

UNOFFICIAL COPY

90169738

90169738

ASSIGNMENT OF LEASES AND RENTS

28<sup>th</sup>

ASSIGNMENT made as of the ~~30<sup>th</sup>~~ day of March, 1990 by THE WINNETKA BANK, not personally but as Trustee under Trust Agreement dated October 15, 1985 and known as Trust No. R-596, 791 Elm, Winnetka, Illinois 60093 (the "Trust") and CHESTNUT STREET PARTNERS, an Illinois general partnership, 874 Green Bay Road, Winnetka, Illinois 60093 (the "Beneficiary"), to NBD CHICAGO BANK, 307 North Michigan Avenue, Chicago, Illinois 60601 (hereinafter called "Mortgagee").

\$20.00

WHEREAS, the Trust has executed a note (the "Note") of even date herewith, payable to Mortgagee in the principal sum of One Million Five Hundred Thousand and no/100 DOLLARS (\$1,500,000.00), evidencing advances of loan proceeds pursuant to that certain loan agreement (the "Loan Agreement") of even date herewith by and between the undersigned and Mortgagee; and

WHEREAS, to secure payment of the Note, the Trust has delivered a mortgage (the "Mortgage") of even date herewith, conveying to Mortgagee the premises (the "Premises"), described on Exhibit "A" hereto; and

WHEREAS, the undersigned, as an inducement to Mortgagee to disburse the proceeds of the loan evidenced by the Note, is desirous of further securing the Note.

NOW, THEREFORE, the undersigned, for and in consideration of these presents and the mutual agreements herein contained and as further and additional security to Mortgagee, and in consideration of the sum of TEN and 00/100 DOLLARS (\$10.00) to the undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby sell, assign and transfer unto Mortgagee all leases of the Premises, or any part thereof, 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 or occupancy of the Premises 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 Mortgagee under the powers herein granted. It being the intention hereby to establish an absolute transfer and assignment of all of the said leases and agreements, and all the avails thereof, to Mortgagee, and the undersigned do hereby irrevocably appoint Mortgagee its true and lawful attorney in its name and stead (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 in its discretion as it may determine (including without limitation for periods extending beyond the date of redemption of the Mortgage), 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 tenancies existing or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exonerations of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession of the Premises pursuant to the provisions hereinafter set forth.

The undersigned represent and agree that without the prior express written consent of Mortgagee in each and every instance, which consent Mortgagee may grant or withhold in its discretion, no rent has been or will be paid by any person in possession of any portion of the Premises for more than one (1) installment in advance and that the payment of none of the rents to accrue for any portion of said Premises has been or will be waived, released, reduced or discounted, or otherwise discharged or compromised by the undersigned without the prior express written consent of Mortgagee in each and every instance, which consent Mortgagee may grant or withhold in its discretion. The undersigned agrees not to make any other or further assignment of the rents or profits or leases prior

90169738

7241641 D2.

01208284  
Carmen

# UNOFFICIAL COPY

to the release of this Assignment. The undersigned shall not amend, cancel, abridge, terminate or otherwise modify (or permit or suffer the amendment, cancellation, abridgement, termination or modification of) any existing or future leases, or any portion thereof, without the express prior written consent of Mortgagee in each and every instance, which consent Mortgagee may grant or withhold in its discretion.

Nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted to Mortgagee, no liability in connection with events or occurrences accruing prior to the exercise of such power shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by the undersigned.

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, subject to the provisions of the Loan Agreement, Mortgagee shall not exercise any of the rights and powers conferred upon it herein until and unless one of the following events shall occur, each of which shall constitute an Event of Default hereunder: failure to pay any installment of principal or interest when due in accordance with the terms of the Note and the expiration of any notice and grace periods expressly provided for thereby, or the occurrence of an Event of Default under and defined in the Loan Agreement, the Mortgage or any of the items of Additional Collateral, as such term is defined in the Note, or failure to perform or observe any of the agreements, obligations, warranties, representations, terms, provisions or conditions of this Assignment made or to be performed or observed by the undersigned.

Nothing herein contained shall be deemed to affect or impair any rights which Mortgagee may have under said Note and Mortgage or any other instrument herein mentioned.

In any case in which under the provisions of the Mortgage Mortgagee 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, and/or in any case in which pursuant to the provisions hereof Mortgagee has the right to exercise the rights and powers conferred upon it herein, then forthwith, upon demand of Mortgagee, the undersigned agree to surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises (and any or all property located thereon) or any part thereof personally, or by its agents or attorneys, and Mortgagee 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 Premises, together with all the documents, books, records, papers and accounts of the undersigned or the then owner of the Premises relating thereto, and may exclude the undersigned, its agents or servants, wholly therefrom and may as attorney-in-fact or agent of the undersigned, 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 or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises, including actions for the recovery of rent, actions in 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 the undersigned to cancel or terminate, the same, to alter any lease,

# UNOFFICIAL COPY

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 Premises that may seem judicious, in its discretion, to insure and reinsure the same for all risks incidental to Mortgagee's possession, operation and management thereof and to receive all such avails, rents, issues and profits.

Mortgagee 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 Premises nor shall Mortgagee be obligated to collect any rents or enforce any leases. The undersigned shall and do hereby agree to indemnify and hold Mortgagee 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 so perform or discharge any of the terms, covenants or agreements contained in said leases except with respect to liability, loss or damage in connection with events or occurrences occurring after Mortgagee takes possession. Should Mortgagee 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, the undersigned agrees to reimburse Mortgagee for the amount thereof, including direct costs, direct expenses and reasonable attorneys' fees, immediately upon demand.

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

A. To the payment of the operating expenses of the Premises, including, without limitation, compensation to Mortgagee and its agent or agents, if management of the Premises has been delegated to an agent or agents, lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases, and premiums on insurance hereinabove authorized;

B. To the payment of taxes, special assessments and other impositions as defined in the Mortgage now due or which may hereafter become due on the Premises, or which may become a lien prior to the lien hereof;

C. To the payment 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 judgment of Mortgagee, 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.

The undersigned further specifically and irrevocably authorize and instruct each and every present and future lessee or tenant of the whole or any part of the Premises to pay all unpaid rental agreed upon in any tenancy to Mortgagee upon receipt of demand from said Mortgagee to pay the same.

The provisions set forth in this Assignment herein shall be deemed a special remedy given to Mortgagee, 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

# UNOFFICIAL COPY

remedies therein granted and elsewhere granted in any other instrument securing the Note, all of which remedies shall be enforceable concurrently or successively.

Whenever the word "undersigned" is mentioned herein, it is hereby understood that the same includes and shall be binding upon the legal representatives, successors and assigns of each of the undersigned, and any party or parties holding title to the Premises by, through or under the undersigned. All of the rights, powers, privileges and immunities herein granted and assigned to Mortgagee shall also inure to its legal representatives, successors and assigns, including all holders from time to time of the Note.

All obligations and undertakings of the undersigned herein shall be the joint and several obligations and undertakings of Beneficiary and the Trust.

All notices, demands and requests given or required to be served by any party hereto to another party shall be delivered as set forth in the Loan Agreement of even date herewith.

This Assignment is executed by The Winnetka Bank, not personally, but solely as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument). All covenants, agreements and conditions to be performed by The Winnetka Bank hereunder are undertaken by it solely as Trustee as aforesaid and not individually, and no personal liability shall be asserted or enforceable against The Winnetka Bank, personally, by reason of any of the covenants, agreements, representations or warranties contained herein; but nothing herein contained shall be deemed a release or impairment of the indebtedness secured hereby nor prejudice the rights of Mortgagee from exercising any of its rights or remedies hereunder or under any or all of the Note, Loan Agreement, Mortgage and Additional Collateral, or from securing a deficiency or personal judgment against any subsequent owner of the Premises who assumes the indebtedness secured hereby; and nothing herein contained shall release, waive, modify or discharge the liability and responsibility of Beneficiary or of any guarantors of or any other persons or entities in respect hereof.

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the day and year first above set forth.

FIRST CHICAGO BANK  
OF WINNETKA F/K/A\*

THE WINNETKA BANK, not  
personally but as Trustee  
under Trust Agreement  
dated October 15, 1985  
and known as Trust No.  
R-596

By: *D. Bruce Maglier*

Title: Vice President

Attest: *Quita E. Morris*

Title: Asst. Secretary

CHESTNUT STREET PARTNERS, an Illinois  
general partnership

By: *Lars Nilsson*

LARS NILSSON, General Partner

By: *William L. Denicolo, Jr.*

WILLIAM L. DENICOLA, JR., General  
Partner

By: AUSTIN-LAMON, INC., an Illinois  
corporation, General Partner

By: *William L. DeNicola, Jr.*

William L. DeNicola, Jr.,  
President

Attest: *Sheryl B. Esker*

Its: *Asst. Secretary*

This instrument was prepared by Robert E. Feldgreber, 10 South Wacker Drive, Suite 4000, Chicago, Illinois 60606.

58163738



# UNOFFICIAL COPY

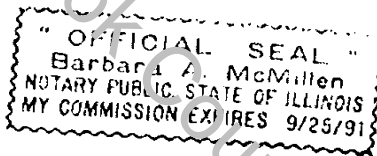
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the said County and State aforesaid, DO HEREBY CERTIFY that D. Bruce Magers, personally known to me to be the Vice President, of The Winnetka Bank, a national banking association, as Trustee under Trust Agreement dated October 15, 1985 and known as Trust No. R-596, and Anita E. Morris, personally known to me to be the Assistant Secretary of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as such Vice President and Assistant Secretary, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act and deed of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said Asst. Secretary then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act and deed of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28<sup>th</sup> day of March, 1990.

Barbara A. McMillen  
Notary Public

My Commission Expires:



# UNOFFICIAL COPY

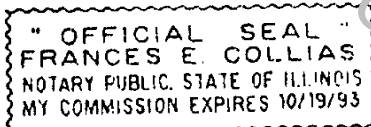
STATE OF Illinois )  
COUNTY OF Cook ) SS.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Lars Nilsson and William L. DeNicolo, Jr., both individually and as President of Austin-Lamon, Inc., an Illinois corporation, as general partner, personally known to be all of the general partners of Chestnut Street Partners, an Illinois general partnership, and 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 severally acknowledged that they signed and delivered the said instrument as their free and voluntary and as the free and voluntary act and deed of said general partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19 day of March, 1990.

Frances E. Collias  
Notary Public

My Commission Expires:



# UNOFFICIAL COPY

## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE PREMISES

#### PARCEL ONE:

The North 93 feet of the South 146 feet of that part of Block 26 in the Village of Winnetka, lying West of the East line of Lot 7 in Oak Knoll Subdivision of part of said Block 26 in the North East 1/4 of the North East 1/4 of Section 20, Township 42 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois

#### PARCEL TWO:

The South 33 feet of part of Block 26 in the Village of Winnetka lying West of the East line of Lot 7 in Oak Knoll Subdivision of said part of Block 26 in the North East 1/4 of the North East 1/4 of Section 20, Township 42 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois

#### PARCEL THREE:

Lot 6 (except the North 41 feet taken for Chestnut Court) in Oak Knoll Subdivision of that part of Block 26 in Village of Winnetka in the North East 1/4 of Section 20, Township 42 North, Range 13 East of the Third Principal Meridian, described as follows:

Commencing at a point 37 feet East of the North East Corner of Chestnut and Oak Streets; thence North 187 feet; Thence East and parallel with the South line of said Block 150 feet; Thence South 30 feet; Thence East 8 feet; Thence South 32 feet; Thence West 8 feet; Then South 125 feet; Thence West 150 feet to the Point of Beginning, according to the Plat of said Oak Knoll Subdivision recorded in the Office of the Recorder of Cook County, Illinois in Book 119 of Plats Page 26 as Document 4991672 all in Cook County, Illinois.

Permanent Tax Number: 05-20-212-008, 05-20-212-009, 05-20-212-010  
05-20-212-011, 05-20-212-012

Property Address: 503-507 Chestnut, Winnetka, Illinois

90169738