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**PREPARED BY:**

Stephen H. Malato, Esq.  
Hinshaw & CULBERTSON  
222 North LaSalle Street  
Suite 300  
Chicago, Illinois 60601

ADDRESS: 714 - 716 Elm Street, Winnetka, Illinois

TAX NO(S): 05-21-109-003



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## ASSIGNMENT OF RENTS AND SPECIFIC ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF RENTS AND SPECIFIC ASSIGNMENT OF LEASES AND RENTS ("Assignment"), made this 30<sup>th</sup> day of January, 2001 by 714 ELM STREET, LLC, an Illinois limited liability company ("Borrower") in favor of COLUMBIAN MUTUAL LIFE INSURANCE COMPANY, a New York corporation ("Lender").  
Successor by conversion from Picone Investment Partnership II

### RECITALS

A. Borrower executed and delivered its note of even date herewith ("Note"), payable to the order of Lender, in the principal amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) ("Loan") and, as security therefor, executed and delivered to Lender its mortgage, of even date with Note ("Mortgage"), conveying the land legally described on Exhibit A attached hereto and made a part hereof ("Land") and the improvements constructed thereon ("Improvements") (Land and Improvements collectively "Mortgaged Premises").

BOX 333-CT1

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B. Borrower or its predecessor in title, as landlord, executed lease agreements with occupancy tenants of Mortgaged Premises, including those that are more fully set forth on Exhibit "B" attached hereto and made a part hereof (collectively "Existing Leases").

C. As additional security for the payment of Loan, interest and all other sums due and owing to Lender pursuant to Note, Mortgage and "Other Loan Documents" (as such term is defined in Mortgage) (collectively "Indebtedness"), and the performance of all of the terms, covenants, conditions and agreements contained in Note, Mortgage and Other Loan Documents (collectively "Loan Papers"), Borrower agreed to assign to Lender all of its right, title and interest in and to "Existing Leases," "Rents," "Future Leases" and "Future Rents") (as such latter terms are hereafter defined).

NOW THEREFORE, in consideration of the disbursement of the proceeds of Loan by Lender and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Borrower:

1. Hereby grants a security interest in and sells, assigns, transfers and sets over unto Lender one hundred per cent (100%) of Borrower's right, title and interest in and to existing leases ("Existing Leases"), together with all rents, income or other sums payable by the provisions thereof ("Rents") and all future lease agreements which may be executed by Borrower, as Landlord, with occupancy tenants of Mortgaged Premises ("Future Tenants") at any time hereafter ("Future Leases") and all rents, income or other sums payable by the provisions thereof ("Future Rents"), it being the intention of Borrower to make and establish an absolute transfer and assignment of Existing Leases, Rents, Future Leases and Future Rents. Upon request of Lender, Borrower shall deliver copies of all Existing Leases and Future Leases to Lender.

2. Agrees that this Assignment is absolute and effective immediately and is made for the purpose of securing the payment of Indebtedness and the performance and discharge of each and every obligation, covenant and agreement required of Borrower pursuant to Loan Papers.

3. Represents and warrants that:

- a) Borrower is the sole owner of one hundred percent (100%) of the landlord's right, title and interest in and to Existing Leases;
- b) Existing Leases are valid and enforceable and have not been altered, modified or amended;
- c) Tenants are not in default in the performance of any of the terms, covenants, conditions or agreements required of them pursuant to Existing Leases;

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- d) No part of Rents reserved in Existing Leases has been previously assigned and no part of Rents, for any period subsequent to the date hereof, has been collected in advance of the due date thereof;
- e) Borrower, as Landlord, is not in default of a term or provision of Existing Leases; and
- f) Borrower, as Landlord, has not received a notice alleging that it is in default of a term or provision of Existing Leases.

4. Shall observe and perform all of the obligations imposed upon the landlord named in Existing Leases and Future Leases (including, but not limited to restrictions imposed upon the Landlord of any Existing Lease or Future Lease relating to the leasing of space in Mortgaged Premises or in other areas identified in such Existing Lease or Future Lease) and shall:

- a) Execute Future Leases using only a form approved by Lender ("Approved Lease Form"). Without limitation, all New Leases shall be bonafide, arm's length tenants, shall not contain any rental or other concessions not approved by Lender;
- b) Not do or permit any act or occurrence which would impair the security thereof;
- c) Not collect any part of Rents or Future Rents in advance of the time when the same shall become due except as specified by the provisions of Existing Leases;
- d) Not execute any other assignment of Borrower's interest, as landlord, in Existing Leases, Future Leases, Rents or Future Rents;
- e) Not alter, modify or change the terms and conditions of Existing Leases or Future Leases, cancel or terminate the same, accept a surrender thereof, without the prior written consent of Lender;
- f) At Lender's request, execute and deliver all such further assurances and assignments as Lender shall, reasonably from time to time, require; and
- g) Submit to Lender for its specific review and approval, all Future Leases demising two (2,000) square feet of net rentable area executed after the date hereof.

5. Shall have the right, so long as no "Monetary Default," "Non-Monetary Default" (as such terms are defined in Mortgage) or default by Borrower, as Landlord, pursuant to Existing

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Leases and Future Leases which could result in the termination of an Existing Lease or Future Lease or materially interferes in the enforcement thereof ("Lease Default") shall exist, to collect Rents and Future Rents, when due but not prior thereto, and retain, use and enjoy the same. In the event of a Monetary Default, Non-Monetary Default or a Lease Default, Borrower's right to retain, use and enjoy Rents shall automatically terminate and, after such events, Borrower shall hold all Rents and Future Rents in trust on behalf of Lender and shall apply the same on account of Indebtedness or on account of the payment of the normal operating expenses of Mortgaged Premises required to be paid pursuant to Mortgage. Borrower shall be liable to Lender for all Rents and Future Rents collected after a Monetary Default, Non-Monetary Default or Lease Default which have not been applied on account of Indebtedness or on account of the payment of the normal operating expenses of Mortgaged Premises required to be paid pursuant to Mortgage.

6. Agrees that any time following the occurrence of a Monetary Default, Non-Monetary Default (and the failure to cure the same after written notice as provided in the Mortgage) or Lease Default, Lender may, at its option, either in person or through its agent or a receiver appointed by a court of competent jurisdiction, without notice, without, in any way, waiving such default, and without regard to the adequacy of the security for Indebtedness and with or without instituting any action or proceeding:

- a) To the extent permitted by law, take possession of Mortgaged Premises and hold, manage, lease and operate the same on such terms and for such periods of time as Lender may deem proper;
- b) With or without taking possession of Mortgaged Premises, in its own name, institute suit or otherwise collect and receive Rents and Future Rents, including Rents and Future Rents past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof, as Lender may deem proper; and
- c) Apply Rents and Future Rents to the payment of: i) all costs and expenses incurred in managing Mortgaged Premises (including, but not limited to, the salaries, fees and wages of the managing agent thereof and other employees of Borrower), ii) all expenses of operating and maintaining Mortgaged Premises (including, but not limited to, all taxes, charges, claims, assessments, water rents, sewer rents and other liens and premiums for all insurance coverages which Lender may deem necessary), iii) all costs of alteration, renovation, repair or replacement of Mortgaged Premises, iv) all expenses incident to the taking and retention of possession of Mortgaged Premises, and v) Indebtedness and all costs, expenses and attorneys' fees incurred by Lender by reason hereof, in such order of priority as Lender, in its sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding.

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7. Agrees that Lender shall not be:
- a) Liable for any loss sustained by Borrower resulting from Lender's failure to let Mortgaged Premises following the occurrence of a Monetary Default, Non-Monetary Default or Lease Default or by reason of any other act or omission of Lender in managing Mortgaged Premises thereafter, unless such loss is caused by the willful misconduct or gross negligence of Lender;
  - b) Obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability of Borrower pursuant hereto or pursuant to Existing Leases and Future Leases and Borrower shall, and does hereby agree, to indemnify Lender for, and hold Lender harmless from, any and all liability, loss or damage which may or might be incurred by reason thereof and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants, conditions and agreements required of Borrower pursuant hereto or pursuant to Existing Leases and Future Leases, PROVIDED THAT such indemnification shall not include any liability, loss or damage which may be incurred by Lender by reason of the willful misconduct or gross negligence of Lender or its acts and deeds following the exercise of Lender's rights pursuant hereto or pursuant to Existing Leases and Future Leases.

If Lender incurs any liability pursuant hereto or pursuant to Existing Leases and Future Leases or in defense of any such claim or demand, the amount thereof, including costs, expenses and attorneys' fees (exclusive of any costs, expenses and attorneys' fees incurred by Lender by reason of its gross negligence, wilful misconduct or acts and deeds following the exercise of Lender's rights pursuant hereto or pursuant to Existing Leases and Future Leases), shall be secured by Mortgage and Borrower shall reimburse Lender therefor, immediately upon demand, PROVIDED THAT no personal liability shall be imposed upon Borrower except to the extent permitted pursuant to Paragraph 15 hereof. In the event of the failure of Borrower so to do, Lender may, at its option, declare Indebtedness immediately due and payable.

8. Agrees that, except as otherwise herein provided, this Assignment shall not operate to place upon Lender any responsibility for the control, care, management or repair of Mortgaged Premises or for the performance of any of the terms, covenants, conditions and agreements required of Borrower, as landlord, pursuant to Existing Leases and Future Leases nor is the same intended to make Lender responsible or liable for any:

- a) Waste committed on Mortgaged Premises by Tenants, Future Tenants or any other party;
- b) Dangerous or defective condition of Mortgaged Premises; or

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- c) Negligence in the management, upkeep, repair or control of Mortgaged Premises resulting in loss, injury or death to any Tenant, Future Tenant, licensee, employee or stranger;

unless caused by the willful misconduct or gross negligence of the Lender.

9. Agrees that:

- a) Any good faith affidavit, certificate, letter or statement of any officer, agent or attorney of Lender, setting forth that any part of Indebtedness remains unpaid, shall be and constitute evidence of the validity, effectiveness and continuing force and effect of this Assignment (all persons being hereby authorized to rely thereon); and Borrower hereby authorizes and directs Tenants, Future Tenants or other occupants of Mortgaged Premises, upon receipt from Lender of written notice to the effect that Lender is then the holder of Loan Papers and that a Monetary Default, Non-Monetary Default or Lease Default has occurred pursuant thereunder or pursuant hereto, to pay Rents and Future Rents to Lender until otherwise notified by Lender to the contrary.
- b) Upon payment of Indebtedness in full, this Assignment shall be null and void.

10. Agrees that Lender may take or release any other security given for the payment of Indebtedness, release any party primarily or secondarily liable therefor and apply any other security, in its possession, to the satisfaction of Indebtedness, without prejudice to any of its rights pursuant hereto.

11. Agrees that the terms "Existing Leases" and "Future Leases" shall include any subleases thereof and all extensions or renewals of Existing Leases, Future Leases and subleases thereof.

12. Agrees that nothing contained herein and no act done or omitted to be done by Lender pursuant to the powers and rights granted to it hereunder shall be deemed to be a waiver by Lender of its rights and remedies pursuant to Loan Papers and this Assignment is made without prejudice to any of the rights and remedies possessed by Lender thereunder. The right of Lender to collect Indebtedness and to enforce any security therefor in its possession may be exercised by Lender either prior to, concurrently with or subsequent to any action taken by it pursuant hereto.

13. Agrees that any notices to be served pursuant hereto shall be deemed properly delivered if delivered personally or by Federal Express or comparable "over-night" courier service (which shall be deemed received on the date of delivery thereof), or served by United States certified

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or registered mail, postage prepaid (which shall be deemed received three (3) days following the postmark date thereof), to Borrower and the parties to whom copies of such notices are to be mailed at the addresses set forth below or to such other address as Borrower or such other parties may direct in writing:

If to Borrower, 714 Elm Street, LLC, P.O. Box 264, Lake Zurich, Illinois 60447: Attn: Christopher L. Picone; and

If to Lender, Columbian Mutual Life Insurance Company, Vestal Parkway East, P.O. Box 1381 Binghamton, New York 13902.

PROVIDED, HOWEVER, that no liability shall be asserted against nor is the same assumed by Borrower or Lender by reason of its failure to serve the copies of the notices required pursuant hereto.

14. Agrees that this Assignment and all covenants and warranties herein contained shall inure to the benefit of Lender, its successors, assigns, grantees and legal representatives and shall be binding upon Borrower, their respective heirs, executors, administrators, successors, assigns, grantees and legal representatives.

15. Subject to the terms of the next succeeding sentences and notwithstanding anything to the contrary otherwise contained in the Note, but without in any way releasing, impairing or otherwise affecting the Note, the Mortgage or any Other Loan Documents (including without limitation any guaranties or indemnification agreements) or the validity hereof or thereof, or the lien of the Mortgage, it is agreed that Lender's source of satisfaction of the Loan and of Borrower's other obligations hereunder and under the Note, Mortgage and Other Loan Documents is limited to (a) the Mortgaged Premises and proceeds thereof, (b) rents, income, issues, proceeds and profits arising out of the Mortgaged Premises, and (c) any separate guaranty or indemnification agreements guaranteeing or indemnifying Lender with respect to the payment of any amounts due hereunder and under the Note, the Mortgage and Other Loan Documents and/or Borrower's performance hereunder and under the Mortgage and Other Loan Documents; provided, however, that nothing herein contained shall be deemed to be a release or impairment of Indebtedness or the security therefore intended by the Mortgage, or be deemed to preclude Lender from foreclosing the Mortgage or from enforcing any of Borrower's rights thereunder, or in any way or manner affecting Lender's rights or remedies in law or in equity thereunder, or in any way or manner affecting Lender's rights and privileges under the Note, Mortgage or any of the Other Loan Documents or any separate guaranty or indemnification agreements guaranteeing Borrower's payment and/or performance hereunder and/or under the Other Loan Documents. Notwithstanding the foregoing limitation of liability provision, it is expressly understood and agreed that Christopher L. Picone shall be personally liable for the payment to the Lender of the "Personal Liability Covenants" specified in Note.

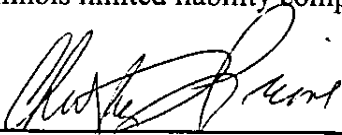
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Nothing contained herein or in Note, Mortgage and Other Loan Documents to the contrary notwithstanding shall be deemed to release, affect or impair Indebtedness or the rights of Lender to enforce its remedies pursuant hereto and to Note, Mortgage and Other Loan Documents, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

IN WITNESS WHEREOF, Borrower has caused this Assignment of Rents to be signed by their respective duly authorized agent(s) on the day and year first above written.

BORROWER:

714 ELM STREET,  
an Illinois limited liability company

By:   
Christopher L. Picone, its manager

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STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

The undersigned, a Notary Public, in and for said County, in the State aforesaid, does hereby certify that Christopher L. Picone, personally known to me to be the manager of 714 Elm Street, LLC, an Illinois limited liability company, whose name is subscribed to the foregoing instrument as such managing member, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the use and purposes set forth.

SUBSCRIBED and SWORN to before me this 30<sup>th</sup> day of January, 2001.

Notary Public

*Regina E. Gholston*



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## EXHIBIT A LEGAL DESCRIPTION

The East 55.4 feet of the West 218.4 feet of the North 211 feet of that part of block 24 lying South of Elm Street in the Village of Winnetka in Section 20 and Section 21, Township 42 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois

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## EXHIBIT B LEASES

### Tenant

J.S. Computer Training  
Baird & Warner Real Estate  
Winnetka Dental  
A-Adams Driving School  
Howard Waitzman  
Michael's Beauty School

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