

This Instrument Prepared By
and Returned To:

09016830

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1999-10-28 15:19:53
Cook County Recorder 35.00

Charles R. Hug
Ice Miller Donadio & Ryan
135 South LaSalle Street
Chicago, Illinois 60603



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- Permanent Index Nos: 29-32-200-062
- 29-32-200-063
- 29-32-200-064
- 29-32-200-065
- 29-32-200-066
- 29-32-200-067
- 29-32-200-078

Address: 1000 Maple Avenue
Homewood, Illinois

SECOND ASSIGNMENT OF RENTS AND LEASES

KNOW ALL MEN BY THESE PRESENTS, BOMAR, L.L.C., an Illinois limited liability company, having an address at 530 West 172nd Street, South Holland, Illinois 60473 (the "Assignor"), in consideration of the sums advanced by the Assignee pursuant to the Note and the Loan Agreement (as all of said terms are hereinbelow identified) and other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, do hereby assign, transfer and set over unto the AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, having an address at 4343 Lincoln Highway, Matteson, Illinois 60443 (the "Assignee"), all right, title and interest of the Assignor in, under or pursuant to any and all present or future leases or subleases, whether written or oral, or any lettings of possession of, or any agreements, easements or licenses for the use or occupancy of, the whole or any part of the real estate and premises hereinafter described which the Assignor may have heretofore made or agreed to or may hereafter make or agree to, or which may be made or agreed to by the Assignee under the powers hereinafter granted, including all amendments and supplements to and renewals thereof at any time made (collectively the "Leases"), relating to that certain real estate situated in the County of Cook, State of Illinois, described in Schedule I attached hereto and made a part hereof and the improvements now or hereafter erected thereon (the "premises"), including, without limiting the generality of the foregoing, all right, title and interest of Assignor in and to all the rents (whether fixed or contingent), earnings, renewal rents and all other sums due or which may hereafter become due under or by virtue of the Leases.

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This Assignment is made and given as collateral security for, and shall secure (i) the payment in full of all principal of and interest on that certain Installment Note (Secured) of the Assignor dated as of the date of issuance, payable to the order of the Assignee in the original maximum principal

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sum of \$362,500 expressed to bear interest prior to maturity, and after maturity until paid, as set forth therein (the "Note"), (ii) the performance of all obligations, covenants, promises and agreements contained herein or in that certain Second Mortgage and Security Agreement dated as of September 1, 1999 from the Assignor to the Assignee (the "Mortgage"), conveying and mortgaging the premises as security for the Note or in any other document relating to the Loan (as defined in the Note, and any other indebtedness intended to be secured thereby, (iii) the performance of all obligations, covenants, promises and agreements contained herein conveying and mortgaging certain premises as security for the Note and any and all other indebtedness intended to be secured thereby, (iv) the performance of all obligations, covenants, promises and agreements of the Assignor contained in the Note, and (v) the payment of all expenses and charges, legal or otherwise, paid or incurred by the Assignee in realizing upon or protecting the indebtedness referred to in the foregoing clauses (i), (ii), (iii) and (iv) or any security therefore, including this Assignment (the Note and the other indebtedness, obligations and liabilities referred to in clauses (i), (ii), (iii), (iv) and (v) above being hereinafter collectively referred to as the "indebtedness hereby secured"); subject, however, to the provisions of the Assignment of Rents and Leases recorded in the office of the Recorder of Deeds, Cook County, Illinois, as Document No. 09016827 (the "First Assignment") to which this Assignment shall be junior and subordinate.

The Assignor does hereby irrevocably constitute and appoint the Assignee the true and lawful attorney of the Assignor with full power of substitution for Assignor and in Assignor's name, place and stead to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all sums due or to become due under any Lease, with full power to settle, adjust or compromise any claim thereunder as fully as the Assignor could do, and to endorse the name of the Assignor on all commercial paper given in payment or in part payment thereof, and in the Assignee's discretion to file any claim or take any other action or proceeding, either in the Assignee's name or in the name of the Assignor or otherwise, which the Assignee may deem necessary or appropriate to protect and preserve the right, title and interest of the Assignee in and to such sums and the security intended to be afforded hereby.

The Assignor warrants to the Assignee that the Assignor has good right to make this Assignment and that the Assignor, other than as provided in the First Assignment, has not heretofore alienated, assigned, pledged or otherwise disposed of any of the rights, rents and other sums due or which may hereafter become due and which are intended to be assigned hereunder.

This Assignment includes and establishes a present, absolute and primary transfer and assignment of all rents, earnings, income, issues and profits of the premises, but so long as no event of default shall exist under the Note, the Mortgage or the Loan and no event shall exist which by lapse of time or service of notice, or both, has or would become an event of default thereunder, the Assignor shall have the right and license to collect, use and enjoy all rents and other sums due or to become due under and by virtue of any Lease as they respectively become due, but not more than one (1) month in advance.

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The Assignor hereby irrevocably consents to and authorizes and directs that the tenant or other obligor under any Lease upon demand and notice from the Assignee of the Assignee's right to receive rents and other sums hereunder, shall pay such rents and other sums to the Assignee without any obligation on the part of such tenant or other obligor to determine the actual existence of any default or event claimed by the Assignee as the basis for the Assignee's right to receive such rents or other sums and notwithstanding any notice from or claim of the Assignor to the contrary. The Assignor hereby waives any right or claim against any tenant or other obligor for any such rents and other sums paid by tenant or other obligor to the Assignee.

Without limiting any legal rights of the Assignee as the absolute assignee of the rents, issues and profits of the premises and in furtherance thereof, Assignor agrees that in the event of default under said Mortgage or Note, whether before or after the Note is declared due in accordance with its terms or under the terms of said Mortgage or Note and whether before or after satisfaction of any requirement of the lapse of time or the giving of notice or both on which acceleration after default may be conditioned, the Assignee may, at its option, (i) take actual possession of the premises hereinabove described, or of any part thereof, personally or by agent or attorney, and with or without force and with or without process of law, enter upon, take and maintain possession of all or any part of said premises together with all documents, books, records, papers and accounts relating thereto, and exclude the Assignor, its agents or servants, therefrom and hold, operate, manage and control the premises, and at the expense of the premises, from time to time, cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments and improvements to the premises as may seem judicious, and pay taxes, assessments and prior or proper charges on the premises, or any part thereof, and insure and reinsure the same, and lease the premises in such parcels and for such times and on such terms as Assignee may deem fit, including leases for terms expiring beyond the maturity of the indebtedness secured by said Mortgage, and cancel any lease or sublease for any cause or on any ground which would entitle the Assignor to cancel the same and in such case have the right to manage and operate the said premises and to carry on the business thereof as the Assignee shall deem proper or (ii) with or without taking possession of the premises, Assignee may proceed to enforce the Leases and collect all sums due or to become due thereunder and by so doing Assignee shall not be deemed a mortgagee in possession nor to have assumed or become responsible or liable for any obligations of Assignor arising thereunder or in respect thereof.

Any sums received by Assignee under or by virtue of this Assignment shall be applied to the payment of or on account of the following in the following order of priority: first, on account of all costs and expenses incident to the proceedings; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all costs and expenses of the Assignee; fourth, all interest, fees and other expenses, if any, due and owing, remaining unpaid on the Note; fifth, all principal due and owing, remaining unpaid on the Note; and sixth, any overplus to the Assignor and its successors or assigns, to be distributed in accordance with the Note and the Mortgage to the parties thereto, as their rights may appear. Assignee shall be subrogated to any lien discharged out of the rents, income and profits of the premises.

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The Assignor hereby further covenants that the Assignor will upon request of the Assignee execute and deliver such further instruments and do and perform such other acts and things as the Assignee may reasonably deem necessary or appropriate to more effectively vest in and secure to the Assignee the rights and rents which are intended to be assigned to the Assignee hereunder. Assignor irrevocably waives any right they now or hereafter may have to off-set any claim or liability owing from it to any obligor on a Lease against sums due or to become due from such obligor under a Lease.

Assignor covenants and agrees to observe and perform all of the obligations imposed on it under the Leases and not to do or permit to be done anything to impair the security thereof, not to execute any Lease on terms and conditions less satisfactory to the lessor than are usual and customary in leases with a similar term and for similar types of space in the general market area where the premises is located, not to further assign or encumber its rights under the Leases to be subordinated to any other liens or encumbrances whatsoever, any such subordination to be null and void unless done with the written consent of Assignee. Assignor further covenants and agrees not to amend, modify or terminate any of the Leases without the prior written consent of Assignee. Assignor further covenants and agrees that they will submit the executed originals of all Leases and amendments thereto to Assignee.

Anything contained elsewhere in this Assignment to the contrary notwithstanding, Assignor covenants and agrees that they will not, without the prior consent of Assignee, terminate any Lease or amend or modify same in any respect and that any of such done without the prior written consent of Assignee shall be null and void.

The acceptance by the Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of actual physical possession of the premises by the Assignee, be deemed or construed to constitute the Assignee a mortgagee in possession nor impose any obligation whatsoever upon the Assignee. It being understood and agreed that the Assignee does not hereby undertake to perform or discharge any obligation, duty or liability of the landlord under any Leases or under or by reason of this Assignment. Assignee shall have no liability to Assignor or any one for any action taken or omitted to be taken by them hereunder, except for its gross negligence or willful misconduct. Should the Assignee incur any liability, loss or damage under or by reason of this Assignment or for any action taken by the Assignee hereunder, or in defense against any claim or demand whatsoever which may be asserted against the Assignee arising out of any Lease, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate applicable to the Note at the time of incurrence shall be secured by this Assignment and by the Mortgage, and the Assignors shall reimburse the Assignee therefore immediately upon demand, Assignor's obligation to so pay to survive payment of the indebtedness hereby secured and the release of this Assignment.

The rights and remedies of the Assignee hereunder are cumulative and are not secondary to or in lieu of but are in addition to any rights or remedies which the Assignee shall have under the said Note, Mortgage or any other instrument or document or under applicable law and the exercise by Assignee of any rights and remedies herein contained shall not be deemed a waiver of any other

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rights or remedies of Assignee, whether arising under the Note, Mortgage or otherwise, each and all of which may be exercised whenever Assignee deems it in its interest to do so. The rights and remedies of the Assignee may be exercised from time to time and as often as such exercise is deemed expedient and the failure of the Assignee to enforce any of the terms, provisions and conditions of this Assignment for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

The right of the Assignee to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to the Assignee shall, to the extent not prohibited by law, extend also to the period from and after the filing of any suits to foreclose the liens of the Mortgage, including any period allowed by law for the redemption of the premises after any foreclosure sale.

Assignor hereby agrees to indemnify the Assignee and to hold them harmless from any liability, loss or damage including without limitation reasonable attorneys' fees which may or might be incurred by them under the Leases or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligations or undertakings on their part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases.

This Assignment shall be assignable by the Assignee and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective executors, administrators, heirs, legal representatives, successors and assigns of each of the parties hereto. All provisions hereof are severable and if any provisions hereof shall be invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall in no way be affected thereby.

This Assignment and all provisions hereof, shall extend to and be binding upon the Assignor and all persons claiming under or through the Assignor, and the word "Assignor" when used herein shall include all such persons, jointly and severally.

TO INDUCE ASSIGNEE TO ACCEPT THIS ASSIGNMENT, ASSIGNOR IRREVOCABLY AGREES THAT, SUBJECT TO ASSIGNEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS ASSIGNMENT SHALL BE LITIGATED IN COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO, STATE OF ILLINOIS. ASSIGNOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID CITY AND STATE. ASSIGNOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST ASSIGNOR BY ASSIGNEE IN ACCORDANCE WITH THIS PARAGRAPH.

ASSIGNOR AND ASSIGNEE BY ITS ACCEPTANCE OF THIS ASSIGNMENT, HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS ASSIGNMENT AND THE BUSINESS RELATIONSHIP THAT IS BEING ESTABLISHED. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY

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ASSIGNOR AND ASSIGNEE, AND ASSIGNOR ACKNOWLEDGES THAT NEITHER ASSIGNEE NOR ANY PERSON ACTING ON BEHALF OF ASSIGNEE HAS MADE ANY REPRESENTATIONS OF FACT TO INCLUDE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. ASSIGNOR AND ASSIGNEE ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH OF THEM HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS ASSIGNMENT AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. ASSIGNOR AND ASSIGNEE FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL.

Dated as of this 1st day of September, 1999.

IN WITNESS WHEREOF, the undersigned has executed this Assignment as of the date first above written.

BOMAR, L.L.C.

By: 
Its: Member

By: 
Its: Member

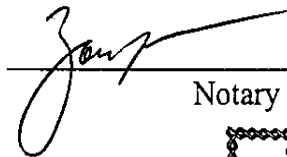
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY, THAT Robert C. Hopkins and Marilyn J. Hopkins, the Members of BoMar, L.L.C., an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and the free and voluntary act of the company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of October, 1999.



Notary Public



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SCHEDULE I

LEGAL DESCRIPTION

Lot 1 in Resubdivision of Prairie Lakes Business Center Lots 1 through 10 and Outlot "B" in Block 1, Recorded as Document No. 99610317, Being a Part of the Northeast 1/4 of Section 32, Township 36 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

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