

UNOFFICIAL COPY

BOX 260

ASSIGNMENT OF LEASES AND RENTS

90603770

THIS ASSIGNMENT made as of November 28, 1990 by

NEMESIO CORTEZ AND ZENAIDA CORTEZ, his wife,

("Mortgagor") whose mailing address is 3518 W. Lyndale, Chicago, Illinois 60647 in favor of THE FIRST NATIONAL BANK OF ELGIN, a national banking association, whose address is 6 Fountain Square Plaza, Elgin, Illinois 60120 ("Lender").

This Assignment is given to Lender as additional security for the payment of that certain promissory note (the "Note") of even date payable to the order of Lender in the principal sum of One Hundred One Thousand Five Hundred and 00/100 Dollars (\$101,500.00);

and for the performance of the terms, covenants and conditions in the Note and in that certain mortgage of even date (the "Mortgage") to secure the Note, which Mortgage conveys the property (the "Property") described as follows:

LOT 10 AND THE WEST HALF OF LOT 11 IN KING'S LANE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.L.N.: 06-18-405-010  
06-18-405-011

Address: 1108 Ash Drive Elgin IL 60120

NOW, THEREFORE, Assignor, for and in consideration of these presents and the mutual agreements, herein contained and as further and additional security to the Lender and in consideration of the sum of TEN DOLLARS (\$10.00) to Assignor in hand paid, the receipt whereof is hereby acknowledged, does hereby sell, assign and transfer unto the Lender all leases of the Property, or any part thereof,

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

First National Bank of Elgin  
Attn: John M. Ostrem  
6 Fountain Square Plaza  
Elgin, Illinois 60120

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together with all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use of occupancy of the Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Lender under the powers herein granted, together with all guaranties of any of the foregoing, it being the intention hereby to establish an agreement, and all the avails thereof, to the Lender, and Assignor does hereby authorize the Lender (with or without taking possession of the Property), to rent, lease or let all or any portion of the Property to any party or parties at such rental and upon such terms, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Property, with the same rights and power and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession of the Property pursuant to the provisions hereinafter set forth.

1. Payment of Rent. Assignor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Property for more than on installment in advance and that the payment of none of the rents to accrue for any portion of said Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Assignor. Assignor waives any right or set-off against any person in possession of any portion of the Property. Assignor agrees not to make any other or further assignment of the rents or profits or leases prior to the release of this Assignment.

2. Representations and Covenants. Assignor agrees and represents unto Lender, its successor and assigns as follows:

- (a) attached as Exhibit B is a schedule of all leases existing as of the present date with respect to the Property or part thereof (the "current leases"); all amendments to the current leases are designated on the aforesaid schedule; Assignor is the sole owner of the entire lessor's interest in the current leases;
- (b) no default exists on the part of the lessor or lessee named in the current leases, or their successors and assigns, under the terms, covenants, provisions or agreements therein contained and 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 current leases;
- (c) the current leases are 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) if any of the current leases provide for the abatement of rent during repair of the demised property 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;
- (e) Assignor shall not hereafter terminate, modify or amend any of the current leases or any of the terms thereof without the prior written consent of Lender and any attempted termination, modification or amendment of said leases, or any of them, without such written consent shall be null and void;

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- (f) Assignor or the beneficiaries of Assignor shall perform all of Assignor's covenants and agreements as lessor under each of the current leases and shall not suffer or permit to occur, any release of liability of the lessee therein, or any right of the lessee therein to withhold payment of rent;
- (g) If so requested by the Lender after default under the current leases, Assignor or the beneficiaries of Assignor shall enforce any one or several of the current leases and all remedies available to Assignor against the lessee therein named.

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

4. Further Assurances. Assignor further agrees to execute and deliver immediately upon the request of the Lender, all such further assurances and assignments in the Property as the Lender shall from time to time reasonably require.

5. Present Assignment; 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 the Lender shall not exercise any of the rights and powers conferred upon it herein until and unless one or more of the following events shall occur, which shall constitute Events of Default hereunder: (a) default shall be made in the payment of interest or principal due under the Note; (b) default shall occur in performance or observance of any of the agreements or conditions in the Mortgage; (c) default shall be made in the performance or observance of any of the conditions or agreements hereunder or a default in any instrument now or at any time securing the Note or the debt evidenced thereby or by any extension thereof; and, in each instance, all applicable grace periods, if any, shall have expired, and nothing herein contained shall be deemed to affect or impair any rights which the Lender may have under said Note and Mortgage or any other instrument herein mentioned.

6. Remedies. In any case in which under the provisions of the Mortgage the Lender has a right to institute foreclosure proceedings, whether before or after the entire principal sum secured thereby is declared to be immediately due, or whether before or after institution of legal proceedings to foreclose the lien thereof or before or after sale thereunder, forthwith, upon demand of the Lender, Assignor agrees to surrender to the Lender and the Lender shall be entitled to take actual possession of the Property or any part thereof personally, or by its agents or attorneys, and Lender in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of the Property, together with all the documents, books, records, papers and accounts of Assignor or then owner of the Property relating thereto, and may exclude Assignor, its agents or servants, wholly therefrom and may as attorney in fact or agent of the Mortgagor, or in its own name as Lender and under the powers herein granted, hold, operate, manage and control the Property 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 or in the discretion of its successor or assignee may be deemed proper or necessary to enforce the payment of security of the avails, rents, issues and profits of the Property, including actions for the recovery of rent, actions in

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forceable 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 or sublease for any cause or on any ground which would entitle undersigned to cancel the same, to elect to disaffirm any lease or sublease 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 Property that may seem judicious, in its discretion, to insure and reinsure the same for all risks incidental to Lender's possession, operation and management thereof and to receive all such avails, rents, issues and profits.

7. No Obligation to Perform; Indemnification of Lender. The Lender shall not 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 Property, and Assignor shall and does hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should the Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands Assignor agrees to reimburse the Lender for the amount thereof, including direct costs, direct expenses and reasonable attorney's fees, immediately upon demand.

8. Application of Funds. The Lender in the exercise of the rights and powers conferred upon it by this agreement shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as the Lender may determine:

(a) To the payment of the operating expenses of the Property, including cost of management and leasing thereof (which shall include reasonable compensation to the Lender and its agent or agents, if management be delegated to an agent or agents, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), establish claim for damages, if any, and premiums on insurance hereinabove authorized;

(b) To the payment of taxes and special assessments now due or which may hereafter become due on the Property;

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

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

9. Payment to Lender Directly. Assignor further specifically and irrevocably authorizes and instructs each and every present and future lessee or tenant of the whole or any part of the Property to pay all unpaid rental agreed upon in any tenancy to the Lender upon receipt of demand from said Lender to the same.

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10. Remedies Cumulative; No Waiver. It is understood and agreed that the provisions set forth in the assignment herein shall be deemed a special remedy given to the lender, and shall not be deemed exclusive of any of the remedies granted in the Mortgage, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted and elsewhere granted in any instrument securing the Note, all of which remedies shall be enforceable concurrently or successively. No delay, forbearance or inaction by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall be a waiver of or preclude the exercise of any such right or remedy.

11. Successors and Assigns. Whenever the word "Assignor" is mentioned herein, it is hereby understood that the same includes and shall be binding upon successors and assigns (including successors by consolidation) of Assignor, and any party or parties holding any right, title or interest in the Property by, through or under Assignor. All of the rights, powers, privileges and immunities herein granted and assigned to the Lender shall also inure to its successors and assigns, including all holders, from time to time, of the Note.

12. Continuing Security. It is expressly understood that no judgment or decree which may be entered on any debt secured by this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness secured by the Mortgage, and all bills incurred by virtue of the authority herein contained have been fully paid out of rents, issues and profits of the property, or by 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 the indebtedness secured by the Mortgage is fully satisfied before the expiration of any period of redemption. Lender may at any time take or release other security for the performance of the terms, conditions and covenants contained herein or in the Mortgage or the Note; may release any party primarily or secondarily liable therefore; and may apply any other security held by Lender to the satisfaction of any amounts owed to Lender thereunder without prejudice to any of its rights hereunder.

13. Conflict of Terms. In the event of a conflict between the terms of this Assignment and the Mortgage, the terms of the Mortgage shall control.

14. Interpretation. This Assignment shall be construed pursuant to the laws of the State of Illinois. If any provision of this Assignment, or the application thereof, is adjudicated to be invalid, the validity of the remainder of this Assignment shall be construed as if such invalid part were never included.

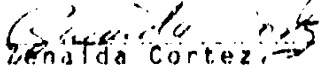
15. Land Trustee Exculpation. If Assignor is a trustee under a land trust ("Trustee"), this Assignment is executed by, not personally but solely as Trustee, as aforesaid. All covenants and conditions to be performed hereunder by, or undertaken by it solely as Trustee as aforesaid and not individually, and no personal liability shall be asserted or be enforceable against by reason or any of the covenants, statements, representations or warranties contained in this Assignment.

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IN WITNESS WHEREOF, Assignor has executed this Assignment as of the 28th day of November, 1990.

## INDIVIDUALS:

  
Nemesio Cortez

  
Zenaida Cortez

STATE OF ILLINOIS )  
COUNTY OF DeKalb ) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Nemesio Cortez and Zenaida Cortez 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 said instrument as their free and voluntary act, for the uses and purposes herein set forth.

GIVEN under my hand and notarial seal this 28th day of November, 1990.

OFFICIAL SEAL  
MARY ROSE STUCKER  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXPI. JULY 22, 1991

  
NOTARY PUBLIC

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