

# UNOFFICIAL COPY

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## ASSIGNMENT OF RENTS AND LEASES

24.00

THIS ASSIGNMENT is made jointly and severally on October 24, 1990, by and among <sup>LaSalle National Trust, N.A., successor trustee, to</sup> LASALLE NATIONAL BANK, not personally, but as Trustee under Trust Agreement dated September 29, 1988 and known as Trust Number 113468 whose mailing address is 115 South LaSalle Street, Chicago, Illinois 60690 ("Trustee") and JAMES P. GIERCZYK whose mailing address is 16200 Clinton Avenue, Harvey, Illinois 60426 (collectively \*\* "Beneficiary"), and GIERCZYK DEVELOPMENT, INC., an Illinois corporation, whose business address is 16200 Clinton Avenue, Harvey, Illinois 60426 ("Corporation"), to FIRST MIDWEST BANK/ILLINOIS, N.A., a national banking association whose mailing address is 50 West Jefferson Street, Joliet, Illinois 60431 ("Assignee"). Trustee, Beneficiary and Corporation are hereinafter collectively called the "Assignor." Beneficiary owns one hundred percent (100%) of the beneficial interest under said Trust Agreement, but has no legal or equitable interest in the Premises hereinafter described,

### WITNESSETH

Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby bargain, sell, transfer, assign, convey, set over and deliver unto Assignee all right, title and interest of the Assignor and each of them in, to and under all present leases of the Premises described in EXHIBIT "A" attached hereto and made a part hereof ("Premises") (including those leases described on the SCHEDULE OF LEASES attached hereto and made a part hereof as Exhibit "B") together with all future leases hereinafter entered into by any lessor affecting the Premises, and all guaranties, amendments, extensions and renewals of said leases and each of them (all of which are hereinafter collectively called the "Leases") and all rents, income and profits which may now or hereafter be or become due or owing under the Leases and each of them, or on account of the use of the Premises.

This Assignment is made for the purposes of securing:

A. The payment of the Indebtedness (including any extensions and renewals thereof) evidenced by a certain INSTALLMENT NOTE of Borrower of even date herewith in the principal sum of \$3,500,000.00 (the "Note") and secured by a certain MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") of Borrower of even date herewith, encumbering the Premises; and

\*\*The beneficiary is James P. Gierczyk Trust

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B. The payment of all other sums with interest thereon becoming due and payable to Assignee under the provisions of the Mortgage and all other instruments constituting security for the Notes; and

C. The performance and discharge of each and every term, covenant and condition of Borrower contained in the Note, Mortgage and in all other instruments constituting security for the Note.

Assignor covenants and agrees with Assignee as follows:

1. That there is no present lease of the Premises not listed on the SCHEDULE OF LEASES.

2. That the sole ownership of the entire landlords' interest in the leases is vested in Borrower (or Beneficiary) or Beneficiary, or both of them. Borrower (and Beneficiary) have not, and each shall not: (a) perform any act or execute any other instrument which might prevent Assignee from fully exercising its rights under any term, covenant or condition of this Assignment; (b) execute any assignment or pledge, of rents, income, profits or any of the Leases except an assignment or pledge securing the Indebtedness secured hereby; (c) accept any payment of any installment of rent more than thirty (30) days before the due date thereof; or (d) make any lease of the Premises except for actual occupancy by the tenant thereunder.

3. That each of those Leases listed on the SCHEDULE OF LEASES is valid and enforceable in accordance with its terms and none has been altered, modified, amended, terminated, cancelled, renewed or surrendered nor has any term or condition thereof been waived in any manner whatsoever, except as heretofore approved in writing by Assignee.

4. That, without the prior written approval of the Assignee, which consent shall not be unreasonably withheld none of the Leases shall be altered, modified, amended, terminated, cancelled or surrendered, except in the ordinary course of business and only in the event such action does not have a material adverse effect on the operation of, or the rental income from, the Premises, nor shall any term or condition thereof be waived.

5. That there is no default now existing under any of the Leases in the payment of rent, and, to the best of Assignor's knowledge, there is no other default now existing under any of the Leases, and to the best of Assignor's knowledge, there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases;

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and that Assignor will fulfill and perform each and every covenant and condition of each of the Leases by the landlord thereunder to be fulfilled or performed and, at the sole cost and expense of Assignor, enforce (short of termination of any of the Leases) the performance and observance of each and every covenant and condition of all such Leases by the tenants thereunder to be performed and observed.

6. That Assignor shall give prompt notice to Assignee of each notice received by Assignor or any of them claiming that a default has occurred under any of the Leases on the part of the landlord, together with a complete copy of each such notice.

7. That each of the Leases shall remain in full force and effect irrespective of any merger of the interest of any landlord and any tenant under any of the Leases.

8. That, without Assignee's prior written consent in each case, Assignor will not suffer or permit any of the Leases to become subordinate to any lien other than the lien of the Mortgage, this Assignment and general real estate taxes not delinquent.

9. That this Assignment is absolute and is effective immediately; however, until notice is sent by Assignee to the Assignor in writing that an event of default has occurred under the Note or under any other instrument at any time constituting security for the Note and has not been cured within the applicable cure periods (an "Event of Default") (each such notice is hereafter called a "Notice"), Assignor may receive, collect and enjoy the rents, income and profits accruing from the Premises.

10. That if any Event of Default occurs at any time, Assignee may (at its option after service of a Notice) receive and collect when due all such rents, income and profits from the Premises and under any and all Leases of all or any part of the Premises. Assignee shall thereafter continue to receive and collect all such rents, income and profits until such event of default is cured and during the pendency of any foreclosure proceedings, and (if there is a deficiency) during the redemption period (if any).

11. That Beneficiary hereby irrevocably appoints Assignee its true and lawful attorney-in-fact, with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor (from and after an Event of Default and the service of a Notice) to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Premises, and at

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Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits, All present and future tenants of the Premises are hereby expressly authorized and directed (from and after an Event of Default and service of a Notice) to pay to Assignee, or to such nominee as Assignee may designate in a writing delivered to and received by such tenants, all amounts due Assignor or any of them pursuant to the Leases, All present and future tenants are further expressly authorized and directed to rely on notices from Assignee and shall have no right or duty to inquire as to whether any event of default has actually occurred or is then existing, All present and future tenants are expressly relieved of all duty, liability or obligation to Assignor and each of them in respect of all payments so made to Assignee or such nominee.

12. That after an Event of Default and service of a Notice, Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Assignee or its designee to enter upon the Premises, or any part thereof, and take possession of all or any part of the Premises together with all personal property, fixtures, documents, books, records, papers and accounts of Assignor and each of them relating thereto, and may exclude the Assignor and its agents and servants wholly therefrom. Assignor hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times (after an Event of Default and service of a Notice) without further notice to Assignor, with full power to use and apply all of the rents and other income herein assigned to payment of the costs of managing and operating the Premises and to payment of all indebtedness and liability of Borrower to Assignee, including but not limited to: (a) the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Premises or of making the same rentable, attorney's fees incurred in connection with the enforcement of this Assignment; and (b) principal and interest payments due from Borrower to Assignee on the Notes and the Mortgage; all in such order and for such time as Assignee may determine.

13. That Assignee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of any landlord under any of the Leases. Assignee does not hereby assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Assignor or any of them under any of the Leases.

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14. That Assignor hereby agrees to indemnify Assignee and to hold Assignee harmless from any liability, loss or damage including, without limitation, reasonable attorneys' fees which may or might be Incurred by Assignee under the Leases or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any term, covenant or agreement contained in any of the Leases, except any liability, loss or damage or claims or demands resulting from Assignee's own actions or gross negligence.

15. That this Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Assignee, nor shall it operate to make Assignee liable for the performance or observance of any term, condition, covenant or agreement contained in any of the Leases, or for any waste of the Premises by any tenant under any of the Leases or any other person, 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, other than as a result of Assignee's own actions.

16. That Assignee may: (a) take or release other security; (b) release any party primarily or secondarily liable for any of the Indebtedness secured hereby; (c) grant extensions, renewals or indulgences with respect to such Indebtedness; and (d) apply any other security therefor held by Assignee to the satisfaction of such Indebtedness; in each case without prejudice to any of Assignee's other rights hereunder or under any other security given to secure the Indebtedness secured hereby.

17. That Assignee may, at its option after reasonable notice to the Assignor, although it shall not be obligated to do so, perform any Lease covenant for and on behalf of the Assignor and each of them, and all monies expended in so doing shall be chargeable to the Borrower, with interest thereon at the rate set forth in the Notes applicable to a period when a default exists under the Notes, and shall be added to the Indebtedness secured hereby, and shall be immediately due and payable.

18. That waiver of, or acquiescence by Assignee in, any default by the Assignor, or failure of the Assignee to insist upon strict performance by the Assignor of any covenant, condition or agreement in this Assignment or otherwise, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

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19. That the rights, remedies and powers of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to, all other rights, remedies and powers which Assignee has under the Notes and all instruments constituting security for the Notes, and at law and in equity.

If any provision contained in this Assignment or its application to any person or circumstance is to any extent invalid or unenforceable, the remainder of this Assignment and the application of such provisions to persons or circumstance (other than those as to which it is invalid or unenforceable) shall not be affected, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

Each Notice given pursuant to this Assignment shall be sufficient and shall be deemed served upon personal delivery or upon the third day after deposit in the mails if mailed postage prepaid, certified or registered mail, return receipt requested, to the addresses provided in the Note, or to such other address as a party may indicate in writing by a Notice in accordance herewith.

The term "Assignor," "Assignee," "Borrower" and "Beneficiary" shall be construed to include the heirs, personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

This Assignment may not be amended, modified or changed nor shall any waiver of any provisions hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

THIS ASSIGNMENT is executed by Borrower, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and each of the undersigned hereby warrants that each possesses full power and authority to execute this instrument). Borrower shall have no liability or obligation personally hereunder, all such liability and obligation being waived by Assignee.

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IN WITNESS WHEREOF, the said Assignor has caused this instrument to be signed and sealed as of the date first above written.

LaSalle National Trust, N.A., as successor trustee to  
LASALLE NATIONAL BANK, not  
personally, but as Trustee as  
aforesaid

ATTEST:

By: *Barbara Callen* By: *[Signature]*  
Its: Asst Secretary Its: Asst Vice President

GIERCZYK DEVELOPMENT, INC.,  
an Illinois corporation

By: *[Signature]*  
Its: PRESIDENT

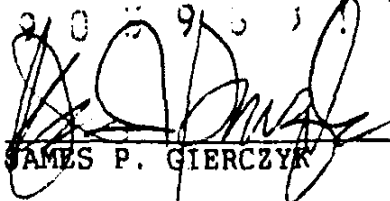
ATTEST:

By: *William P. Lester*  
Its: SECRETARY

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910 910 910  
  
JAMES P. GIERCZYK

INSTRUMENT PREPARED BY:  
*Please Return TO:*  
Richard C. Jones Jr.  
DARDICK & DENLOW  
737 N. Michigan Ave.  
Chicago, Illinois 60611  
(312) 944-7900

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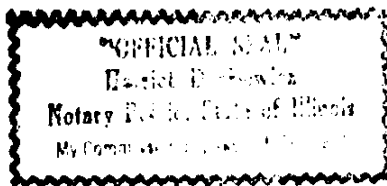
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STATE OF ILLINOIS )
) SS
COUNTY OF WABE )
COOK

I, Harriet Denisewicz, a Notary Public in
and for said County, in the state aforesaid, DO HEREBY CERTIFY
that Corinne Bek, Asst, Vice-President (Trust-Officer) and
Rosemary Collins, Assistant Trust-Officer of LASALLE
NATIONAL BANK, not personally known to me to be the same persons
whose names are subscribed to the foregoing instrument as such
Asst Vice-President (Trust-Officer) and Assistant Trust-Officer, Secretary
respectively, 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 as the free and voluntary
act of said Trustee as aforesaid, for the uses and purposes
therein set forth; and the said Assistant Trust-Officer then and
there acknowledged that said Assistant Trust-Officer, as
custodian of the corporate seal of said Trustee, did affix the
seal of said Trustee to said instrument as said Assistant Trust
Officer's own free and voluntary act and as the free and
voluntary act of said Trustee as aforesaid, for the uses and
purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23rd day of
November, 1990



Handwritten signature of Harriet Denisewicz
Notary Public
My commission expires:

LaSalle National Trust, N.A., successor trustee to\*\*

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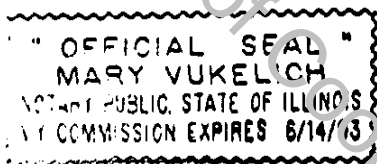
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STATE OF ILLINOIS )  
                           ) SS  
COUNTY OF COOK   )

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, do hereby certify that JAMES P. GIERCZYK, personally known to me to be the President of GIERCZYK DEVELOPMENT, INC., an Illinois corporation, and WILLIAM P. SPSTON, Secretary of said corporation, personally appeared before me this day and acknowledged that they signed the foregoing instrument as their free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of November, 1990.



Mary Vukelich  
NOTARY PUBLIC

My commission expires:

6/14/93

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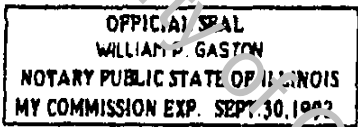
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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF LAKE )

I, WILLIAM P. GASTON, a Notary Public, in and for said County and State, do hereby certify, that JAMES P. GIERCZYK, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20<sup>th</sup> day of NOVEMBER, 1990.



William P. Gaston  
Notary Public

My commission expires:  
9/30/92

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## EXHIBIT A

### Legal Description

That part of the East 1/2 of the Northeast 1/4 of Section 35, Township 35 North, Range 14 East of the Third Principal Meridian bounded and described as follows: Beginning at the point of intersection of the West line of the 200-foot-wide Calumet Expressway with the north line of the Northeast 1/4 of said Section 35; thence West on the last described line 513.00 feet; thence South on a line parallel with the West line of said Calumet Expressway 849.16 feet; thence East on a line parallel with the North line of the Northeast 1/4 of said Section 35 a distance of 513.00 feet to the West line of said Calumet Expressway; thence North on said West line 849.16 feet to the point of beginning in Cook County, Illinois.

P.I.N. 35-35-200-002

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## EXHIBIT B

### Schedule of Leases

1. Lease dated November 30, 1988 between LaSalle National Bank, as trustee under Trust Agreement dated September 29, 1988, and known as Trust No. 113468, as Lessor, and Pacesetter Steel Service, Inc., as Lessee, demising the premises commonly known as 22351 Joshua Drive, Sauk Village, Illinois for a term of Fifteen (15) years.

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