

UNOFFICIAL COPY

GRANTOR

92088538



West Suburban Bank of Carol Stream/Stratford Square 355 W. Army Trail Road Bloomingdale, IL 60108 (708) 381-0800

MARK R CZERNEK JULIE A CZERNEK 1090 HONEYSUCKLE DRIVE WHEELING, IL 60090

MORTGAGE

Telephone Number

BORROWER

ADDRESS OF REAL PROPERTY

CZERNEK INC d/b/a SIR NICK'S PIZZA 1416 W ARMY TRAIL ROAD CAROL STREAM, IL 60188

1090 HONEYSUCKLE DRIVE WHEELING, IL 60090

Telephone Number

893-5151

Handwritten signature/initials

1. GRANT. Grantor hereby mortgages, grants, assigns and conveys Lender identified above, the real property described in Schedule A which is attached to this Mortgage and incorporated herein together with all future and present improvements and fixtures; privileges, hereditaments, and appurtenances; leases, licenses and other agreements; rents, issues and profits; water, well, ditch, reservoir and mineral rights and stock, and standing timber and crops pertaining to the real property (cumulatively "Property").

2. OBLIGATIONS. This Mortgage shall secure the payment and performance of all of Borrower and Grantor's present and future, indebtedness, liabilities, obligations and covenants (cumulatively "Obligations") to Lender pursuant to:

(a) this Mortgage and the following promissory notes and other agreements:

Table with 6 columns: INTEREST RATE, PRINCIPAL AMOUNT/CREDIT LIMIT, FUNDING/AGREEMENT DATE, MATURITY DATE, CUSTOMER NUMBER, LOAN NUMBER. Values include: VARIABLE, \$15,000.00, 02/03/92, 02/03/93, 12057, 4117

(b) all other present or future, written or oral, agreements between Borrower or Grantor and Lender (whether executed for the same or different purposes than the preceding documents); (c) all amendments, modifications, replacements or substitutions to any of the foregoing.

3. PURPOSE. This Mortgage and the Obligations described herein are executed and incurred for BUSINESS purposes.

4. FUTURE ADVANCES. This Mortgage secures the repayment of all advances that Lender may extend to Borrower or Grantor under the promissory notes and other agreements evidencing the revolving credit loans described in paragraph 2. The Mortgage secures not only existing indebtedness, but also secures future advances, whether such advances are obligatory or to be made at the option of Lender to the same extent as if such future advances were made on the date of the execution of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The total amount of indebtedness secured by this Mortgage under the promissory notes and agreements described above may increase or decrease from time to time, but the total of all such indebtedness so secured shall not exceed 200% of the principal amount stated in paragraph 2. This Mortgage secures the repayment of all advances that Lender may extend to Borrower or Grantor under the promissory notes and other agreements described in paragraph 2, but the total of all such indebtedness so secured shall not exceed 200% of the principal amount stated in paragraph 2.

5. EXPENSES. To the extent permitted by law, this Mortgage secures the repayment of all amounts expended by Lender to perform Grantor's covenants under this Mortgage or to maintain, preserve, or dispose of the Property, including but not limited to, amounts expended for the payment of taxes, special assessments, or insurance on the Property, plus interest thereon.

6. CONSTRUCTION PURPOSES. If checked, this Mortgage secures an indebtedness for construction purposes.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS. Grantor represents, warrants and covenants to Lender that:

(a) Grantor shall maintain the Property free of all liens, security interests, encumbrances and claims except for this Mortgage and those described in Schedule B which is attached to this Mortgage and incorporated herein by reference.

(b) Neither Grantor nor, to the best of Grantor's knowledge, any other party has used, generated, released, discharged, stored, or disposed of any hazardous waste, toxic substance, or related material (cumulatively "Hazardous Materials") in connection with the Property or transported any Hazardous Materials to or from the Property. Grantor shall not commit or permit such actions to be taken in the future. The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any governmental authority including, but not limited to, (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act or listed pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes; (v) those substances, materials or wastes defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; or (vi) those substances, materials or wastes defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments or replacements to that statute;

(c) Grantor has the right and is duly authorized to execute and perform its Obligations under this Mortgage and these actions do not and shall not conflict with the provisions of any statute, regulation, ordinance, rule of law, contract or other agreement which may be binding on Grantor at any time;

(d) No action or proceeding is or shall be pending or threatened which might materially affect the Property;

(e) Grantor has not violated and shall not violate any statute, regulation, ordinance, rule of law, contract or other agreement which might materially affect the Property (including, but not limited to, those governing Hazardous Materials) or Lender's rights or interest in the Property pursuant to this Mortgage.

8. TRANSFER OF PROPERTY. Grantor shall not assign, convey, lease, sell or transfer (cumulatively "Transfer") any of the Property without Lender's prior written consent. Lender shall be entitled to withhold its consent to any such Transfer if Lender in good faith deems that the Transfer would increase the risk of the non-payment or non-performance of any of the Obligations.

9. INQUIRES AND NOTIFICATION TO THIRD PARTIES. Grantor hereby authorizes Lender to contact any third party and make any inquiry pertaining to Grantor's financial condition or the Property. In addition, Lender is authorized to provide oral or written notice of its interest in the Property to any third party.

10. INTERFERENCE WITH LEASES AND OTHER AGREEMENTS. Grantor shall not take or fail to take any action which may cause or permit the termination or the withholding of any payment in connection with any lease or other agreement ("Agreement") pertaining to the Property. In addition, Grantor, without Lender's prior written consent, shall not: (a) collect any monies payable under any Agreement more than one month in advance; (b) modify any Agreement; (c) assign or allow a lien, security interest or other encumbrance to be placed upon Lender's rights, title and interest in and to any Agreement or the amounts payable thereunder; or (d) terminate or cancel any Agreement except for the nonpayment of any sum or other material breach by the other party thereto. If Grantor receives at any time any written communication asserting a default by Grantor under an Agreement or purporting to terminate or cancel any Agreement, Grantor shall promptly forward a copy of such communication (and any subsequent communications relating thereto) to Lender.

11. COLLECTION OF INDEBTEDNESS FROM THIRD PARTY. Lender shall be entitled to notify or require Grantor to notify any third party (including, but not limited to, lessors, licensees, governmental authorities and insurance companies) to pay Lender any indebtedness or obligation owing to Grantor with respect to the Property (cumulatively "indebtedness") whether or not a default exists under this Mortgage. Grantor shall diligently collect the indebtedness owing to Grantor from these third parties until the giving of such notification. In the event that Grantor possesses or receives possession of any instrument or other remittances with respect to the indebtedness following the giving of such notification or if the instruments or other remittances constitute the prepayment of any indebtedness or the payment of any insurance or condemnation proceeds, Grantor shall hold such instruments and other remittances in trust for Lender apart from its other property, endorse the instruments and other remittances to Lender, and immediately provide Lender with possession of the instruments and other remittances. Lender shall be entitled, but not required to collect (by legal proceedings or otherwise), extend the time for payment, compromise, exchange or release any obligor or collateral upon, or otherwise settle any of the indebtedness whether or not an event of default exists under this Agreement. Lender shall not be liable to Grantor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom.

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11. USE AND MAINTENANCE OF PROPERTY. Grantor shall take all actions and make any repairs needed to maintain the Property in good condition. Grantor shall not commit or permit any act to be committed with respect to the Property. Grantor shall use the Property solely in compliance with applicable law and insurance policies. Grantor shall not make any alterations, additions or improvements to the Property without Lender's prior written consent. Without limiting the foregoing, all alterations, additions and improvements made to the Property shall be subject to the interest belonging to Lender, shall not be removed without Lender's prior written consent, and shall be made at Grantor's sole expense.

12. LOSS OR DAMAGE. Grantor shall bear the entire risk of any loss, theft, destruction or damage (cumulatively "Loss or Damage") to the Property or any portion thereof from any cause whatsoever. In the event of any Loss or Damage, Grantor shall, at the option of Lender, repair the affected Property to its previous condition or pay or cause to be paid to Lender the decrease in the fair market value of the affected Property.

13. INSURANCE. The Property will be kept insured for its full value against all hazards including loss or damage caused by fire, collision, theft or other casualty. Grantor may obtain insurance on the Property from such companies as are acceptable to Lender in its sole discretion. The insurance policies shall require the insurance company to provide Lender with at least thirty (30) days' written notice before such policies are altered or cancelled in any manner. The insurance policies shall name Lender as a loss payee and provide that no act or omission of Grantor or any other person shall affect the right of Lender to be paid the insurance proceeds pertaining to the loss or damage of the Property. In the event Grantor fails to acquire or maintain insurance, Lender (after providing notice as may be required by law) may in its discretion procure appropriate insurance coverage upon the Property and charge the insurance cost as an advance of principal under the promissory note. Grantor shall furnish Lender with evidence of insurance indicating the required coverage. Lender may act as attorney-in-fact for Grantor in making and settling claims under insurance policies, cancelling any policy or endorsing Grantor's name on any draft or negotiable instrument drawn by any insurer.

14. ZONING AND PRIVATE COVENANTS. Grantor shall not initiate or consent to any change in the zoning provisions or private covenants affecting the use of the Property without Lender's prior written consent. If Grantor's use of the Property becomes a nonconforming use under any zoning provision, Grantor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Grantor will immediately provide Lender with written notice of any proposed changes to the zoning provisions or private covenants affecting the Property.

15. CONDEMNATION. Grantor shall immediately provide Lender with written notice of any actual or threatened condemnation or eminent domain proceeding pertaining to the Property. All monies payable to Grantor from such condemnation or taking are hereby assigned to Lender and shall be applied first to the payment of Lender's attorneys' fees, legal expenses and other costs (including appraisal fees) in connection with the condemnation or eminent domain proceedings and then, at the option of Lender, to the payment of the Obligations or the restoration or repair of the Property.

16. LENDER'S RIGHT TO COMMENCE OR DEFEND LEGAL ACTIONS. Grantor shall immediately provide Lender with written notice of any actual or threatened action, suit, or other proceeding affecting the Property. Grantor hereby appoints Lender as its attorney-in-fact to commence, intervene in, and defend such actions, suits, or other legal proceedings and to compromise or settle any claim or controversy pertaining thereto. Lender shall not be liable to Grantor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom. Nothing contained herein will prevent Lender from taking the actions described in this paragraph in its own name.

17. INDEMNIFICATION. Lender shall not assume or be responsible for the performance of any of Grantor's Obligations with respect to the Property under any circumstances. Grantor shall immediately provide Lender and its shareholders, directors, officers, employees and agents with written notice of and indemnify and hold Lender harmless from all claims, damages, liabilities (including attorneys' fees and legal expenses), causes of action, actions, suits and other legal proceedings (cumulatively "Claims") pertaining to the Property (including, but not limited to, those involving Hazardous Materials). Grantor, upon the request of Lender, shall hire legal counsel to defend Lender from such Claims, and pay the attorneys' fees, legal expenses and other costs incurred in connection therewith. In the alternative, Lender shall be entitled to employ its own legal counsel to defend such Claims at Grantor's cost.

18. TAXES AND ASSESSMENTS. Grantor shall pay all taxes and assessments relating to Property when due. Upon the request of Lender, Grantor shall deposit with Lender each month one-twelfth (1/12) of the estimated annual insurance premium, taxes and assessments pertaining to the Property. These amounts shall be applied to the payment of taxes, assessments and insurance as required on the Property.

19. INSPECTION OF PROPERTY, BOOKS, RECORDS AND REPORTS. Grantor shall allow Lender or its agents to examine and inspect the Property and examine, inspect and make copies of Grantor's books and records pertaining to the Property from time to time. Grantor shall provide any assistance required by Lender for these purposes. All of the signatures and information contained in Grantor's books and records shall be genuine, true, accurate and complete in all respects. Grantor shall note the existence of Lender's beneficial interest in its books and records pertaining to the Property. Additionally, Grantor shall report, in a form satisfactory to Lender, such information as Lender may request regarding Grantor's financial condition or the Property. The information shall be for such periods, shall reflect Grantor's records at such time and shall be rendered with such frequency as Lender may designate. All information furnished by Grantor to Lender shall be true, accurate and complete in all respects.

20. ESTOPPEL CERTIFICATES. Within ten (10) days after any request by Lender, Grantor shall deliver to Lender, or any intended transferee of Lender's rights with respect to the Obligations, a signed and acknowledged statement specifying (a) the outstanding balance on the Obligations; and (b) whether Grantor possesses any claims, defenses, set-offs or counterclaims with respect to the Obligations and, if so, the nature or such claims, defenses, set-offs or counterclaims. Grantor will be conclusively bound by any representation that Lender may make to the intended transferee with respect to these matters in the event that Grantor fails to provide the requested statement in a timely manner.

21. DEFAULT. Grantor shall be in default under this Mortgage in the event that Grantor, Borrower, or any guarantor of any Obligation:

- (a) fails to pay any Obligation to Lender when due;
- (b) fails to perform any Obligation or breaches any warranty or covenant to Lender contained in this Mortgage or any other present or future, written or oral, agreement;
- (c) allows the Property to be damaged, destroyed, lost or stolen in any material respect;
- (d) seeks to revoke, terminate or otherwise limit its liability under any guaranty to Lender;
- (e) allow the Property to be used by anyone to transport or store goods the possession, transportation, or use of which is illegal;
- (f) causes Lender to deem itself insecure in good faith for any reason.

22. RIGHTS OF LENDER ON DEFAULT. If there is a default under this Mortgage, Lender shall be entitled to exercise one or more of the following remedies without notice or demand (except as required by law):

- (a) to declare the Obligations immediately due and payable in full;
- (b) to collect the outstanding Obligations with or without resorting to judicial process;
- (c) to require Grantor to deliver and make available to Lender any personal property constituting the Property at a place reasonably convenient to Grantor and Lender;
- (d) to take immediate possession, management and control of the Property without seeking the appointment of a receiver;
- (e) to collect all of the rents, issues, and profits from the Property from the date of default through the expiration of the last redemption period following the foreclosure of this Mortgage;
- (f) to apply for and obtain, without notice and upon ex parte application, the appointment of a receiver for the Property without regard to Grantor's financial condition or solvency, the adequacy of the Property to secure the payment or performance of the Obligations, or the existence of any waste to the Property;
- (g) to foreclose this Mortgage;
- (h) to set-off Grantor's Obligations against any amounts due to Lender including, but not limited to, monies, instruments, and deposit accounts maintained with Lender; and
- (i) to exercise all other rights available to Lender under any other written agreement or applicable law.

Lender's rights are cumulative and may be exercised together, separately, and in any order. In the event that Lender institutes an action seeking the recovery of any of the Property by way of a prejudgment remedy in an action against Grantor, Grantor waives the posting of any bond which might otherwise be required.

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23. APPLICATION OF FORECLOSURE PROCEEDS. The Sheriff shall apply the proceeds from its foreclosure of this Mortgage and the sale of the Property in the following manner: first, to the payment of any sheriff's fee and the satisfaction of its expenses and costs; then to reimburse Lender for its expenses and costs of the sale or in connection with securing, preserving and maintaining the Property, seeking or obtaining the appointment of a receiver for the Property, (including, but not limited to, attorneys' fees, legal expenses, filing fees, notification costs, and appraisal costs); then to the payment of the Obligations; and then to any third party as provided by law.

24. WAIVER OF HOMESTEAD AND OTHER EXEMPTIONS. Grantor hereby waives all homestead or other exemptions to which Grantor would otherwise be entitled under any applicable law.

25. REIMBURSEMENT OF AMOUNTS EXPENDED BY LENDER. Upon demand, Grantor shall immediately reimburse Lender for all amounts (including attorneys' fees and legal expenses) expended by Lender in the performance of any action required to be taken by Grantor or the exercise of any right or remedy of Lender under this Mortgage, together with interest thereon at the lower of the highest rate described in any Obligation or the highest rate allowed by law from the date of payment until the date of reimbursement. These sums shall be included in the definition of Obligations herein and shall be secured by the interest granted herein.

26. APPLICATION OF PAYMENTS. All payments made by or on behalf of Grantor may be applied against the amounts paid by Lender (including attorneys' fees and legal expenses) in connection with the exercise of its rights or remedies described in this Mortgage and then to the payment of the remaining Obligations in whatever order Lender chooses.

27. POWER OF ATTORNEY. Grantor hereby appoints Lender as its attorney-in-fact to endorse Grantor's name on all instruments and other documents pertaining to the Obligations. In addition, Lender shall be entitled, but not required, to perform any action or execute any document required to be taken or executed by Grantor under this Mortgage. Lender's performance of such action or execution of such documents shall not relieve Grantor from any Obligation or cure any default under this Mortgage. The powers of attorney described in this paragraph are coupled with an interest and are irrevocable.

28. SUBROGATION OF LENDER. Lender shall be subrogated to the rights of the holder of any previous lien, security interest or encumbrance discharged with funds advanced by Lender regardless of whether these liens, security interests or other encumbrances have been released of record.

29. COLLECTION COSTS. If Lender hires an attorney to assist in collecting any amount due or enforcing any right or remedy under this Agreement, Grantor agrees to pay Lender's attorneys' fees and collection costs.

30. PARTIAL RELEASE. Lender may release its interest in a portion of the Property by executing and recording one or more partial releases without affecting its interest in the remaining portion of the Property.

31. MODIFICATION AND WAIVER. The modification or waiver of any of Grantor's Obligations or Lender's rights under this Mortgage must be contained in a writing signed by Lender. Lender may perform any of Grantor's Obligations or delay or fail to exercise any of its rights without causing a waiver of those Obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Grantor's Obligations under this Mortgage shall not be affected if Lender amends, compromises, exchanges, fails to exercise, impairs or releases any of the Obligations belonging to any Grantor, third party or any of its rights against any Grantor, third party or the Property.

32. SUCCESSORS AND ASSIGNS. This Mortgage shall be binding upon and inure to the benefit of Grantor and Lender and their respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees and devisees.

33. NOTICES. Any notice or other communication to be provided under this Mortgage shall be in writing and sent to the parties at the addresses described in this Mortgage or such other address as the parties may designate in writing from time to time.

34. SEVERABILITY. If any provision of this Mortgage violates the law or is unenforceable, the rest of the Mortgage shall continue to be valid and enforceable.

35. APPLICABLE LAW. This Mortgage shall be governed by the law of the state indicated in Lender's address. Grantor consents to the jurisdiction and venue of any court located in the state indicated in Lender's address in the event of any legal proceeding under this Mortgage.

36. MISCELLANEOUS. Grantor and Lender agree that time is of the essence. Grantor waives presentment, demand for payment, notice of dishonor and protest except as required by law. Grantor waives any right to a jury trial Grantor may have under applicable law. All references to Grantor in this Mortgage shall include all persons signing below. If there is more than one Grantor, their Obligations shall be joint and several. This Mortgage and any related documents represent the complete integrated understanding between Grantor and Lender pertaining to the terms and conditions of those documents.

37. ADDITIONAL TERMS:

Grantor acknowledges that Grantor has read, understands, and agrees to the terms and conditions of this Mortgage.

Dated **FEBRUARY 3, 1992**

GRANTOR: **MARK R CZERNIEK**

BY: Mark R Czerniek

TITLE: \_\_\_\_\_

JOINTLY

GRANTOR:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

LENDER: NSB CAROL STREAM/STRATFORD SQUARE

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

GRANTOR: **JULIE A CZERNIEK**

BY: Julie A Czerniek

TITLE: \_\_\_\_\_

JOINTLY

GRANTOR:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

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# UNOFFICIAL COPY

State of Illinois )

State of \_\_\_\_\_ )

County of DuPage )

County of \_\_\_\_\_ )

I, the undersigned,  
a notary public in and for said County, in the State aforesaid, DO HEREBY  
CERTIFY that Mark R. & Julie A. Czernek  
personally known to me to be the same person S whose  
name S are subscribed to the foregoing instrument,  
appeared before me this day in person and acknowledged that they  
he signed, sealed and delivered the said instrument as their  
free and voluntary act, for the uses and purposes herein set forth.

I, \_\_\_\_\_,  
a notary public in and for said County, in the State aforesaid, DO HEREBY  
CERTIFY that \_\_\_\_\_  
personally known to me to be the same person \_\_\_\_\_ whose  
name \_\_\_\_\_ subscribed to the foregoing instrument,  
appeared before me this day in person and acknowledged that \_\_\_\_\_  
he signed, sealed and delivered the said instrument as \_\_\_\_\_  
free and voluntary act, for the uses and purposes herein set forth.

Given under my hand and official seal, this 3rd day of  
February, 1992

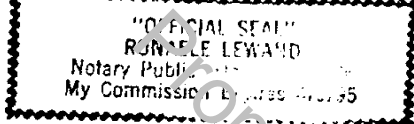
Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_

*Ronald Lewand*  
Notary Public

\_\_\_\_\_  
Notary Public

Commission expires: April 9, 1995

Commission expires: \_\_\_\_\_



**SCHEDULE A**

The street address of the Property (if applicable) is:

**1090 HONEYSUCKLE DRIVE  
WHEELING, IL 60090**

The permanent tax identification number of the Property is: **03152120700000**

The legal description of the Property is:

**LOT 122 IN LEMKE FARMS SUBDIVISION UNIT 2 BEING A SUBDIVISION OF PART OF  
THE EAST 1/2 OF THE NORTH EAST 1/4 OF SECTION 15, TOWNSHIP 42 NORTH, RANGE  
11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF  
RECORDED 24536419 AND REGISTERED AS DOCUMENT LR 3031925 AND CORRECTED BY  
PLAT RECORDED AS DOCUMENT 24877456 AND REGISTERED AS DOCUMENT LR 3080271  
IN COOK COUNTY, ILLINOIS.**

**SCHEDULE B**

COOK COUNTY, ILL. CLERK'S OFFICE  
FILED FOR RECORDS

1992 FEB 11 AM 3:25

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This document was prepared by: ATTN: RONEY, LEWAND  
Returned or mailed to: \_\_\_\_\_

WEST SUBURBAN BANK OF  
CAROL STREET WESTAFFORD SQUARE  
355 W. ARMY TRAIL ROAD  
BLOOMINGDALE, IL 60108

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