

UNOFFICIAL COPY

ASSIGNMENT OF LEASES AND RENTS

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THIS ASSIGNMENT OF LEASES AND RENTS made this 25th day of July, 1986

between Kenneth E. Upshaw, a single person (the "Assignor") and WELLS FARGO CREDIT CORPORATION, a California corporation, (the "Assignee");

1. Definitions. The following words and phrases shall have the following meanings under this Assignment:

1.1 "Premises" shall mean Lots 6 and 7 in Block 1 in Hartmann's Subdivision of Block 46 in the Subdivision of Section 19, Township 40 North, Range 14 East of the Third Principal Meridian, (Except the Southwest 1/4 of the Northwest 1/4 of the Southeast 1/4 of the Northwest 1/4 and the East 1/2 of the Southeast 1/4 thereof), in Cook County, Illinois, PTN:14-19-325-041 Affects Lot 6 14-19-325-042 Affects Lot 7 AKA: 2244-46 Leavitt, Chicago, Il.

1.2 "Leases" shall mean any and all of the leases, rental agreements, or arrangements for the use or occupancy of the Premises that may now be in effect, including but not limited to those certain leases described on Exhibit A attached hereto and incorporated herein by reference, as well as any future or additional leases, rental agreements, or arrangements for the use or occupancy of the Premises, and any renewals, extensions, modifications, or replacements of such leases or rental agreements that may be entered into by Assignor for the lease or rental of the Premises, or any part thereof, or by Assignee under the power to enter and execute such leases hereinafter granted by this instrument.

1.3 "Lessees" shall mean any and all of the tenants and other occupants of the Premises under the Leases.

1.4 "Note" shall mean that certain promissory note made by Assignor of even date herewith in the principal amount of \$ 57,218.00 and payable to Assignee, and any modifications, amendments, renewals, extensions, or replacements thereof.

1.5 "Deed of Trust" or "Mortgage" shall mean the deed of trust or mortgage securing the Note and encumbering the Premises, and any other instrument securing the Note, and any modifications, amendments, renewals, extensions, or replacements thereof.

2. Consideration. The consideration for this agreement is the loan from Assignor to Assignee as evidenced by the Note.

3. Assignment. Assignor hereby assigns unto Assignee as security for the payment of principal and interest provided to be paid in the Note and for the performance of the covenants contained in the Note and Deed of Trust or Mortgage:

3.1 All of the right, title, and interest of Assignor in, under, or by virtue of the Leases.

3.2 All guarantees of the obligations of Lessees under any provisions of the Leases or otherwise.

3.3 All rents, income, and profits arising from the Leases and any and all payments derived therefrom, including, but not limited to, the following:

3.3.1 claims for the recovery of damages done to the Premises or for the abatement of nuisances existing on the Premises;

3.3.2 claims for damages resulting from defaults under the Leases, whether resulting from acts of insolvency or acts of bankruptcy or otherwise;

3.3.3 lump sum payments for the cancellation, termination, or modification of the Leases;

3.3.4 return of any insurance premiums;

3.3.5 refunds of ad valorem tax payments made in advance.

3.4 All other rents, income, and profits in which Assignor has or will have an interest under or by virtue of its ownership, use, management, or occupancy of the Premises.

4. Reservation.

4.1 Assignor reserves the right to collect and retain the rentals as they become due, but not for more than one month in advance, under the Leases, but only so long as there is no default in any of the terms, covenants, or provisions of the Note, of the Deed of Trust (or Mortgage), or of this instrument.

4.2 Notwithstanding said reserved right, Assignee, and not Assignor, shall be and shall be deemed to be the creditor of the Lessees in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such Lessees, without obligation on the part of Assignee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein. Assignee shall have the option to apply proceeds received on such claims in reduction of the principal or interest or any other indebtedness secured by or to be paid pursuant to the Note and Deed of Trust (or Mortgage) or pursuant to this Assignment.

5. Warranties of Assignor. Assignor represents and warrants to Assignee that:

5.1 The terms of the Leases described on Exhibit A as submitted to Assignee embody the entire agreements now existing between Assignor and the respective Lessees under said Leases, there are no defaults existing under said Leases, all conditions precedent to the effectiveness of said Leases have been satisfied, except as to the completion of tenant space, occupancy thereunder, and acceptance thereof by said Lessees. Assignor has not executed or granted any modification whatever of said Leases, either orally or in writing, performed any act, omitted to perform any act, or entered into any agreement which would have the effect of modifying the Leases, and said leases are in full force and effect according to the terms set forth in the Leases submitted to Assignee.

5.2 The Leases shall remain in full force and effect irrespective of any merger of the interest of the landlord and any Lessee thereunder.

5.3 Assignor has not executed and shall not execute any other assignment of the Leases or of any interest in those Leases or of any of the rents, income, or profits payable under those Leases, as security for the repayment of any indebtedness other than the indebtedness under the Note.

5.4 Assignor has not performed any acts or executed any other instrument which might prevent Assignee from operating under any of the terms and conditions of this Assignment.

6. Covenants of Assignor. Assignor covenants and agrees as follows:

6.1 Assignor shall perform all of its covenants and agreements as lessor under the Leases, and shall not suffer or permit to occur any release of liability of Lessees or the accrual of any right in Lessees to withhold payments of rents.

6.2 Assignor shall give prompt notice to Assignee of any notice of Assignor's default received from the Lessees or from any other person and shall furnish Assignee with complete copies of said notice.

6.3 At its expense, Assignor shall enforce or secure the performance of each and every obligation, covenant, condition, and agreement to be performed under any of the Leases by any Lessee.

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6.4 Assignor shall not amend, cancel, abridge, surrender, terminate or change, alter, or otherwise modify the Leases, or consent to any assignment or hypothecation thereof or subletting thereunder (except as may be expressly permitted therein to be done without Assignor's consent), or request, consent, agree to, or accept a subordination of the Leases to the Deed of Trust (or Mortgage) or any other mortgage or other encumbrance now or hereafter affecting the Premises, or waive, excuse, condone, or in any manner release or discharge any Lessee from the obligations and agreements by the Lessee to be performed, or accept any prepayment of rent or installments of rent for more than one month in advance, without the prior written consent of Assignee, except that Assignor may increase rentals without such consent. Any attempted amendment, cancellation, abridgement, surrender, termination, change, alteration, or other modification of the Leases without the written consent of Assignee shall be null and void.

6.5 At Assignor's sole cost and expense to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties, or liabilities of Lessor and Lessee thereunder, and to pay all costs and expenses of the Assignee, including attorneys' fees in any reasonable sum in any action or proceeding in which the Assignee may appear.

6.7 Assignor shall reimburse Assignee upon demand for any expenses or liabilities incurred by Assignee under this Assignment, together with interest at the rate provided in the Note to be applicable after maturity, whether Assignee acts as agent of Assignor (in performance of Assignor's obligations) or under an express assumption of Assignor's obligations, or in the exercise of any of the rights, powers, or privileges accorded Assignee under this Assignment, including, without limitation, attorneys' fees incurred by Assignee in enforcing or exercising any of its rights under this Assignment.

6.8 Assignor shall execute and deliver to Assignee upon demand any further or supplemental assignments of Leases to effectuate the intentions of this Assignment.

7. Events of Default. It shall be an event of default under this Assignment if:

- 7.1 Any default occurs under the Note or Deed of Trust or Mortgage;
- 7.2 Assignor shall fail to perform or observe any of its covenants hereunder; or
- 7.3 Any representation of Assignor in this Assignment or in the Note or Deed of Trust shall be untrue.

8. Remedies of Assignee.

8.1 Upon occurrence of an event of default, Assignor's right to collect and retain rentals shall terminate without notice and Assignee may:

8.1.1 enter upon, take possession of, manage, and operate the Premises or any part of the Premises;

8.1.2 demand, collect and receive from the Lessees the rents, income, or profits under the Leases as they become due, as well as all past due rents, income, and profits which have been uncollected by Assignor;

8.1.3 endorse the name of the Assignor or any subsequent owner of the Premises on any checks, notes, or other instruments for the payment of money, deposit the same in bank accounts, and give any and all acquittances or any other instrument in relation thereto in the name of the Assignor;

8.1.4 institute, prosecute, settle, or compromise any summary or legal proceedings in the name of the Assignor or in the name of the Assignee for the recovery of such rents, income, or profits, for the recovery of damages done to the Premises, for the abatement of any nuisance thereon, for the eviction of any Lessee or for the enforcement of any Lease, and defend any legal proceedings brought against the Assignor arising out of the operation of the Premises;

8.1.5 pay all charges, expenses, and fees deemed by it in its sole and absolute discretion necessary or expedient for the leasing, maintaining, and operation of the Premises;

8.1.6 exercise all the rights and privileges of Assignor as owner of the Premises, including the right to let or relet the Premises, or any part of the Premises, and to collect the rents, income, and profits under such new Lease in accordance with the foregoing;

8.1.7 perform any of Assignor's obligations to the Lessees under the Leases, exercise any of Assignor's rights, powers, or privileges under the Leases, and modify the Leases;

8.1.8 apply the rentals received to expenses incurred by Assignee under this Assignment or to reduce the indebtedness under the Note and Deed of Trust (or Mortgage) in such amounts and in such order as Assignee in its sole discretion shall determine;

8.1.9 at its election, assume any of the obligations of Assignor or its assigns to the Lessees under the Leases; or

8.1.10 exercise any of Assignee's rights or remedies under the Note or Deed of Trust (or Mortgage).

8.2 The rights and remedies of Assignee under this instrument are cumulative and are not in lieu of, but are in addition to, and their exercise or the failure to exercise them shall not constitute a waiver of, any other rights and remedies which the Assignee shall have under the Note or Deed of Trust (or Mortgage).

8.3 The rights and remedies of Assignee under this Assignment may be exercised from time to time, without regard to the adequacy of security for the indebtedness secured by this Assignment, either in person or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a court, and as often as such exercise is deemed expedient by Assignee.

9. Obligations of Assignee and Indemnity.

9.1 Assignor by this Assignment appoints Assignee as its agent, to exercise at Assignee's option, any of the rights set forth in paragraph 8.1. All obligations created by the exercise of such agency shall be those of Assignor and not those of Assignee, except as otherwise provided in this Assignment. Assignor hereby ratifies and confirms all that Assignee shall lawfully do or cause to be done by virtue of this Assignment.

9.2 Assignee shall only be accountable for money actually received pursuant to this Assignment. The manner of the application of such rentals, the reasonableness of the costs and charges to which such rentals are applied, and the item or items which shall be credited thereby shall be within the sole and uncontrolled discretion of Assignee. Assignee shall in no way be responsible in excess of rents actually received by Assignee for any debt incurred in respect to the Premises. After Assignor shall have been barred and foreclosed of all right, title, and interest and equity of redemption in said Premises, Assignee shall not be liable to account to Assignor for the rents, income, and profits thereafter accruing.

9.3 Assignee shall in no way be responsible or liable for any failure to account for any rents collected by any agent, manager, receiver, or collector of the Premises whom it may designate or appoint to collect the rents or manage the Premises, nor shall the Assignee be in any way liable to the Assignor for the failure or refusal on its part to make repairs to the Premises.

9.4 No security deposited by the Lessees with the Lessor under the terms of the Leases has been transferred to the Assignee, and Assignee assumes no liability for any security so deposited.

9.5 Except as otherwise provided in this Assignment, this Assignment shall not operate to place responsibility for the control, care, management, or repair of the Premises upon Assignee, nor the carrying out of any of the terms and conditions of the Leases, unless such responsibility is specifically assumed by Assignee in writing; nor shall it operate to make Assignee responsible or liable for

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STATE OF Illinois)

COUNTY OF Cook) ss.

Subscribed and sworn to before me this 25th day of July, 1986

by Kenneth E. Upshaw, a single person

My commission expires: 2/5/90

STATE OF _____)

COUNTY OF _____) ss.

Paula Podvin
Notary

Subscribed and sworn to before me this _____ day of _____

by _____

My commission expires: _____

STATE OF Illinois)

COUNTY OF Cook) ss.

Subscribed and sworn to before me this 25th day of July, 1986

by Craig Gammon, as Assistant Vice President of Wells Fargo Credit Corporation, a California corporation.

My commission expires: June 21, 1989

Christine Schneider
Notary

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This instrument prepared by:

mail to:
WELLS FARGO CREDIT CORP
One Century Center
1750 East Golf Rd.
Suite #150
Schaumburg, IL 60195

When recorded, return to:
Box 15

DEPT-61 RECORDING \$13.00
743333 TRAN 7203 07/28/86 15:28:00
1991 # A * - 84 - 320062
COOK COUNTY RECORDER

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any waste committed on the Premises by the Lessees or any 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, licensee, employee, or stranger.

9.6 Assignor, by this Assignment indemnifies and holds Assignee harmless of and from any and all liability, loss, or damage which Assignee may incur under the Leases or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking to be performed or discharged by Assignee under the Leases or this Assignment. Should the Assignee incur any such liability, loss, or damage under the Leases, or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall be secured by this Assignment, and Assignor shall reimburse Assignee therefor immediately upon demand, and upon the failure of Assignor so to do, Assignee may declare all sums secured by this Assignment immediately due and payable.

9.7 Nothing contained in this Assignment shall be construed to bind Assignee to the performance of any of the terms and provisions contained in the Leases or otherwise to impose any obligation on Assignee to do any act which it may be authorized to do under this Assignment.

10. Notice to Lessees. Assignor irrevocably consents that the Lessees under the Leases, upon demand and notice from Assignee of the occurrence of a default under the Note, under the Deed of Trust or Mortgage, or under this Assignment, may and shall pay the rents, income, and profits under the Leases to Assignee without liability of Lessees for the determination of the actual existence of any default claimed by Assignee. Assignor hereby irrevocably authorizes and directs Lessees, upon receipt of any notice of Assignee stating that such a default exists, to pay to Assignee the rents, income, and profits due and to become due under the Leases. Assignor agrees that Lessees shall have the right to rely upon any such notices of Assignee and that Lessees shall pay such rents, income, and profits to Assignee without any obligation or right to inquire whether such default actually exists, and notwithstanding any claim of Assignor to the contrary. Assignor shall have no claim against Lessees for any rents paid by Lessees to Assignee. Upon the curing of all such defaults, Assignee shall give written notice of that cure to Lessees and after that notice, until further notice from Assignee, Lessees shall pay such rents, income, and profits to Assignor.

11. Miscellaneous.

11.1 Assignee shall have the right to assign the interests acquired by this Assignment to any subsequent holder of the Note and Deed of Trust and to any person acquiring title to the Premises through foreclosure or otherwise.

11.2 No change, amendment, modification, abridgement, cancellation, or discharge of this Assignment or of any part of this Assignment, shall be valid unless consented to in writing by Assignee.

11.3 To the extent that any of the terms, covenants, or conditions contained in this Assignment are in conflict with or inconsistent with any of the terms, conditions, or provisions of the Note or Deed of Trust (or Mortgage), the provisions of the Note and Deed of Trust (or Mortgage) shall prevail.

11.4 Assignee may take security in addition to the security already given Assignee for the payment of the indebtedness under the Note, under the Deed of Trust (or Mortgage), or under this Assignment, or may release such other security, may release any party primarily or secondarily liable on the Note, may grant or make extensions, renewals, modifications, and indulgences on the same or on different terms from the present terms of said Note or Deed of Trust (or Mortgage), and may apply any other security therefor held by it to the satisfaction of such Note or Deed of Trust (or Mortgage) without prejudice to any of its rights under this Assignment and the Leases and the benefits by this Assignment assigned shall continue as security in accordance with the terms of this Assignment.

11.5 Any notices required or permitted under this Assignment or which any party elects to give, shall be in writing and shall be delivered either personally to the other party or the other party's authorized agent set forth below (or as changed by written notice), or by depositing such notice in the United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the person at the address set forth below, or to such other address as either party may later designate in writing:

Assignor: Kenneth E. Urshaw
5118 N. Tripp
Chicago, IL 60630
Assignee: Wells Fargo Credit Corporation, a California corporation
1750 E. Golf Road, Suite 150
Schaumburg, IL 60173

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Any notice given by mail as provided shall be deemed given when deposited in the United States mail.

11.6 The paragraph headings in this Assignment are inserted for convenience only and shall in no way define, limit or prescribe the scope or intent of any provision of this Assignment.

11.7 This Assignment may be executed in several counterparts, and each such counterpart shall be deemed to be an original.

11.8 Wherever required by the context, the singular number shall include the plural number, the plural number shall include the singular number, the masculine gender shall include the neuter and feminine gender, the feminine gender shall include the masculine and neuter gender, and the neuter gender shall include the masculine and feminine gender.

11.9 Upon payment in full of the entire indebtedness accrued by this Assignment as evidenced by a recorded satisfaction or release of the Deed of Trust (or Mortgage), this Assignment shall be void and of no effect, and no instrument or reassignment, release, or satisfaction of this Assignment shall be necessary, provided however, that Assignee will in such event execute and deliver to Assignor such other documents evidencing releasing of this Assignment as Assignor may reasonably request.

11.11 All covenants and agreements contained in this Assignment shall extend to, and inure to the benefit of, and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties to this Assignment except that no assignment by Assignor in violation of the Note, Deed of Trust (or Mortgage), or this Assignment shall be of any effect.

IN WITNESS WHEREOF, this agreement was executed on the date first above written.

Assignor: Kenneth E. Urshaw
Kenneth E. Urshaw

Assignee: Wells Fargo Credit Corporation, a California corporation
By: Craig Gammon
Craig Gammon
Its: Assistant Vice President