i) material alterations of the Mortgaged Property except as required by law or ordinance or contemplated in the Loan Agreement; (ii) change in the intended use or occupancy of the Mortgaged Property for which the improvements are being constructed, including without limitation any change which would increase any fire or other hazard; (iii) change in the identity of the person or firm responsible for managing the Mortgaged Property; (iv) zoning reclassifications with respect to the Mortgaged Property which would prohibit use as a mixed residential/commercial use as set forth in the Loan Agreement; (v) unlawful use of, or nuisance to exist upon, the Mortgaged Property; (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Mortgaged Property except those necessary to develop the Mortgaged Property into a mixed residential/commercial use as set forth in the Loan Agreement; or (vii) execution by Mortgagor of any leases in breach of the terms and provisions of the Assignment.
- c) Mortgagor agrees not to cause or permit any toxic or hazardous substance or waste, or under ground storage tanks, or any other pollutants which could be detrimental to the Mortgaged Property, human health, or the environment, or that would violate any local, state or federal laws or regulations (*collectively*, "Environmental Conditions")

to be present on or affect the Mortgaged Property. If Mortgagee determines that Environmental Conditions either do or may exist at the Mortgaged Property, upon demand, Mortgagor shall take at its own expense any and all measures necessary to eliminate the Environmental Condition. If at any time Environmental Conditions are present and affect the Mortgaged Property, Mortgagor agrees to indemnify, defend and save Mortgagee, its successors and assigns, harmless, from and against all damage suffered by reason of the Environmental Conditions. Mortgagor has executed and delivered in favor of Mortgagee a separate Hazardous Materials Indemnity Agreement dated of even date herewith (*the "Environmental Indemnity"*) in order to evidence and more specifically define Mortgagor's obligations under this Paragraph 3(c). The terms and provisions of the Environmental Indemnity are incorporated herein by reference.

4. **Taxes, Liens.**

- a) Mortgagor agrees to pay, not later than the due date and before any penalty or interest attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed or imposed on or against the Mortgaged Property and, at the request of the Mortgagee, to exhibit to Mortgagee, official receipts evidencing such payments.
- b) Mortgagor shall not create, suffer or permit any mortgage, lien, charges or encumbrance to attach to or be filed against the Mortgaged Property, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, including mechanic's liens, materialmen's liens or other claims for lien made by parties claiming to have provided labor or materials with respect to the Mortgaged Property and excepting only the lien of real estate taxes and assessments not due or delinquent, and any liens and encumbrances of Mortgagee. Mortgagor shall not be deemed in default hereunder if Mortgagor shall first deposit with Mortgagee a bond, title insurance indemnity, or other security satisfactory to Mortgagee in an amount equal to the amount being so contested plus a reasonable estimate of the amount of any additional charges, penalties or expenses arising from or occurring as a result of such contest. If Mortgagor deposits such a bond or other security, Mortgagee shall return such bond or other security to Mortgagor after final adjudication of such asserted lien and, if required, payment thereof by Mortgagor.

5. **Changes in Tax Laws.** Mortgagor agrees that, if the United States or the State of Illinois or any of their subdivisions having jurisdiction, shall levy, assess, or charge any tax, assessment or imposition upon this Mortgage or the credit or indebtedness secured hereby or the interest of Mortgagee in the Mortgaged Property or upon Mortgagee by reason of or as holder of any of the foregoing, then, Mortgagor shall pay (*or reimburse Mortgagee for*) such taxes, assessments or impositions, and, unless all such taxes, assessments or impositions are paid or reimbursed by Mortgagor when and as they become due and payable, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee,

notwithstanding anything contained herein or in any law heretofore or hereafter enacted.

6. **Restrictions on Transfer.** Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, contract for, consent to, suffer or permit any "Prohibited Transfer". "Prohibited Transfer" shall mean any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrances or alienation of any of the following:
- a) the Mortgaged Property or any part thereof or interest therein ("*Obsolete Collateral*") *except a first mortgage in an amount not to exceed \$143,200.00*;
 - b) all or any portion of the undersigned's interest in and to the Mortgaged Property, if Mortgagor is an individual;
 - c) all or any portion of the beneficial's interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a Trustee;
 - d) any shares of capital stock or membership interest of: (i) a corporate or limited liability company Mortgagor, (ii) a corporation or limited liability company which is a beneficiary of a land trust whose trustee is the Mortgagor, (iii) a corporation which is a general partner in a partnership Mortgagor, (iv) a corporation which is a general partner in a partnership beneficiary of a trustee Mortgagor, or (v) a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph. Provided, however, that transfers of such shares in the ordinary course shall be allowed if Mortgagor's shares are publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System; or
 - e) all or any part of the partnership or joint venture interest, as the case may be, of any Mortgagor or any direct or indirect beneficiary of a Trustee Mortgagor if Mortgagor or such beneficiary is a partnership or a joint venture;
 - f) all or any part of the membership interest of Mortgagor or any direct or indirect beneficiary of a Trustee Mortgagor if Mortgagor or such beneficiary is a limited liability company.

All of the above described transactions shall be a Prohibited Transfer if such occurs, is granted, accomplished, attempted or effectuated without prior written consent of Mortgagee. Further all such transactions shall be a "Prohibited Transfer" regardless of whether such is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise. Mortgagor acknowledges that Mortgagee shall be under no obligation to consent to any of the Prohibited Transfer and that any such consent may be subject to changes in the applicable interest rates charged under instrument evidencing the Indebtedness, the payment of a fee to Mortgagee or such other modifications to the terms and conditions of this Mortgage or any other agreement which evidence or secures the repayment of the Indebtedness as Mortgagee in its sole discretion may determine.

7. **Insurance.**
- a) Mortgage agrees to maintain in force at all times: (i) fire and extended coverage insurance (*including, without limitation, windstorm, earthquake, explosion, flood, builders risk and such other risks usually insured against by owners of like properties*) on the Mortgaged Property an amount not less than one hundred percent (100%) of the full insurable value of the Mortgaged Property; (ii) comprehensive public liability insurance against death, bodily injury and property damage not less than \$10,000,000 single limit coverage; (iii) the types and amounts of insurance that are customarily maintained by owners or operators of like properties; and (iv) excess umbrella liability insurance with such limits as Lender may reasonably require, but in no event less than two million dollars (\$2,000,000).
 - b) All such insurance shall be written by companies and on forms with endorsements satisfactory to Mortgagee, all with suitable lender's loss-payable and standard non-contribution clauses in favor of Mortgagee attached. Certified copies of the policies evidencing the same shall be kept constantly deposited with Mortgagee. All said policies shall provide for thirty (30) days prior written notice to Mortgagee of the expiration of any such policy, and a certified copy of an appropriate renewal policy shall be deposited with Mortgagee. Mortgagee is authorized to collect all insurance proceeds and apply them, at its option, to the reduction of the Indebtedness hereby secured, whether due or not then due. Mortgagee may, at its option, allow Mortgagor to use such money, or any part thereof, in repairing the damage or restoring the improvements.
 - c) Mortgagor shall notify Mortgagee, in writing, of any loss to the Mortgaged Property covered by insurance, and Mortgagor hereby directs each insurance company to make payment for such loss directly and solely to Mortgagee; and Mortgagor agrees that any payment which is delivered, for any reason, to Mortgagor shall be held in trust for Mortgagee and promptly delivered in the form received (*except for any necessary endorsements thereon*) to Mortgagee.
8. **Compliance with Laws.** Mortgagor agrees that it will comply with all restrictions affecting the Mortgaged Property and with all laws, ordinances, acts, rules, regulations and orders of any legislative, executive, administrative or judicial body, commission or officer (*whether federal, state or local*) exercising any power or regulation or supervision over Mortgagor, or any part of the Mortgaged Property, whether the same be directed to the repair thereof, manner or use thereof, structural alterations or buildings located thereon, or otherwise.
9. **Stamp Tax.** Mortgagor agrees that, if the United States Government or any department, agency or bureau thereof or of the State of Illinois or any of its subdivisions or municipalities shall at any time require documentary stamps to be affixed to the Mortgage, Mortgagor will, upon request, pay for the stamps in the required amount and deliver them to Mortgagee and Mortgagor agrees to indemnify Mortgagee against liability on account of such documentary stamps, whether such liability arises before or after payment of the Indebtedness and

regardless whether this Mortgage shall have been released.

10. **Financial Statements.** Mortgagor will furnish to Mortgagee, financial information in a format acceptable to Mortgagee of Ivan Cico, Jr. for any fiscal year requested by Mortgagee, including, without limitation, a balance sheet and supporting schedules, detailed statement of income and expenditures and supporting schedules, including depreciation schedules and federal income tax figures, all prepared in accordance with generally accepted principles of accounting consistently applied. Such financial information shall be prepared by and reviewed by an accountant, the identity of which is acceptable to Mortgagee, and in such form as may be acceptable to Mortgagee, and Mortgagee may, by notice in writing to the beneficiary of Mortgagor, and the holder of the beneficial interest in Mortgagor, audit the respective books and records of beneficiary of Mortgagor and the holder of the beneficial interest in Mortgagor. Additionally, on a quarterly basis, Borrower shall furnish to the Lender the following statements, reports, notices and information:
- a) a copy of the unaudited balance sheet and income statement for the Borrower including, statements and earnings and cash flow of the Borrower, in each case certified in a manner acceptable to the Lender by the chief financial officer of the Borrower, including the statement that such officer has not become aware of any Event of Default that has occurred and is continuing, or, if he has become aware of such Event of Default;
 - b) a writing describing any Event of Default and the steps, if any, being taken to cure it;
 - c) financial statements in format acceptable to Lender; and
 - d) from time to time, such other information concerning the Borrower and Guarantors as the Lender may reasonably request.
11. **Deposits for Taxes and Insurance Premiums.** Mortgagor shall make monthly deposits to a non interest bearing reserve account designated by the Mortgagee in an amount equal to the sum of 1/12th of the annual general real estate taxes levied on the Mortgaged Property and 1/12th of the annual premium required to maintain insurance in force on the Mortgaged Property in accordance with the provisions of this mortgage; the amount of such taxes and premiums, if unknown, then to be estimated on the basis of the previous year's taxes and premiums, if any, or by such person or corporation as is acceptable to Mortgagee. Mortgagor shall provide Mortgagee with the original real estate tax bill or insurance invoice not later than ten (10) days before the payment is due and shall concurrently deposit in said account an amount equal to the difference between the amount available in the aforesaid reserve account for such payment (*giving effect to other taxes or expenses which are also paid from said account*) as shown on Mortgagee's records and the amount required to be paid. Provided that no Default, as hereinafter defined, has occurred, funds in such account (*including the supplemental deposits required by the preceding sentence*) shall be used by Mortgagor to pay such taxes and premiums on their respective due dates. From and after the

occurrence of a Default under this Mortgage, Mortgagor will pay such funds to Mortgagee for application on the Indebtedness.

12. **Leases.** Mortgagor agrees faithfully to perform all its obligations under the Assignment and under all present and future leases or other agreements relative to the occupancy of the Mortgaged Property at any time assigned to Mortgagee as additional security for the payment and performance of the Indebtedness. Mortgagor shall refrain from any action or inaction which could result in termination of any leases or agreements or in the diminution of the value thereof or of the rents or revenues due thereunder. Mortgagor further agrees that any lease of the Mortgaged Property made after the date of recording of this Mortgage shall contain a covenant to the effect that the lessee under such lease shall, at Mortgagee's option, agree to attorn to Mortgagee as lessor and, upon demand, to pay rent to Mortgagee.
13. **Indemnification.** In addition to the provisions of the Environmental Indemnity, Mortgagor further agrees to indemnify Mortgagee from all loss, damage and expense, including reasonable attorneys' fees, expert's fees and paralegal's fees and expenses and the costs of any settlement or judgment, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage, and all such fees, expenses and costs shall be additional Indebtedness secured hereby.
14. **Condemnation.** Mortgagor agrees that, if at any time it shall become aware of the institution of condemnation proceedings against the Mortgaged Property or any part thereof, it shall immediately inform Mortgagee of the pendency of such proceedings. Mortgagee may, at its option, participate in such proceedings, and Mortgagor agrees to provide Mortgagee with any evidence that Mortgagee may seek in connection with such proceeding. Mortgagor hereby assigns to Mortgagee, as additional security, all awards of damage resulting from condemnation proceedings or the taking of or an injury to the Mortgaged Property for public use, and Mortgagor agrees that the proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all its expenses, in connection with such proceedings, including reasonable attorney's fees and expenses, to the reduction of the Indebtedness hereby secured, and Mortgagee is hereby authorized, on behalf or and in the name of Mortgagor, to execute and deliver valid acquittance for and to appeal from any such award.
15. **Mortgagor's Performance of Mortgagor's Obligations.** Mortgagor agrees that Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient after reasonable inquiry into the validity thereof. By way of illustration, and not in limitation of the foregoing, Mortgagee may, but need not, (a) make full or partial payments of insurance premiums or tax payments which are unpaid by Mortgagor, if any, and (b) purchase, discharge, compromise or settle any tax lien, or any other lien encumbrance, suit, proceeding, title or claim thereof, or (c) redeem all or any part of the Mortgaged Property from tax or assessment. All money paid for any of the purposes herein authorized and all other moneys advanced by Mortgagee to protect the Mortgaged Property and the lien hereof shall be additional Indebtedness secured hereby and shall become immediately due and payable with notice and shall bear interest at

UNOFFICIAL COPY

10063762

eighteen percent (18%) per annum until paid to Mortgagee in full. In making any payment hereby authorized relating to taxes, assessments or prior or coordinates liens or encumbrances, Mortgagee shall be the sole judge of the legality, validity and priority thereof and of the amount necessary to be paid in satisfaction thereof.

16. **Inspection.** Mortgagor, or any person designated by Mortgagee in writing, shall have the right, from time to time hereafter, to call at the Mortgaged Property (*or at any other place where information relating thereto is kept or located*) during reasonable business hours and, without hindrance or delay, to make such inspection and verification of the Mortgaged Property and the affairs, finances and business of Mortgagor (including all books, records and documents relating thereto) in connection with the Mortgaged Property, as Mortgagee may consider reasonable under the circumstances, and to discuss the same with any agents or employees of Mortgagor. Mortgagor shall be liable for all costs and fees related to such inspections, field audits and verifications.
17. **Default.** Any of the following occurrences or acts shall constitute an event of default under this Mortgage ("*Default*") if such occurs and is not cured within any applicable cure period:
- a) the occurrence of a default or an Event of Default under the Secured Note (*whether in payment or otherwise*) or in the payment of the Indebtedness;
 - b) the occurrence of a default or an Event of Default under the Loan Agreement, Assignment, the Hazardous Material Indemnity Agreement or any other agreement, security agreement, assignment, instrument or other agreement made by Mortgagor in favor of Mortgagee which secures the repayment of the Note;
 - c) the occurrence of a default or an Event of Default under any guaranty related to the Loan Agreement, Secured Note or the Indebtedness or any other agreement, security agreement, assignment, instrument or other agreement made by any guarantor in favor of Mortgagee with respect to the Secured Note or the Indebtedness;
 - d) Mortgagor shall fail to observe or perform any of the Mortgagor's covenants, agreements or obligations under this Mortgage and Mortgagor shall fail to cure such default within five (5) days after being served with written notice from Mortgagee or such other time as is allowed by the Mortgagee (in its reasonable discretion) and set forth in such notice in cases, where, in the Mortgagee's reasonable opinion, the default cannot be reasonably cured within such five (5) day period;
 - e) the occurrence of a Prohibited Transfer;
 - f) the Mortgaged Property or a substantial part thereof shall have been abandoned for thirty (30) consecutive days, except when adverse weather conditions have prevented the Borrower from constructing the Project.
 - g) The occurrence of any breach of any representation or warranty contained in this

Mortgage;

- h) Mortgagor, or any beneficiary of or person in control of the beneficiary of Mortgagor, or any guarantor of the Secured Note shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the Federal Bankruptcy Act or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee, (or similar official) of the Mortgagor or for any part of the Premises or any substantial part of the Mortgagor's other property; (iii) make any assignment for the benefit of Mortgagor's creditors; (iv) fail generally to pay Mortgagor's debts as they become due; (v) a court having jurisdiction shall enter a decree or order for relief in respect of Mortgagor in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law;
- i) All or a substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon;
- j) This Mortgage shall not constitute a valid lien on and security interest in the Premises, or if such lien and security interest shall not be perfected;
- k) An indictment or other charge is filed against Mortgagor, in any jurisdiction, under any federal or state law for which forfeiture of the Mortgaged Property or of other collateral securing the Secured Indebtedness or of any other funds, property or other assets of Mortgagor or Lender is a potential penalty.

18. **Rights Upon Default.** If any such Default shall have occurred, then, to the extent permitted by applicable law, the following provisions shall apply:

- a) The Indebtedness shall, at the option of Mortgagee, become immediately due and payable without presentment, demand or further notice.
- b) It shall be lawful for Mortgagee to take all actions authorized under applicable law or under any other agreement or instrument delivered by Mortgagor to Mortgagee including, without limitation, the Secured Note.
- c) It shall be lawful for Mortgagee to (i) immediately foreclose this Mortgage; or (ii) if allowed under Illinois law at the time of such Default, immediately sell the Mortgaged Property either in whole or in separate parcels, as prescribed by Illinois law, under power of sale, which power is hereby granted to Mortgagee to the full extent permitted by Illinois law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant to applicable law.
- d) If a suit is brought to foreclose this Mortgage, the court in which any proceeding is pending for the purpose of foreclosure of this Mortgage may, at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and

without regard to the solvency or insolvency of any person liable for payment of the Indebtedness secured hereby, and without regard to the value of the Mortgaged Property or the occupancy thereof as a homestead, appoint Mortgagee as a mortgagee-in-possession or appoint a receiver (*the provisions for the appointment of a receiver or mortgagee-in-possession being an express condition upon which the loan hereby secured is made*) for the benefit of Mortgagee with power to collect rents, issues and profits of the Mortgaged Property, due and to become due, during such foreclosure suit and to do all other things allowed under applicable law.

- e) Mortgagee shall, at its option, have the right, acting through its agents or attorneys, either with or without process of law, forcibly or otherwise, to enter upon and take possession of the Mortgaged Property, expel and remove any persons, goods, or chattels occupying or upon the same, to collect or receive all the rents, issues and profits thereof and to manage and control the same, and to lease the same or any part hereof, from time to time, and after deducting all reasonable attorney's fees and expenses, and all reasonable expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income upon the Indebtedness or other sums secured hereby or upon any deficiency decree entered in any foreclosure proceedings.
- f) Mortgagee or its duly authorized agent shall have the right to enter upon the Mortgaged Property to inspect, appraise and/or conduct any environmental assessments of the Mortgaged Property which Mortgagee, in its sole discretion, deems necessary. All expenses incurred by Mortgagee in connection with any inspections, appraisals or environmental assessments done pursuant hereto shall be additional Indebtedness secured hereby and shall become immediately due and payable without notice and shall bear interest at the Interest Rate of eighteen percent (18%) per annum until paid to Mortgagee in full. Nothing contained in this paragraph 18(f) shall create an affirmative duty on the part of the Mortgagee, or otherwise bind Mortgagee in any respect, to conduct any such inspection, appraisal or environmental assessment.
- g) If more than one property, lot or parcel is covered by this Mortgage, and if this Mortgage is foreclosed upon, or judgment is entered upon any of the Indebtedness, or if Mortgagee exercises its power of sale against any one or more of the properties, lots or parcels and not upon the others, or upon all of such properties or parcels, either together or separately, and at different times or at the same time, then the execution sale or sales by advertisement may likewise be conducted separately or concurrently, in each case at Mortgagee's election.
- h) In the event of a foreclosure of this Mortgage, the Indebtedness then due the Mortgagee shall not be merged into any decree of foreclosure entered by the court, and Mortgagee may concurrently or subsequently seek to foreclosure one or more mortgages which also secure said Indebtedness.

19. **Foreclosure.** In any foreclosure of this Mortgage by action, or any sale or the Mortgaged Property by advertisement, there shall be allowed (*and included in the decree for sale in the event of a foreclosure by action*), to be paid out of the rents or the proceeds of such foreclosure proceeding or sale:
- a) all of the Indebtedness and other sums secured hereby which then remain unpaid;
 - b) all other items advanced or paid by Mortgagee pursuant to this Mortgage, the Assignment or the Environmental Indemnity, with interest thereon at the Interest Rate from the date of advancement of 18% per annum;
 - c) All court costs, reasonable attorneys', expert's fees and paralegals' fees and expenses, appraiser's fees, advertising costs, notice expenses, expenditures 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*) of procuring all abstracts of title, title searches and examinations, title guarantees, title insurance policies and similar data with respect to title which Mortgagee may deem necessary. All such expense shall become additional Indebtedness secured hereby and immediately due and payable, with interest thereon at the rate of 18% per annum, when paid or incurred by Mortgagee in connection with any proceeding, including but not limited to probate and bankruptcy proceedings, to which this Mortgage shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured or in connection with the preparations for the commencement of any suit for the foreclosure, whether or not actually commenced, or sale by advertisement. The proceeds of any sale (*whether through a foreclosure proceeding or Mortgagee's exercise of the power of sale*) shall be distributed and applied to the items described in (a), (b) and (c) of this paragraph, as Mortgagee may in its sole discretion determine, and any surplus of the proceeds of such sale shall be paid to Mortgagor; and
 - d) All expenses incurred by the Mortgagee to the extent reimbursable under Sections 735 ILCS 5/15-1510 and 5/15-1512 of the Illinois Mortgage Foreclosure Law whether incurred before or after any decree or judgment of foreclosure.
19. **Rights Cumulative.** Each remedy or right of Mortgagee shall not be exclusive of but shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall constitute a waiver of default or constitute acquiescent therein, nor shall it affect any subsequent default of the same or different nature.
20. **Execution of Additional Documents.** Mortgagor agrees that, upon request of Mortgagee from time to time, it will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may be reasonably necessary to fully effectuate the intent of this Mortgage.

21. **WAIVER OF RIGHT OF REDEMPTION.** MORTGAGOR REPRESENTS THAT IT HAS BEEN AUTHORIZED TO, AND MORTGAGOR DOES HEREBY, WAIVE (TO THE FULL EXTENT PERMITTED UNDER ILLINOIS LAW) ANY AND ALL STATUTORY OR EQUITABLE RIGHTS OF REDEMPTION, FOR REINSTATEMENT OR ANY OTHER RIGHT UNDER ANY "MORATORIUM LAW" ON BEHALF OF MORTGAGOR AND EACH AND EVERY PERSON, EXCEPT DECREE OR JUDGMENT CREDITORS OF MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PROPERTY SUBSEQUENT TO THE DATE HEREOF.
22. **Representation of Title.** At the time of the delivery of this Mortgage, the Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Property which constitutes real property and owns good title to the portion of the Mortgaged Property which constitutes personal property and has good right, full power and lawful authority to convey and mortgage and grant a security interest in the same, in the manner and form aforesaid; that the same is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever (*except as may be agreed to in advance by Mortgagee*), and that, Mortgagor shall and will forever defend the title to the Mortgaged Property against the claims of all persons whatsoever.
23. **Future Advances.** Mortgagor has executed, acknowledged and delivered this Mortgage to secure, in addition to the Secured Note described above, any and all sums, indebtedness, and liabilities of any and every kind now or hereafter owing or to become due from Mortgagor to holders of the Secured Note or Mortgagor, however created, incurred, evidenced, acquired, or arising, whether under the Secured Note or this Mortgage or any other instruments, obligations, contracts or agreements of every kind now or hereafter existing or entered into by and between Mortgagor and holders of the Note or Mortgagee or otherwise, and whether direct, indirect, primary, secondary, fixed or contingent, together with interest thereon as provided in said instruments, and any and all renewals and extensions of any of the foregoing, all of which said sums, indebtedness and liabilities are hereinafter referred to as "future advances" and all of which "future advances," as aforesaid together with any such instruments are hereby expressly secured by this Mortgage.
24. **Non-Marshaling Provision.** Mortgagor hereby agrees that the Mortgagee shall have no obligation to marshal any collateral which secures the Indebtedness, and it shall require any other of its creditors to waive any such marshaling obligation.
26. **Miscellaneous.**
- a) Mortgagor agrees that, without affecting the liability of any person for payment of the Indebtedness or affecting the lien of this Mortgage upon the Mortgaged Property or any part thereof (*other than persons or property explicitly released as a result of the exercise by Mortgagee of its rights and privileges hereunder*), Mortgagee may at any time and from time to time, on request of the Mortgagor, without notice to any person liable for payment of any Indebtedness secured hereby, extend the time, or

agree to alter the terms of payment of such Indebtedness.

- b) Mortgagor hereby represents that: (i) the Loan will be used for the purposes specified in the 815 ILCS 205/4 (a) or (c); (ii) the Loan constitutes a "business loan" within the purview of that Section; (c) the Loan is a transaction exempt from the Truth in Lending Act, 15 U.S.C. §1601 et seq.; and (d) the proceeds of the Indebtedness will not be used for the purchase of Margin Stock within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System.
- c) Mortgagor agrees that this Mortgage is to be construed and governed by the laws of the State of Illinois. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.
- d) Upon full payment of all sums secured hereby or upon application on the Indebtedness of the proceeds of any sale of the Mortgaged Property in accordance with the provisions of this Mortgage, at any time and in the manner provided, this conveyance shall be null and void and, upon demand therefore following such payment, a satisfaction of mortgage shall be provided by Mortgagee to Mortgagor.
- e) This Mortgage shall be binding upon the Mortgagor and upon the successors, assigns and vendees of the Mortgagor and shall inure to the benefit of the Mortgagee's successors and assigns. All references herein to the Mortgagor and to the Mortgagee shall be deemed to include their successor and assigns. Mortgagor's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for Mortgagor. Further, the term "Secured Note" as used herein shall also be read to refer to any note executed in renewal, substitution, amendment or replacement thereto.
- f) Time is of the essence of this Mortgage, and any other document or instrument evidencing or securing the Indebtedness.
- g) Any notice hereunder to the Mortgagor or the Mortgagee shall be in writing and, if mailed, shall be deemed served when sent by registered or certified mail, postage prepaid, and addressed to the Mortgagor or the Mortgagee at its/their address set forth below or at such other address as the Mortgagor or the Mortgagee may, by written notice, designate as its address for purposes of notice hereunder; if sent by telecopy, notice shall be deemed served when sent and confirmation received at the telecopy number shown below, if any, or such other telecopy number which shall be designated in writing by the parties as the telecopy number for purposes of notice hereunder.

Notice to Mortgagor:	Notice to Mortgagee:
	Robert Krueger Dan Wood 4103 St. Charles Road Bellwood, Illinois 6104

- h) No modification, waiver, estoppel, amendment, discharge or change of this Mortgage or any related instrument shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, estoppel, amendment, discharge or change is sought.
- i) This Document is executed by the undersigned Trustee, not personally, but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as Trustee. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the Property herein described and has no agents, employees or control over the management of the Property and no knowledge of other factual matters except as represented to it by the beneficiaries of the Trust. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this Document.
- j) TO INDUCE MORTGAGEE TO ACCEPT THIS MORTGAGE, MORTGAGOR IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE AND HEREBY WAIVE ANY OBJECTION IT MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING BROUGHT AGAINST MORTGAGOR BY MORTGAGEE IN ACCORDANCE WITH THIS PARAGRAPH.
- k) MORTGAGOR AND MORTGAGEE IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR (II) ARISING

UNOFFICIAL COPY

10063762

FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS MORTGAGE OR ANY SUCH AGREEMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

Property of Cook County Clerk's Office

IN WITNESS WHEREOF, this instrument is executed by Mortgagor as of the day and year first above written.

MORTGAGOR:

Michael V. Raimo
Michael V. Raimo

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael V. Raimo, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged before me that (s)he signed and delivered the said instrument as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 8th day of December, 2000.

Brenda Tyler
Notary Public

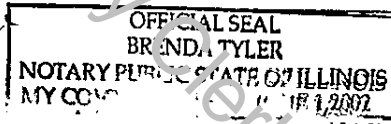


EXHIBIT "A"

LEGAL DESCRIPTION

LOT 3 IN BLOCK 1 IN O. RUETER AND COMPANY'S BEVERLY HILLS ADDITION, A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAS TO PLAT RECORDED MAY 5, 1923 AS DOCUMENT NUMBER 7916570, IN COOK COUNTY, ILLINOIS.

The Property's address is commonly known as 10008 S. Western Avenue, Chicago, Illinois. The Property's tax identification number is 24-12-418-018-0000.

Property of Cook County Clerk's Office