

2000

COLLATERAL ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT is made as of the ^{15th} day of December, 1986, from AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under the provisions of a deed or deeds in trust duly recorded and delivered to such trustee in pursuance of a Trust Agreement dated December 4, 1986 and known as Trust No. 100768-00 (the "Trustee") and STANLEY E. BONTKOWSKI (the "Beneficiary") who is the sole beneficiary of the Trust Agreement pursuant to which the Trustee acts (the Beneficiary and the Trustee are hereinafter sometimes collectively referred to as the "Assignor") to USAmeribanc/Chicago, an Illinois banking corporation (the "Lender");

WHEREAS, the Trustee has executed (i) a Mortgage Note of even date herewith to the order of Lender in the principal amount of TWO HUNDRED EIGHTY FIVE THOUSAND AND NO/100 DOLLARS (\$285,000.00), (ii) a Mortgage Note of even date herewith to the order of Lender in the principal amount of ONE HUNDRED FORTY FIVE THOUSAND AND NO/100 DOLLARS (\$145,000.00) (said notes shall be collectively referred to hereinafter as the "Note") and (iii) its Mortgage (herein called the "Mortgage") of even date herewith, to secure the Note, conveying the premises (the "Premises") legally described in Exhibit A hereto; and

WHEREAS, as a condition to making the loan (the "Loan") evidenced by the Note, Lender requires the execution and delivery of this Assignment by Assignor as additional security for the Loan;

NOW, THEREFORE, the Assignor, for and in consideration of these presents and the mutual agreements herein contained and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, and as further and additional security for payment of the Note; the principal sum, interest, premiums and other indebtedness evidenced thereby; any amendments, extensions or renewals of the Note; any other indebtedness or obligation secured or guaranteed by the Mortgage; payment of all other suits with interest thereon becoming due and payable to Lender under the provisions of this Assignment; and the performance and discharge of each and every obligation, covenant and agreement of Assignor contained in this Assignment, the Note, the Mortgage or any of the other "Security Documents" (as defined in the Mortgage), does hereby sell, assign and transfer unto the Lender its interest in (i) the Identified Leases, if any, shown on Schedule attached hereto; (ii) all leases or tenancies (including concessions) of the Premises or any part thereof, or any letting of or agreement for the use or occupancy of the Premises or any part thereof, whether written or oral, heretofore or hereafter made or agreed to by any party, including without limitation the Lender in the exercise of the powers herein conferred or otherwise; and (iii) any and all extensions, renewals and replacements of any of the foregoing (all of the leases, tenancies and rights described above are hereinafter collectively referred to as the "Leases" or individually as a "Lease"), together with all the rents, income, issues and profits now due and which may hereafter become due under or by virtue of the Leases, together with all guaranties of any of the foregoing, it being the intention hereby to establish an absolute transfer and assignment of all the foregoing to Lender.

To protect and further the security of this Assignment, the Assignor agrees as follows:

THIS INSTRUMENT PREPARED BY:

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Larry H. Pachter
Rudnick & Wolfe
Suite 2900
30 North LaSalle Street
Chicago, Illinois 60602

Box 416

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1. Agreements Regarding Leases. The Trustee agrees, covenants and represents unto Lender and the Beneficiary agrees, represents and warrants unto Lender as follows:

- (a) Assignor will not enter into any Leases without the prior written consent of Lender;
- (b) Assignor is the sole owner of the entire interest of the lessor in the Leases; without Lender's prior written consent, Assignor will not transfer, sell, assign, pledge, encumber or grant a security interest in any of the Leases; without Lender's prior written consent, Assignor will not consent to, suffer or permit the assignment or subletting of any leasehold estate created thereunder; any attempted assignment or subletting without Lender's written consent, whether by Assignor or by a lessee, shall be null and void;
- (c) any Leases are and will be valid and enforceable in accordance with their terms, and shall remain in full force and effect irrespective of any merger of the interest of lessor and lessee thereunder;
- (d) Assignor will promptly notify Lender of any default or claimed default by lessor or lessee under the Leases of which it becomes aware;
- (e) if any Lease provides for the abatement of rent during repair of the premises demised thereunder by reason of fire or other casualty, Assignor shall furnish rental insurance to Lender in amount and form and written by insurance companies as shall be satisfactory to Lender;
- (f) Assignor shall not hereafter permit any Lease to become subordinate to any lien other than the lien of the Mortgage and any liens to which the Mortgage is now, or may pursuant to its terms become, subordinate, nor terminate, modify or amend any of the Leases or any of the terms thereof without the prior written consent of Lender, and any attempted termination, modification or amendment of any of the Leases without such written consent shall be null and void;
- (g) no payment of rent has been or will be made by any lessee or by any person in possession of any portion of the Premises for more than one month's installment in advance or has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by Assignor, and Assignor agrees not to do or cause to be done nor suffer nor permit any act or omission which would entitle any right of set-off which any lessee or any person in possession of any portion of the Premises may have under any of the Leases, written or oral, or under any other tenancy, whether now existing or hereafter created with respect to the Premises or any portion thereof; Assignor has not made and will not make any other or further assignment of the rents, issues, income or profits of the Premises or of the Leases except subsequent to or in connection with the release of this Assignment with respect to such portion of the Premises so released;
- (h) Assignor shall perform all of its covenants and agreements under the Leases and shall not suffer or permit any release of liability of, or right to withhold payment of rent by, the lessees or any guarantor(s) of lessees obligations therein;
- (i) Assignor shall not commence or continue proceedings to evict, remove or dispossess any lessee under any Lease

or to terminate any Lease without prior written consent of Lender;

- (j) The Identified Leases, if any, and all other existing Leases are valid and unmodified and in full force and effect, except as indicated herein, and the lessees thereunder are not in default under any of the terms, covenants or conditions thereof; and
- (k) Assignor shall not waive, cancel, release, modify, excuse, condone, discount, set-off, compromise or in any manner release or discharge any lessee or guarantor(s) of lessees obligations under any of the Leases from any obligation, covenant, condition or requirement of said Leases, without prior written consent of Lender.

Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification or amendment of any of the Leases prohibited by the terms of this Assignment and any amounts received by Assignor as rents, income, issues or profits from the Premises from and after the date of any "Default" under this Assignment, the Note, the Mortgage or under any of the Security Documents, which default shall not have been cured within the time periods, if any, expressly established therefore, shall be held by Assignor as trustee for Lender and all such amounts shall be accounted for to Lender and shall not be commingled with other funds of Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Lender as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith; by way of example and not of limitation, such notice may be given by an instrument recorded with the Recorder of Deeds of the county in which the Premises are located stating that Assignor has received or will receive such amounts in trust for Lender.

2. Waiver Of Liability. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions hereinafter contained. In the exercise of the powers granted by the Mortgage, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by the Assignor.

3. Further Assurances And Assignments. Assignor further agrees to execute and deliver immediately upon the request of Lender, all such further assurances and assignments concerning the Leases or the Premises as Lender shall from time to time require.

4. Exercise Of Remedies. In any case in which Lender has a right to institute foreclosure proceedings under the provisions of the Mortgage, whether before or after institution of legal proceedings to foreclose the lien thereof or before or after sale thereunder, upon demand of Lender, Assignor agrees to surrender to Lender and Lender shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys, and Lender in its discretion may, with or without force or notice and with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all the documents, books, records, papers and accounts of Assignor or the then owner of the Premises relating thereto, and may exclude Assignor, its agents or servants, wholly therefrom and may as attorney in fact of the Beneficiary or agent of Assignor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion

may be deemed proper or necessary to enforce the payment of security of the rents, income, issues and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, and with full power to cancel or terminate any Lease for any cause or on any ground which would entitle Assignor to cancel the same, to elect to disaffirm any Lease made subsequent to the Mortgage or subordinated to the lien thereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises that may seem judicious to Lender, in its sole discretion, to insure and reinsure the same for all risks incidental to Lender's possession, operation and management thereof and to receive all such rents, income, issues and profits.

5. Indemnity. Lender shall not at any time (notwithstanding any exercise by Lender, or right of Lender to exercise, any powers herein conferred) be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases or rental agreements relating to the Premises, and Beneficiary shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which Lender may or might incur under or by reason of (a) any Leases, (b) the assignment thereof, (c) any action taken by Lender or its agents hereunder, unless constituting wilful misconduct or gross negligence, or (d) claims and demands which may be asserted against it by reason of any alleged obligations or undertakings on its part to (or to cause Assignor to) perform or discharge any of the terms, covenants or agreements contained in the Leases.

6. Application Of Proceeds. Lender, in the exercise of the rights and powers conferred upon it by this Assignment, shall have full power to use and apply the rents, income, issues and profits of the Premises to the payment of or on account of the following, in such order as Lender may determine:

(a) operating expenses of the Premises, including costs of management and leasing thereof (including reasonable compensation to Lender and its agents for management of the Premises, and leasing commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), costs of establishing and premiums on insurance as hereinabove authorized, any claims for damages arising out of the operation of the Premises and the costs of enforcing any of the Leases; it being expressly understood and agreed that Lender, in the exercise of such powers, may so pay any claims purporting to be for any operating expenses of the Premises, without inquiry into, and without respect to, the validity thereof and whether such claims are in fact for operating expenses of the Premises;

(b) taxes and special assessments now due or which may hereafter become due on the Premises;

(c) the costs of all repairs, decorating, renewals; replacements, alterations, additions, or betterments, and improvements of the Premises, including, without limitation, the cost from time to time of installing or replacing such fixtures, furnishings and equipment therein, and of placing the Premises in such condition as will, in the reasonable judgment of Lender, make it readily rentable; or

(d) any indebtedness secured or guaranteed by the Mortgage or any deficiency which may result from any foreclosure sale.

7. Power Of Attorney. Beneficiary does hereby irrevocably appoint the Lender its true and lawful attorney in its name and stead, and Assignor hereby authorizes Lender, with or without taking possession of the Premises, to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as Lender may determine in its sole discretion, and to collect all of said rents, income, issues and profits now or hereafter arising from or accruing or due under the Leases with the same rights and powers and subject to the same immunities, exonerations of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Premises pursuant to the provisions hereinafter set forth. Powers of attorney conferred upon Lender pursuant to this Assignment are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Lender.

8. Occurrence Of Default. Although it is the intention of the parties that this assignment is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Lender shall not exercise any of the rights and powers conferred upon it herein until and unless there shall occur a "Default" as defined in the Mortgage, or a default in the performance and observance by any party other than the Lender of its obligations and agreements under the Note, the Mortgage, this Assignment or any of the other Security Documents, in each instance after any applicable grace periods shall have expired. In the event that any representation or warranty herein of Assignor shall be found to be untrue, or Assignor shall default in the observance or performance of any obligation, term, covenant, condition or warranty herein, then, in such instance, the same shall constitute and be deemed to be a "Default" under the Note and the Mortgage, hereby entitling Lender to declare all sums secured thereby and hereby immediately due and payable, and to exercise any and all of the rights and remedies provided hereunder and hereunder as well as by law. Nothing herein contained shall be deemed to affect or impair any rights which the Lender may have under the Note, Mortgage, or any of the other Security Documents or to affect the impression of a trust upon funds received by a trustee in the manner provided for in Paragraph 1 above.

9. Instruction To Lessees. Assignor further specifically and irrevocably authorizes and instructs each and every present and future lessee or tenant under any Lease of the whole or any part of the Premises to pay all unpaid rental agreed upon in any Lease or other agreement for occupancy of any part of the Premises to Lender upon receipt of demand from Lender so to pay the same, without any inquiry as to whether or not said demand is made in compliance with the immediately preceding paragraph hereof. Lender has not received or been transferred any security deposit with respect to any Lease, and assumes no responsibility for any such security deposit until such time as such security deposit (specified as such with specific reference to the Lease pursuant to which deposited) may be transferred to Lender and accepted by Lender by notice to the lessee under said Lease.

10. Election Of Remedies. It is understood and agreed that the provisions set forth in this Assignment shall be deemed a special remedy given to Lender, and shall not be deemed exclusive of any of the remedies granted in the Note, the Mortgage or any of the other Security Documents but shall be deemed an additional remedy and shall be cumulative with the remedies therein and elsewhere granted Lender, all of which remedies shall be enforceable concurrently or successively. No exercise by Lender of any of its rights hereunder shall cure, waive or affect any default hereunder or "Default" under the Note, the Mortgage or any of the other Security Documents. No inaction or partial exercise of rights by Lender shall be construed as a waiver of any of its such rights and remedies, and no waiver by Lender of any such rights and remedies shall be

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construed as a waiver by Lender of any of its other rights and remedies.

11. Continual Effectiveness. It is expressly understood that no judgment or decree which may be entered on any debt secured or intended to be secured by Lender shall operate to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment, discharge and performance of any and all indebtedness and obligations evidenced by the Note or secured or guaranteed by the Mortgage or any of the other Security Documents, in whatever form, and until all bills incurred by virtue of the authority herein contained have been fully paid out of rents, income, issues and profits of the Premises, or by the Assignor, or until such time as this instrument may be voluntarily released. This instrument shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale, until the issuance of a deed pursuant to a foreclosure decree, unless all indebtedness secured or guaranteed by the Mortgage is fully satisfied before the expiration of any period of redemption.

12. Bankruptcy. In the event any lessee under the Leases should be 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, Assignor covenants and agrees that if any of the Leases 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 Assignor and Lender. Assignor 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 will be applied to whatever portion of the indebtedness secured by this Assignment that Lender may elect.

13. Release Of Mortgage. To the extent, if any, that any provisions of the Mortgage may provide for the partial release thereof upon conditions therein stated, the Leases of any portion of the Premises which may be released from the lien of the Mortgage pursuant to such provisions, and any rents, issues and profits thereafter accruing with respect thereto, shall ipso facto be immediately released from this Assignment without the necessity of further action or instrument.

14. Notices. Any notice which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given if and when personally delivered, or on the second (2nd) business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth below, or at such other place as such party may have designated to all other parties by notice in writing in accordance herewith:

(a) If to Assignor:

American National Bank and Trust
Company of Chicago
33 North LaSalle Street
Chicago, Illinois 60690
Attn: Land Trust Department

and

Stanley E. Bontkowski, President
Brass Roots, Inc.
~~2545 West Polk~~ 5850 W. Ogden
~~Chicago, Illinois 60612~~ CICEK, ILL 60650

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with a copy to:

Hugo Tagli, Jr., Esq.
8303 West Higgins
Suite 220
Chicago, Illinois 60631

(b) If to Lender:

USAmeribanc/Chicago
307 North Michigan Avenue
Chicago, Illinois 60601
Attn: Thomas A. Farrell

with a copy to:

Rudnick & Wolfe
30 North LaSalle Street
Suite 2900
Chicago, Illinois 60602
Attn: Larry H. Pachter, Esq.

Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Assignment is not required to be given.

15. Binding Agreements. This Assignment and all provisions hereof shall be binding upon Trustee and Beneficiary, their successors, assigns, and legal representatives and all other persons or entities claiming under or through them, or either of them, and the word "Assignor", when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Assignment. The word "Lender", when used herein, shall include Lender's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

16. Governing Law; Interpretation. This Assignment shall be governed by the laws of the State of Illinois in which State the Note and this Assignment were executed and delivered, the Premises are located, the proceeds of the Loan evidenced by the Note were disbursed by Lender, and the principal and interest due under the Note are to be paid. Wherever possible each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be prohibited by or invalid under such 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 Assignment. Time is of the essence of this Assignment.

17. Miscellaneous. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally. The Paragraph headings used herein are for convenience of reference only and shall not define or limit the provisions of this Assignment. As used in this Assignment, the singular shall include the plural and the plural shall include the singular and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

18. Joint and Several Liability. The Beneficiary and Trustee shall be jointly and severally liable hereunder. An action to enforce this Assignment may be brought against either the Beneficiary or Trustee without any requirement of joinder of the other party in such action. Any amounts due under this Assignment may be recovered in full from either the Beneficiary or Trustee.

19. Trustee Exculpation. This Assignment is executed and delivered by the undersigned trustee, not personally but as Trustee as aforesaid, in the exercise of the power and authority

conferred upon and vested in it as such Trustee, provided that said Trustee hereby personally warrants that it possesses full power and authority to execute and deliver the same. It is expressly understood and agreed that nothing contained in this Assignment shall be construed as creating any liability on said Trustee personally to pay the indebtedness secured by this Assignment or any interest that may accrue thereon or to perform any covenant, express or implied, contained herein, all such personal liability, if any, being expressly waived by Assignee and by every person now or hereafter claiming any right or security hereunder, provided, however, nothing herein contained shall be construed in any way so as to limit or restrict any of the rights and remedies of Lender against Beneficiary or any other party other than Trustee under this Assignment or any other document or instrument evidencing, securing or guarantying the indebtedness evidenced by the Note.

IN WITNESS WHEREOF, the undersigned have caused this Assignment to be executed as of the day and year first above written.

TRUSTEE:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee as aforesaid

By: [Signature]
Name: J. A. Whelan
Title: VP

Attest:

[Signature]
Name: P. JOHANSEN
Title: Assy Secy

BENEFICIARY:

[Signature]
Stanley E. Bontkowski

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SCHEDULE I

The Identified Leases

Name of Lessee

Date of Lease

Term of Lease

Property of Cook County Clerk's Office

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UNOFFICIAL COPY

EXHIBIT A

TO
COLLATERAL ASSIGNMENT OF LEASES AND RENTS

THE WEST 160 FEET MEASURED ON WEST 31ST STREET OF THAT PART LYING NORTH OF THE CENTER LINE OF OGDEN AVENUE (EXCEPT STREETS AND EXCEPT THE WEST 33 FEET) OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTH EAST 1/4 OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

Commonly known as 5850 West Ogden Avenue, Cicero, Illinois.

Tax # 16-32-201-001
W 1/2 NE 1/4 DM

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