

UNOFFICIAL COPY

90055983

4066

ASSIGNMENT OF LEASES, RENTS, PROFITS, AND CONTRACTS

THIS ASSIGNMENT OF LEASES, RENTS, PROFITS, AND CONTRACTS (this "Assignment") is given by FREDERICK W. CASPERSEN, "Borrower" to NBD NORTHFIELD BANK, an Illinois Banking corporation with principal place of business at 400 Central Avenue, Northfield, Illinois 60093-8905 ("Bank").

\$24.00

WITNESSETH:

WHEREAS, Borrower has requested Bank to provide financial accommodation pursuant to the terms of a Mortgage Note (the "Note"), Mortgage and Security Agreement and other security or supporting documents executed in conjunction therewith, all of even date with this Assignment, (the "Loan Documents"); and

WHEREAS, said Mortgage and Security Agreement (the "Mortgage") applies to certain Real Property located in Cook County, Illinois, as described on Exhibit A attached hereto (the "Land"), and all buildings, improvements, fixtures, and personal property located thereon or related thereto (the "Improvements" hereinafter referred to together with the Land as the "Project"); and

WHEREAS, Bank is willing to extend the Loan only upon the security of the priority of said Mortgage, the various Loan Documents, and as further security, this Assignment.

NOW THEREFORE, in consideration of the foregoing premises and covenants herein contained and in further consideration of the reliance of Bank in extending the Loan, and for other valuable consideration as evidenced by the Loan and Security Agreement and other Loan Documents, the sufficiency of which is hereby acknowledged, the Borrowers do hereby grant, transfer and assign to Bank for collateral purposes all of the Borrowers' right, title and interest in and to: (i) Any present or future lease or tenancy, whether written or oral, covering or affecting all or any part of the Project together with: (a) all guaranties of the aforesaid leases including guaranties of tenant performance; (b) all insurance proceeds, including rental loss coverage and business interruption coverage as to said leases; (c) all awards or proceeds from any condemnation of the property or any part thereof; (d) all judgments or settlements of claims in favor of Borrowers and arising out of said leases in any court proceeding, including any bankruptcy, reorganization, insolvency or debtor proceeding or case or otherwise; and (e)

COOK COUNTY, ILLINOIS
NOTARY PUBLIC

NOV -2 PM 2:09

90055983

72-40-549 D2

1208023

Casper

90055983

UNOFFICIAL COPY

9 9 0 3 1 0 1 3

all security deposits made thereunder (all of which, together with any extensions, modifications or renewals, are collectively referred to as the "Leases" or singularly as a "Lease"); (ii) All rents and other income or payments of any kind due or payable or to become due or payable to the Borrowers as the result of any use, possession or occupancy of all or any portion of the Project or as the result of the use of or lease of any personal property constituting a part of the Project (all of which are collectively referred to as "Rents"), whether the Rents accrue before or after foreclosure of the Mortgage or during any period of redemption from it; (iii) All revenues from the Project in excess of all costs, charges, and expenses which are directly attributable to the operation, repair and maintenance of the Project including all taxes, rates, charges, levies and assessments imposed by any competent authority upon or in respect of the Project (the "Profits"); (iv) All contracts between Borrowers and third parties related to or having to do with the managing, marketing, maintenance or operation in the normal course of business of the Project, except for contracts or subcontracts pertaining to any restoration, refurbishment, improvement or construction of or on the Project (the "Contracts"), all for the purpose of securing:

- (A) Payment of all indebtedness evidenced by the Loan Documents and all other sums secured by the Mortgage or this Assignment; and
- (B) Performance and discharge of each and every obligation, covenant and agreement of the Borrower contained herein and in the various Loan Documents.

The Borrower warrants and covenants that he is and shall remain the absolute owner of the Leases, Rents, Profits, and Contracts, free and clear of all liens and encumbrances that he has not previously assigned or otherwise encumbered any of his interest in any of the Leases, Rents, Profits, or Contracts to any person or entity; that he has the right under applicable law, and under the Leases and the Contracts and otherwise to execute and deliver this Assignment and keep and perform all of their obligations pursuant to it; that he shall warrant and defend the Leases, Rents, Profits, and Contracts against all adverse claims, whether now existing or hereafter arising.

The Borrower further covenants and agrees with Bank as follows:

1. Performance of Leases and Contracts. The Borrower shall faithfully abide by, perform and discharge each obligation, covenant and agreement which he becomes liable to observe or perform under any present or future Lease or Contract, and, at his sole cost and expense, enforce or secure the performance of each obligation, covenant, condition and

20055983

UNOFFICIAL COPY

9 0 0 7 1 0 1 3

agreement to be performed by the tenant under each Lease; provided, however, that a mere technical default shall not give rise to a violation of this clause, unless there also occurs a material deterioration in the Borrower's capacity to satisfy debt service payments under the Note. Except as is consistent with the usual and customary operation of the Project, Borrower shall not hereafter cancel, surrender or terminate any Lease or Contract, exercise any option which might lead to such termination, or change, alter, or modify the same or consent to the release of any part liable thereunder or to an assignment of the lessee's interest therein. The Borrower shall observe and comply with all provisions of law applicable to the operation and ownership of the Project and shall give prompt written notice to Bank of any notice of default on the part of the Borrower or of the tenant or contracting party with respect to any Lease or Contract. Borrower shall further, at his sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or Contract or the obligations, duties, or liabilities of the borrower or any party pursuant to any Lease or Contract.

2. Collection of Rents. The condition of this Assignment is such that unless and until there occurs an Event of Default under the provisions of the Loan Documents, Borrower has the right to enjoy the powers and privileges pursuant to said Leases, Rents, Profits and Contracts; provided however, that from and after the occurrence of an Event of Default, any rights of Borrower to enjoy the powers and privileges of said Leases, Rents, Profits and Contracts shall wholly cease and this and this Assignment automatically becomes operative, without any further action whatsoever, and Bank is then entitled to all of Borrower's right, title and interest in and to the Leases, Rents, Profits, and Contracts, including specifically the right to collect Rents and Profits.

3. Events of Default. Any of the following constitutes an Event of Default under this Assignment:

- A. Borrowers fail to pay to Bank, when due and in good funds, any payment of principal, interest, fees or expenses required by the Note, the Mortgage, or any other Loan Document, and such payment is not tendered to Bank by Borrower within Ten (10) days following written notice that it is due.
- B. Borrower fails to perform or observe any agreement, covenant, or condition, required of him under this Assignment, or any Loan Document, and (except with regard to financial defaults under the preceding subsection for which a shorter cure period is required) such failure is not corrected to Bank's satisfaction

20055983

UNOFFICIAL COPY

9 0 0 1 7 1 3

within ten (10) days of written notice to Borrowers.

- C. Any representation or warranty made by the Borrower in this Assignment, or any Loan document, or in any certificate or document furnished under the terms of, or in conjunction with, this Assignment or any Loan Document proves untrue in any material respect.
 - D. The Borrower admits in writing an inability to pay debts; makes an assignment for the benefit of creditors; is adjudicated a bankrupt; files a voluntary petition pursuant to state or federal bankruptcy laws whether for arrangement, composition or liquidation; has such a petition filed against it, which petition is not dismissed immediately after its filing; effects a plan or other arrangement with creditors; liquidates its assets under court supervision; or applies for or permits the appointment of a Receiver, Trustee, or Custodian for any of its property which is not immediately discharged under the applicable law.
 - E. Borrower transfers, conveys, or demises in a manner not permitted herein or in the Mortgage any interest he possesses in the Premises; creates or permits the creation of any mortgage not previously approved in writing by the Bank; allows an encumbrance or lien thereon; causes or allows the management of the Premises to be removed from the active control of the Borrower; or commits waste.
4. Remedies. Upon the occurrence of any Event of Default, Bank may, at its option, at any time:
- A. in the name, place and stead of the Borrower and without becoming a mortgagee in possession (i) enter upon, manage and operate the Project or retain the services of one or more independent contractors to manage and operate all or any part of the Project; (ii) make, enforce, modify and accept surrender of the Leases and Contracts; (iii) obtain or evict tenants, collect, sue for, fix or modify the Rents and enforce all rights of the Borrower under the Leases or Contracts; (iv) give notice to the parties obligated under the Contracts to perform their obligations thereunder for the benefit of Bank, in like manner as if Bank were the Borrower; and (v) perform any other acts that may be necessary or proper to protect the security of this Assignment.
 - B. with or without exercising the rights set forth in subparagraph (A) above, give or require the Borrower

30055983

UNOFFICIAL COPY

9 9 0 3 7 0 1 3

to give, notice to any or all tenants under the Leases or obligees under the Contracts, authorizing and directing the tenants to pay all Rents under the Leases directly to Bank and the obligees under the Contracts to perform those obligations for the benefit of Bank, in like manner as if it were the Borrower.

- C. without regard to waste, adequacy of the security or solvency of the Borrower, apply for the appointment of a receiver regarding the Project, whether or not foreclosure proceedings are pending under the Mortgage, and if such proceedings were commenced, whether or not a foreclosure sale has occurred; and Borrower consents to such application.

the exercise of any of the foregoing rights or remedies and the application of the rents, profits and income will not cure or waive any Event of Default, or notice of default, under any Loan Document or invalidate any act done pursuant to such notice. This Assignment in no way operates to prevent Bank from pursuing any remedy which it now has or hereafter may have under the terms and conditions of any Loan Document but will be deemed an additional remedy, cumulative with the remedies granted therein.

5. Protecting the Security of This Assignment. Should the Borrower fail to perform or observe any covenant or agreement contained in this Assignment, then following the occurrence of an Event of Default, Bank may, without obligation to do so and without releasing the Borrower from any obligation of any kind, make or do the same in such manner and to such extent as Bank deems appropriate to protect its security as evidenced by this Document, including specifically and without limitation, the right to commence, appear in, and defend any action or proceeding purporting to affect said security, or the right or powers of the Borrower, and also the right to perform and discharge each obligation covenant and agreement of the Borrower contained in the Leases and Contracts, and in exercising any such powers to pay necessary costs and expenses, employ counsel and pay reasonable attorney's fees. The Borrower shall pay immediately upon demand all sums expended by Bank under the authority of this Agreement, together with interest thereon at the rate stated in the Note, and the same will be added to said indebtedness and be secured hereby and by the Mortgage.
6. Present Assignment. This Assignment constitutes a perfected, absolute and present assignment, subject only to the conditions of paragraph (2).
7. Survival of Obligation to Comply with Mortgage and This Assignment. This Assignment is given as security in

00555983

UNOFFICIAL COPY

9 0 0 5 1 0 1 0

addition to the Mortgage. The Borrower shall observe and comply with all terms and conditions contained in the Mortgage and in this Assignment and to preclude any Event of Default from occurring under said Mortgage. All of the Borrowers' obligations under the Mortgage will survive foreclosure of such and the Borrower shall observe and comply with all terms and conditions of said Mortgage and this Assignment to preclude any Event of Default from occurring therewith throughout any applicable period of redemption.

8. Application of Rents, Profits and Income. All Rents, collected by Bank or the receiver each month are to be applied in the following order of priorities, unless applicable law requires a different order of priorities:
- A. to payment of all reasonable fees of the receiver approved by the court;
 - B. to payment of all prior or current real estate taxes and special assessments with respect to the Project or, if the Loan Documents require periodic escrow payments for such taxes and assessments, to the escrow payments then due;
 - C. to payment of all premiums then due for the insurance required by the provisions of the Loan Documents or, if the Loan Documents require periodic escrow payments for such premiums, to the escrow payments then due;
 - D. to payment of expenses incurred for normal maintenance of the Project;
 - E. if applicable law requires, to the repayment when due of all tenant security deposits, together with interest thereon;
 - F. during the entire period of Bank's interest in, lien on, or encumbrance of the Project to Bank for payment of the indebtedness evidenced and secured by the Loan Documents, (which may include payments to priority creditors as disclosed on any Exhibit B hereto, in order to protect the security of Bank's debt as evidenced by the Mortgage and Loan Documents) but no such payment made after acceleration of the indebtedness will affect such acceleration;

The rights and powers of Bank under this Assignment and the application of Rents under this Paragraph (8) will continue and remain in full force and effect both prior to and after commencement of any foreclosure action and after foreclosure sale and until expiration of any redemption period from any foreclosure sale, whether or not any deficiency remains

00555903

UNOFFICIAL COPY

9 9 0 7 1 9 7 3

after a foreclosure sale.

9. Bank Not to Become Liable and Third Parties not to Acquire Rights. Bank is not obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of the Borrower under the Leases. This Assignment will not operate to place upon Bank responsibility for the control, care, management or repair of the Project or for the performance of any of the terms and conditions of the Leases or Contracts. Bank shall not be responsible or liable for any waste committed on the Project, for any dangerous or defective condition of the Project, for any negligence in the management, upkeep, repair or control of said Project or for failure to collect the Rents. No third party shall acquire any rights against Bank as a result of this Agreement, the provisions of which have been granted to by the Borrower solely for the benefit of Bank. Notwithstanding any language to the contrary contained in this Assignment, Bank shall not be deemed to be in privity of contract with any party having contractual relations with Borrower pursuant to a Lease or Contract unless and until Bank has exercised the remedies provided by this Assignment following the occurrence of an Event of Default and has elected to require the contractual performance of a party obligated by said Lease or Contract, and then Bank shall be liable only during the period in which the remedies provided by this Assignment are so exercised and not before or after.
10. Borrowers' Indemnification. Borrower hereby agrees to indemnify and to hold Bank harmless of and from any and all claims, demands, liability, loss or damage, including all costs, expenses, and reasonable attorney's fees asserted against, imposed on or incurred by Bank in connection with or as a result of this Assignment or the exercise of any rights or remedies under this Assignment or under the Leases or by reason of any alleged obligations or undertaking of Bank to perform or discharge any of the terms, covenants or agreements contained in the Leases. In the event Bank incurs any such liability, the amount thereof, together with interest thereon at the rate stated in the Note, shall be secured by this Assignment and the various Loan Documents, and Borrower shall reimburse Bank therefore immediately upon demand.
11. Authorization to Tenant and to Third Parties Obligated under Contracts. Upon notice from Bank that there has occurred an Event of Default of a kind specified in sections (3.A), (3.D) or (3.E) and on notice from Bank that it is exercising the remedies set forth in this Assignment, the tenants under the Leases are hereby irrevocably authorized and directed to pay to Bank all sums due under the Leases, and the Borrower hereby consents and directs that said sums will be paid to

10055333

UNOFFICIAL COPY

9 0 3 7 0 1 3

Bank without the necessity for a judicial determination that a default has occurred or that Bank is entitled to exercise its rights pursuant to this Assignment, and to the extent such sums are paid to Bank, the Borrower agrees that the tenant has no further liability to Borrower for the same. Upon the same basis, Borrower hereby authorizes and directs any party obligated under a Contract to perform that Contract for the benefit of Bank, in like manner as if Bank were the Borrowers. The signature of Bank alone is sufficient for the exercise of any rights under this Assignment and the receipt by Bank alone of any sums received is full discharge and release of any such tenant or occupant of the Project. Checks for all or any part of the Rents collected under this Assignment will, upon notice from Bank, be drawn to the exclusive order of Bank.

12. Satisfaction. Upon the payment in full of all indebtedness secured hereby, as evidenced by a recorded satisfaction of the Mortgage, this Assignment becomes, without the need for any further satisfaction or release, null and void and of no further effect.
13. Bank an Attorney-In-Fact. The Borrower hereby irrevocably appoints Bank, and its successors and assigns, as his agent and attorney-in-fact coupled with an interest, and with the right but not the duty to exercise any rights or remedies granted by this Assignment and to execute and deliver during the term of this Assignment any such instruments as Bank may deem appropriate to make this Assignment and any further assignment effective, including, without limitation, the right to endorse on behalf and in the name of the Borrower all checks from tenants in payment of Rents.
14. Bank Not a Mortgagee in Possession. Nothing herein contained and no actions taken pursuant to this Assignment will be construed as constituting Bank as a mortgagee in possession.
15. Specific Assignments of Contract Requested by Bank. Upon notice, the Borrower shall transfer and assign to Bank any specific Lease or Contract requested by Bank. Such transfer or assignment will be upon the same or substantially the same terms and conditions as are herein contained, and the Borrower shall promptly file or record such assignment, at the Borrowers' expense, if requested by Bank. Upon request of Bank, Borrower shall further obtain the consent of the lessee to the assignment and subordination of the Lease to the priority of the Mortgage.
16. Unenforceable Provisions Severable. All rights, powers and remedies provided in this Assignment are intended to be exercised only to the extent that such exercise does not violate any applicable provision of law and are intended to

00055983

UNOFFICIAL COPY

9 2 0 5 1 0 1 3

be limited to the extent necessary not to render this Assignment invalid, unenforceable or unreasonable. If any term of this Assignment is held to be invalid, illegal or unenforceable, the validity of other terms are intended to remain unaffected.

17. Successors and Assigns. The covenants and agreements herein contained will be binding upon, and the rights hereunder will inure to, the respective successors and assigns of the Borrower and Bank, including any purchaser at a foreclosure sale.
18. Captions; Amendments; Notices. The captions and headings of the paragraphs of this Assignment are for convenience only and are not intended to interpret or define the provisions of this Assignment. This Assignment can be amended only in a writing signed by the Borrower and Bank. All notices required by this Assignment are deemed sufficient on either (i) the third (3rd) business day after deposit in the United States mail postage prepaid, or (ii) the second (2nd) business day after their deposit with a nationally recognized overnight courier service, or (iii) on the day of their personal delivery, if addressed or delivered to the parties at their respective addresses as set forth in the Mortgage.
19. Construction. The provisions of this assignment do not supersede, but are supplemental to the Mortgage, the intent being that Bank enjoy all of the benefits and protections of the various provisions of this Assignment and the mortgage; provided however, that in the event of direct inconsistency it is intended that this Assignment control the Mortgage with regard to the various provisions herein contained, but only to the extent such control does not impede the enforceability or security of the Mortgage.

90055983

UNOFFICIAL COPY

9 0 0 3 9 0 1 3

IN WITNESS WHEREOF, the undersigned has executed this Assignment
this 1st day of February, 1990.

Frederick W. Caspersen
FREDERICK W. CASPERSEN

STATE OF ILLINOIS)

)SS

COUNTY OF C O O K)

I, SANDRA F. MCPHEE a Notary Public in
and for said county in the state aforesaid, do hereby certify
that FREDERICK W. CASPERSEN personally known by 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 free and voluntary act for the uses and purposes therein set
forth, and including the release and waiver of any and all
rights of redemption.

Given under my hand and official seal this 1st day
of February, 1990

Sandra F. McPhee

Notary Public

My commission expires: November 23, 1993

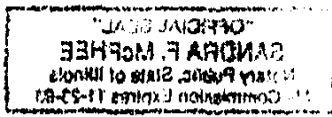
This instrument prepared by:
Martin L. Miller
800 Waukegan Rd.
Glenview, Illinois 60025



90039013

UNOFFICIAL COPY

Property of Cook County Clerk's Office



UNOFFICIAL COPY

9 0 0 5 9 3 3

EXHIBIT "A" - LEGAL DESCRIPTION

THAT PART OF BLOCK 8 IN E.S. BADGER'S SUBDIVISION OF PART OF THE SOUTH EAST 1/4 OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF BLUFF AVENUE, AS PER PLAT RECORDED JANUARY 23, 1905, AS DOCUMENT 3646569, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH EAST CORNER OF SAID SOUTH EAST 1/4; THENCE NORTH ALONG THE EAST LINE OF SAID SOUTH EAST 1/4 A DISTANCE OF 348.00 FEET; THENCE WEST ALONG A LINE DRAWN PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4 TO THE WESTERLY LINE OF SAID BLOCK 8. SAID WESTERLY LINE OF BLOCK 8 BEING THE EASTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO JUNCTION RAILWAY COMPANY NOW KNOWN AS THE INDIANA HARBOR BELT RAILROAD; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID BLOCK 8 AND ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID RAILROAD TO THE SOUTH LINE OF SAID SOUTH EAST 1/4; THENCE EAST ALONG THE SOUTH LINE OF SAID SOUTH EAST 1/4 TO THE POINT OF BEGINNING (EXCEPT THE EAST 33 FEET AND EXCEPT SOUTH 33 FEET FOR HIGHWAY) AND (EXCEPT THAT PART DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH EAST CORNER OF SAID SOUTH EAST 1/4 BEING ALSO THE SOUTH EAST CORNER OF SAID BLOCK 8; THENCE NORTH 0 DEGREES 01 MINUTES 22 SECONDS WEST (BEARINGS ASSUMED FOR DESCRIPTION PURPOSES ONLY) ALONG THE EAST LINE OF SAID SOUTH EAST 1/4 (BEING ALSO THE EAST LINE OF SAID BLOCK 8) A DISTANCE OF 33.00 FEET; THENCE NORTH 89 DEGREES 50 MINUTES 47 SECONDS WEST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4 A DISTANCE OF 33.00 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE CONTINUING NORTH 89 DEGREES 50 MINUTES 47 SECONDS WEST ALONG SAID PARALLEL LINE 15.00 FEET; THENCE NORTH 45 DEGREES 03 MINUTES 56 SECONDS EAST 21.18 FEET TO A POINT IN A LINE 33.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTH EAST 1/4, SAID POINT BEING 15.00 FEET NORTH OF THE AFORESAID DESIGNATED POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 01 MINUTES 22 SECONDS EAST ALONG SAID PARALLEL LINE 15.00 FEET TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING), ALL IN COOK COUNTY, ILLINOIS.

P.I.N.# 18-04-418-024

P.I.N.# 18-04-418-025

Commonly known as: 620 S. East Avenue
707 E. 47th Avenue
LaGrange, Illinois

NBD Bank Northfield
400 Frontage Rd
Northfield, IL

9005598

9005598