

00422797

3890/0102 38 001 Page 1 of 11
2000-06-09 12:01:31
Cook County Recorder 41.00



00422797

(6) All

LMT DJ

7861765

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (the "Assignment") is made and delivered as of the 7th day of June, 2000, by **INSIGNIA CRESCENT, L.L.C.**, an Illinois limited liability company ("Borrower"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION** ("Lender").

RECITALS:

A. Lender has agreed to make a land acquisition and development loan to Borrower in an amount not to exceed \$2,235,000 and a construction loan to Borrower in the maximum aggregate amount outstanding at any time of \$1,560,000 and make available letters of credit in an aggregate amount not to exceed \$750,000, pursuant to and subject to the terms, provisions and conditions set forth in that certain Loan Agreement of even date herewith (the "Loan Agreement") by and between Borrower and Lender.

B. A condition precedent to Lender's extension of the Loan to Borrower is the execution and delivery by Borrower of this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. **Definitions.** All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Loan Agreement.

This instrument was prepared by and, after recording, return to:

Schwartz, Cooper, Greenberger & Krauss
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
Attn: Martin I. Behn, Esq.

Permanent Real Estate Tax Index Nos.:
02-16-411-005-0000; 02-16-411-006-0000;
02-16-411-012-0000; 02-16-411-011-0000;
02-16-411-003-0000; 02-16-411-002-0000

Common Address:
Palatine & Crescent Roads
Palatine, Illinois

BOX 333-CTI

Property of Cook County Clerk's Office

11 k

UNOFFICIAL COPY

00422797

2. **Grant of Security Interest.** Borrower hereby grants, transfers, sets over and assigns to Lender, all of the right, title and interest of Borrower in and to (i) all of the rents, issues, profits, revenues, receipts, income, accounts, security deposits and other receivables arising out of or from the land legally described in Exhibit A attached hereto and made a part hereof and all buildings and other improvements located thereon (said land and improvements being hereinafter referred to collectively as the "Premises") (including, without limitation, any such amounts that are collected by Borrower and maintained in any operating or other accounts or paid or disbursed by Borrower in contravention of the provisions of this Assignment); (ii) all leases and subleases (collectively, the "Leases"), now or hereafter existing, pertaining to all or any part of the Premises; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is given to secure:

(a) Payment by Borrower when due of (i) the indebtedness evidenced by the Notes and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to Lender by Borrower under or with respect to the Loan Documents, and any and all replacements, amendments and modifications thereof; and (iii) all costs and expenses paid or incurred by Lender in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) Observance and performance by Borrower of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower or any other obligor to or benefitting Lender which are evidenced or secured by or otherwise provided in the Notes, this Assignment or any of the other Loan Documents, together with all replacements, amendments and modifications thereof.

3. **Representations and Warranties of Borrower.** Borrower represents and warrants to Lender that:

(a) This Assignment, as executed by Borrower, constitutes the legal and binding obligation of Borrower enforceable in accordance with its terms and provisions;

(b) Borrower is the lessor under all Leases;

(c) Borrower has not made any other assignment of its entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has Borrower entered into any agreement to subordinate any of the Leases or Borrower's right to receive any of the rents, issues, income or profits assigned hereunder;

(d) Borrower has not executed any instrument or performed any act which may prevent Lender from operating under any of the terms and provisions hereof or which would limit Lender in such operation; and

(e) There are no defaults under any Leases.

4. Covenants of Borrower. Borrower covenants and agrees that so long as this Assignment shall be in effect:

(a) Borrower shall not lease any portion of the Premises unless Borrower obtains Lender's prior written consent to all aspects of such lease;

(b) Borrower shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Borrower shall not do or suffer to be done anything to impair the security thereof. Borrower shall not (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to any tenant termination or cancellation of any Lease, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(c) Borrower shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Borrower shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder;

(e) Borrower shall not modify the terms and provisions of any Lease, nor shall Borrower give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease;

(f) Borrower shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder;

(g) Borrower shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law;

(h) Borrower shall not waive or excuse the obligation to pay rent under any Lease;

(i) Borrower shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Lender, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Lender may appear;

(j) Borrower shall give prompt notice to Lender of any notice of any default on the part of the lessor with respect to any Lease received from any tenant or guarantor thereunder;

(k) Borrower shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and shall immediately notify Lender of any breach by the tenant or guarantor under such Lease of the same;

(l) Borrower shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(m) Borrower shall not execute hereafter any Lease unless there shall be included therein a provision providing that the tenant thereunder acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to Lender as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by Lender as security for tenant's performance under such Lease;

(n) Borrower shall furnish to Lender, within ten days after a request by Lender to do so, a written statement containing the names of all tenants and subtenants of the Premises, or any part thereof;

(o) In the event that any tenant under any Lease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Borrower covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Lender, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Borrower and Lender. Borrower hereby assigns any such payment to Lender and further covenants and agrees that upon the request of Lender, it will duly endorse to the order of Lender any such check, the

proceeds of which shall be applied in accordance with the provisions of Paragraph 8 below;

(p) Not later than the 15th day after the end of each month, Borrower shall deliver to Lender a certified rent roll for the Premises as of the last day of such month in a form reasonably satisfactory to Lender.

5. **Rights Prior to Default.** So long as an Event of Default (as defined in Paragraph 6) has not occurred, Lender shall not demand from tenants under the Leases or any other person liable thereunder any of the rents, issues, income and profits assigned hereunder (collectively, the "Rents"), and Borrower shall have the right to collect, at the time (but in no event more than thirty days in advance) provided for the payment thereof, all Rents assigned hereunder, and to retain, use and enjoy the same. Lender shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time. Immediately upon the occurrence of an Event of Default, all of Borrower's rights in or to the Rents shall, to the maximum extent permitted by law, immediately terminate and all of the Rents (wherever located and in whoever's possession or control) shall be immediately paid over to Lender. **ALL THIRD PARTIES ARE HEREBY EXPRESSLY PUT ON NOTICE OF THE PROVISIONS OF THE PREVIOUS SENTENCE AND SHALL BE REQUIRED TO TURN OVER TO LENDER, UPON DEMAND, ALL MONIES RECEIVED WHICH CONSTITUTE RENTS HELD BY OR PAID TO ANY THIRD PARTY AFTER THE OCCURRENCE OF AN EVENT OF DEFAULT, EXCEPTING ONLY RENTS PAID TO THIRD PARTIES NOT AFFILIATED WITH BORROWER IN EXCHANGE FOR SERVICES RENDERED AND APPROVED BY LENDER WITH RESPECT TO THE OPERATION OF THE PREMISES IN THE ORDINARY COURSE OF BUSINESS.** Notwithstanding the foregoing or any other provisions of this Assignment to the contrary, the provisions hereof are not intended to limit in any way any provisions of the Mortgage or any of the other Loan Documents requiring the deposit of the Rents into a lock-box or other similar arrangement.

6. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach of Borrower of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Loan Agreement, or (b) any other Event of Default described in the Loan Agreement or the other Loan Documents. An Event of Default hereunder shall constitute an Event of Default under the Loan Agreement and the other Loan Documents.

7. **Rights and Remedies Upon Default.** At any time upon or following the occurrence of any Event of Default, Lender, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Borrower, without regard to the adequacy of the security for the obligations secured hereby, without releasing Borrower or any guarantor of

the Notes from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

(a) Declare the unpaid balance of the principal sum of the Notes, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Lender deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Lender, without proof of default hereunder, upon receipt from Lender of written notice to thereafter pay all such rents and other amounts to Lender and to comply with any notice or demand by Lender for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and Borrower shall facilitate in all reasonable ways Lender's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Lender; and

(d) Make any payment or do any act required herein of Borrower in such manner and to such extent as Lender may deem necessary, and any amount so paid by Lender shall become immediately due and payable by Borrower with interest thereon until paid at the Default Rate and shall be secured by this Assignment.

8. Limitation of Lender's Liability. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Premises or from any other act or omission of Lender in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Lender shall not be obligated to observe, perform or discharge, nor does Lender hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Borrower under or by reason of this Assignment. Borrower shall and does hereby agree to indemnify, defend (using counsel satisfactory to Lender) and hold Lender harmless from and against any and all liability, loss or damage which Lender may incur under any Lease or under or by reason of this Assignment and of 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 observe or perform any of the covenants, terms, conditions and agreements contained in any Lease. Should Lender incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Borrower with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Lender for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Lender responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Lender of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Lender a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions hereof or of the Mortgage.

9. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Lender pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Lender of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Lender under the terms and provisions of such instruments, and Lender may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Lender may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

10. **Further Assurances.** Borrower shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Lender may designate) and shall do or cause to be done such further acts, as Lender may request, in order to permit Lender to perfect, protect, preserve and maintain the assignment made to Lender by this Assignment.

11. **Security Deposits.** Borrower hereby acknowledges that Lender has not received any security deposited by any tenant pursuant to the terms of the Leases and that Lender assumes no responsibility or liability for any security so deposited.

12. **Severability.** In the event that any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Lender and Borrower shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the

UNOFFICIAL COPY

00-122797

purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

13. **Benefit.** This Assignment is binding upon Borrower and its legal representatives, successors and assigns, and the rights, powers and remedies of Lender under this Assignment shall inure to the benefit of Lender and its successors and assigns.

14. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Borrower and Lender at the time of such amendment, modification or supplement.

15. **Duration.** This Assignment shall become null and void at such time as Borrower shall have paid the principal sum of the Notes, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

16. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

17. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of Borrower and Lender, as the case may be, as specified in the Loan Agreement.

18. **WAIVER OF RIGHT TO JURY TRIAL. LENDER AND BORROWER ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

19. **JURISDICTION AND VENUE.** BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS ASSIGNMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF LENDER INITIATES SUCH ACTION, ANY COURT IN WHICH LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN

ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS ASSIGNMENT. BORROWER WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY LENDER AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY LENDER, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY LENDER, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

IN WITNESS WHEREOF, Borrower has executed and delivered this Assignment as of the day and year first above written.

INSIGNIA CRESCENT, L.L.C., an Illinois limited liability company

By: [Signature]
Title: Manager

UNOFFICIAL COPY

00122797

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, MARGARET G. JONES, a Notary Public in and for said County, in the State aforesaid, do hereby certify that William ROTOCO, the MANAGER of INSIGNIA CRESCENT, L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such MANAGER, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said MANAGER, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 6th day of June, 2000.

Margaret G. Jones
NOTARY PUBLIC

(SEAL)



Property of Cook County Clerk's Office

UNOFFICIAL COPY

00122797

EXHIBIT A

Legal Description of Premises

LOTS 2, 3, 4, 5, 10 AND 11 IN BLOCK 10 IN ARTHUR T. MCINTOSH & COMPANY'S CHICAGO AVENUE FARMS, BEING A SUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 3, 1926 AS DOCUMENT NUMBER 9261330, IN COOK COUNTY, ILLINOIS.

PIN NOS: 02-16-411-005-0000; 02-16-411-006-0000; 02-16-411-012-0000; 02-16-411-011-0000; 02-16-411-003-0000; 02-16-411-002-0000

Property of Cook County Clerk's Office