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THIS INSTRUMENT PREPARED BY: HICK COUNTY, ILLINOIS

Michael J. Torchalski, Esq.

HINSHAW, CULBERTSON, MOELMANN,

HOBAN & FULLER

222 North LaSalle Street

Chicago, Illinois 60601

23 11:15

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AFTER RECORDING RETURN TO:

Ms. Harriet Hartig

AETNA BANK

2401 N. Halsted St.

Chicago, IL 60614

Box 333

## ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

24<sup>00</sup>

THIS ABSOLUTE ASSIGNMENT OF RENTS AND LEASES, made this 4th day of May, 1990, by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee pursuant to Trust Agreement dated January 11, 1977, known as Trust Number 39888 ("Trust"), and ARNOLD DEMAR and ~~ARNOLD DEMAR~~, the sole beneficiaries of Trust, (collectively "Beneficiary") (Trust and Beneficiary collectively "Assignor"), in favor of AETNA BANK, having its principal office at 2401 North Halsted Street, Chicago, Illinois 60614 ("Assignee").

## R E C I T A L S

A. Trust executed and delivered note of even date herewith ("Note"), payable to the order of Assignee, in the principal amount of ONE HUNDRED SIXTY TWO THOUSAND AND NO/100 DOLLARS (\$162,000.00) ("Loan") and, as security therefor, executed and delivered to Assignee its mortgage, of even date with Note ("Mortgage"), conveying the land commonly known as 3946 N. Marshfield Ave. and 1635 W. Irving Park Rd., Chicago, Illinois legally described on Exhibit "A" attached hereto and made a part hereof ("Land") and the improvements constructed and to be constructed thereon ("Improvements") (Land and Improvements collectively "Mortgaged Premises").

B. Trust and/or Beneficiary, as landlord, executed lease agreements and entered into other letting and rental agreements applicable to the use and occupancy of Mortgaged Premises, either orally or in writing ("Existing Leases") with the tenants named thereon ("Tenants").

C. Pursuant to the terms, covenants, conditions and agreements contained in Note, Mortgage, commitment issued by Assignee in favor of Beneficiary, dated March 30, 1990, as amended ("Commitment"), and "Other Loan Documents" (as such terms are defined in Mortgage) (Note, Mortgage, Commitment and Other Loan Documents collectively "Loan Papers"), Assignor agreed to assign to Assignee all of its right, title and interest in and to Existing

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Leases and all future lease agreements and other letting or rental agreements applicable to the use and occupancy of Mortgaged Premises which may be executed or agreed to, either orally or in writing, by Assignor, as landlord, with occupancy tenants of Mortgaged Premises ("Future Tenants") at any time hereafter ("Future Leases").

NOW, THEREFORE, in consideration of the disbursement of the proceeds of Loan by Assignee and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Assignor:

1. Hereby sells, assigns, transfers and sets over unto Assignee one hundred per cent (100%) of Assignor's right, title and interest in and to Existing Leases and Future Leases, together with all rents, income or other sums payable by the provisions of Existing Leases and Future Leases, including security deposits, guaranties or interests in other forms of collateral given by Tenants and Future Tenants to secure the performance of the obligations required of them pursuant thereto ("Rents").

2. Agrees that this Assignment is absolute and effective immediately; PROVIDED, HOWEVER, that until the occurrence of a Monetary Default or Non-Monetary Default (as such terms are defined in the Mortgage) Assignee shall not exercise any rights granted to it pursuant hereto and Assignor may receive, collect and enjoy Rents.

3. Represents (in the instance of Trust) and warrants and represents (in the instance of Beneficiary) that:

- a). Assignor is the sole owner of one hundred per cent (100%) of the landlord's right, title and interest in and to Existing Leases;
- b). Existing Leases are valid and enforceable, in accordance with their respective terms, and have not been altered, modified or amended;
- c). Tenants are not in default in the performance of any of the terms, covenants, conditions or agreements required of them pursuant to Existing Leases; and
- d). no part of Rents reserved in Existing Leases has been previously assigned and no part of Rents reserved in Existing Leases, for any period subsequent to the date hereof, has been collected in advance of the due date thereof.

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4. Shall observe and perform all of the obligations imposed upon the landlord named in Existing Leases and Future Leases and shall:

- a). not do or permit any act or occurrence which would impair the security thereof;
- b). not collect any part of Rents more than one (1) month in advance of the time when the same shall become due;
- c). not execute any other assignment of Assignor's interest, as landlord, in Existing Leases, Future Leases or Rents;
- d). not materially alter, modify or change the terms and conditions of Existing Leases or Future Leases, cancel or terminate the same or accept a surrender thereof (except in the ordinary course of business) without the prior written consent of Assignee;
- e). at Assignee's request, execute and deliver all such further assurances and assignments as Assignee shall, from time to time, require; and
- f). within ten (10) days following Assignee's request therefor, furnish to Assignee a rent roll certified by Beneficiary as true and correct.

5. Shall have the right, so long as there shall exist no "Monetary Default" or "Non-Monetary Default" (as such terms are defined in Loan Papers) to collect Rents, when due but not prior thereto, and retain, use and enjoy the same.

6. Agrees that any time following a Monetary Default or Non-Monetary Default, Assignee may, at its option, either in person or through its agent or a receiver appointed by a court of competent jurisdiction, without notice, without, in any way, waiving such Monetary Default or Non-Monetary Default, as the case may be, and without regard to the adequacy of the security for Indebtedness and with or without instituting any action or proceeding:

- a). to the extent permitted by law, take possession of Mortgaged Premises and hold, manage, lease and operate the same on such terms and for such periods of time as Assignee may deem proper;
- b). with or without taking possession of Mortgaged Premises, in its own name, institute suit or otherwise collect and receive Rents, including Rents past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs

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or replacements thereto or thereof, as Assignee may deem proper; and

c). apply Rents to the payment of:

- i). all costs and expenses incurred in managing Mortgaged Premises (including, but not limited to, the salaries, fees and wages of the managing agent thereof and other employees of Assignor);
- ii). all expenses of operating and maintaining Mortgaged Premises (including, but not limited to, all taxes, charges, claims, assessments, water rents, sewer rents and other liens and premiums for all insurance coverages which Assignee may deem necessary);
- iii). all costs of alteration, renovation, repair or replacement of Mortgaged Premises;
- iv). all expenses incident to the taking and retaining of possession of Mortgaged Premises; and
- v). Indebtedness and all costs, expenses and attorneys' fees incurred by Assignee by reason hereof;

and to the extent permitted by law apply the same in such order of priority as Assignee, in its sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding.

7. Agrees that Assignee shall not be:

- a). Liable for any loss sustained by Assignor resulting from Assignee's failure to let Mortgaged Premises following the occurrence of a Monetary Default or Non-Monetary Default or by reason of any other act or omission of Assignee in managing Mortgaged Premises thereafter, unless such loss is caused by the willful misconduct or gross negligence of Assignee.
- b). Obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability of Assignor pursuant hereto or pursuant to Existing Leases and Future Leases and Assignor shall, and does hereby agree,

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to indemnify Assignee for, and hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred by reason thereof 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 of the terms, covenants, conditions and agreements required of Assignor pursuant hereto or pursuant to Existing Leases and Future Leases; PROVIDED, HOWEVER, that such indemnification shall not include any liability, loss or damage which may be incurred by Assignee by reason of the willful misconduct or gross negligence of Assignee or its acts and deeds following the exercise of Assignee's rights pursuant hereto or pursuant to Existing Leases and Future Leases.

If Assignee incurs any liability pursuant hereto or pursuant to Existing Leases and Future Leases or in defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees (exclusive of any costs, expenses and attorneys' fees incurred by Assignee by reason of its negligence, wilful misconduct or acts and deeds following the exercise of Assignee's rights pursuant hereto or pursuant to Existing Leases and Future Leases), shall be secured by Mortgage and Assignor shall reimburse Assignee therefor, immediately upon demand. In the event of the failure of Assignor so to do, Assignee may, at its option, declare Indebtedness immediately due and payable.

8. Agrees that, except as otherwise herein provided, this Assignment shall not operate to place upon Assignee any responsibility for the control, care, management or repair of Mortgaged Premises or for the performance of any of the terms, covenants, conditions and agreements required of Assignor, as landlord, pursuant to Existing Leases and Future Leases nor is the same intended to make Assignee responsible or liable for any:

- a). waste committed on Mortgaged Premises by Tenants, Future Tenants or any other party;
- b). dangerous or defective condition of Mortgaged Premises; or
- c). negligence in the management, upkeep, repair or control of Mortgaged Premises resulting in loss, injury or death to any Tenant, Future Tenant, licensee, employee or stranger.

9. Agrees that:

- a). Any good faith affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee, setting forth that any part of Indebtedness remains unpaid, shall be and constitute evidence of the validity, effectiveness and continuing force and effect of this Assignment (all persons being hereby authorized to rely thereon); and Assignor hereby authorizes and directs Tenants, Future Tenants or other occupants of Mortgaged Premises, upon receipt from Assignee of written notice to the effect that Assignee is then the holder of Loan Papers and that a Monetary Default or Non-Monetary Default has occurred, to pay Rents to Assignee until otherwise notified by Assignee to the contrary.
- b). Upon payment of Indebtedness in full, this Assignment shall be null and void.

10. Agrees that Assignee may take or release any other security given for the payment of Indebtedness, release any party primarily or secondarily liable therefor and apply any other security, in its possession, to the satisfaction of Indebtedness, without prejudice to any of its rights pursuant hereto.

11. Agrees that the terms "Existing Leases" and "Future Leases" shall include any subleases thereof and all extensions or renewals of Existing Leases, Future Leases and subleases thereof.

12. Agrees that nothing contained herein and no act done or omitted to be done by Assignee pursuant to the powers and rights granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies pursuant to Loan Papers and this Assignment is made without prejudice to any of the rights and remedies possessed by Assignee thereunder. The right of Assignee to collect Indebtedness and to enforce any security therefor in its possession may be exercised by Assignee either prior to, concurrently with or subsequent to any action taken by it pursuant hereto.

13. Agrees that any notices to be served pursuant hereto shall be deemed properly delivered if delivered personally or by Federal Express or comparable "over-night" courier service providing one (1) day service (which shall be deemed to have been received on the date of delivery thereof), or by United States certified or registered mail, postage prepaid (which shall be deemed to have been received three [3] days following the postmark date thereof), to Assignor at the addresses set forth below or to such other address as Assignor may direct in writing:

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If to Trust, at 33 North LaSalle Street, Chicago, Illinois 60690, Attn: Land Trust Dept., with a copy thereof to Beneficiary; and

If to Beneficiary, at 415 W. Aldine Ave., Chicago, Illinois 60657.

14. Agrees that this Assignment and all covenants and warranties herein contained shall inure to the benefit of Assignee, its successors, assigns, grantees and legal representatives and shall be binding upon Assignor, their respective heirs, executors, administrators, successors, assigns, grantees and legal representatives.

This Assignment is executed by Trust, not personally but solely as trustee under the terms of the aforesaid Trust Agreement, solely in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Assignor hereby warrants that it possesses full power and authority to execute this instrument).

In addition to Indebtedness (as defined in Note), Assignee shall have full recourse to recover from ~~Trust~~ Beneficiary, and others:

- (a) all losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Assignee as a result of fraud, material misrepresentation made by Beneficiary or a material breach of Beneficiary's warranties and representations contained in any document delivered to Assignee by or at the request of Assignor or as a result of waste of Mortgaged Premises;
- (b) all rents, revenues, issues and profits from Mortgaged Premises received during the period of any Monetary Default or Non-Monetary Default or after acceleration of Indebtedness, and not applied to payment of Indebtedness or payment of the normal operating expenses of Mortgaged Premises;
- (c) all rents from Mortgaged Premises collected more than one (1) month in advance which are not earned at the time of the occurrence of any Monetary Default or Non-Monetary Default, which are not applied to the payment of Indebtedness or the normal operating expenses of Mortgaged Premises;
- (d) all Insurance Proceeds and Awards which are not applied in accordance with the provisions of Loan Papers; and

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(e) any and all costs, expenses, damages or liabilities incurred by Assignee, including, without limitation, all reasonable attorneys' fees, directly or indirectly arising out of or attributable to the detection and/or removal of friable asbestos containing materials on or from the Mortgaged Premises, and for replacements required for functional restoration of the Mortgaged Premises after asbestos removal, and in connection with claims of persons alleging bodily injury as a result of exposure to or inhalation of asbestos on the Mortgaged Premises, or directly or indirectly attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about Mortgaged Premises of any materials, wastes or substances defined, regulated or classified as hazardous or toxic under any federal, state or local laws or regulations.

With the exception of the matters described in the foregoing subparagraph (e), all liability of Assignor hereunder shall cease and extinguish at such time as all indebtedness is paid to assignee.

Nothing contained herein or in other Loan Papers to the contrary notwithstanding shall be deemed to release, affect or impair Indebtedness or the rights of Assignee to enforce its remedies pursuant hereto and thereto, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

IN WITNESS WHEREOF, Trust has caused this Assignment to be executed by its duly authorized officers and Beneficiary has executed this Assignment, as of the day and year first above written.

TRUST: AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee aforesaid

By \_\_\_\_\_  
Title:

ATTEST: \_\_\_\_\_  
Title:

BENEFICIARY: \_\_\_\_\_  
ARNOLD DEMAR

\_\_\_\_\_  
PATRICIA DEMAR

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and conditions contained in this instrument to be subject to the Trustee's Explanatory Rider attached made a part hereof.



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The terms of the contract shall be governed by the provisions of the law of the State of New York.

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all of the warranties, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the property herein described and has no agents, employees or control over the management of the property and no knowledge of other factual matters except as represented to it by the beneficiary(ies) of the Trust. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument, all such liability being expressly waived by every person now or hereafter claiming any right or security hereunder, and the owner of any indebtedness or cause of action for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to the Trust estate for the payment thereof.



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STATE OF ILLINOIS    )  
                          )    SS.  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that ARNOLD DEMAR, 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 \_\_\_\_\_ day of May, 1990.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

STATE OF ILLINOIS    )  
                          )    SS.  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that PATRICIA DEMAR, 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 she signed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of May, 1990.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

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LEGAL DESCRIPTION OF LAND:

LOTS 1 AND 2 IN SUB-BLOCK 2 IN BUECHNER'S SUBDIVISION OF BLOCK 1 IN THE SUBDIVISION OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE SOUTH WEST QUARTER OF THE NORTH EAST QUARTER OF THE SOUTH EAST QUARTER OF THE NORTH WEST QUARTER AND THE EAST HALF OF THE SOUTH EAST QUARTER), IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 3946 N. MARSHFIELD AVENUE/1635 W. IRVING PARK ROAD, CHICAGO, ILLINOIS

PERMANENT INDEX NO.: 14-19-207-008

Property of Cook County Clerk's Office

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EXHIBIT "A"