

UNOFFICIAL COPY

ASSIGNMENT OF LEASES AND RENTS

04984191

Date: October 3, 1994

Mortgagor: F&S Management, Inc.

COOK COUNTY, ILLINOIS
FILED FOR RECORD

Original Principal Amount of the Note: \$ Fifty Five Thousand and No/100 Dollars (855,000.00).

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RECITALS

The First National Bank of Chicago, a national banking association, ("Lender"), having an office at 439 West Schick Road, Bloomingdale, Illinois 60108, has issued a loan commitment (the "Loan Commitment") pursuant to which Lender has agreed, subject to the terms and conditions thereof, to make a loan to Mortgagor in the Original Principal Amount of the Note (the "Loan"). The Loan is evidenced by that certain note of even date herewith executed by Mortgagor in favor of Lender, in the Original Principal Amount of the Note (the "Note"). The payment of the Note is secured by: (a) this Assignment; (b) a Mortgage (the "Mortgage") executed by Mortgagor pertaining to property defined therein as the "Mortgaged Property" of which the parcel of land legally described in Exhibit A attached hereto and all improvements thereon and appurtenances thereto form a part; and (c) the other Loan Instruments (hereinafter defined).

GRANTING CLAUSES

To secure the payment of the indebtedness evidenced by the Note and payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Assignment, the Mortgage, the Loan Commitment and any other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit and any other documents and instruments and any and all renewals, extensions, replacements and amendments now or hereafter executed by Mortgagor, Beneficiaries (if any) of Mortgagor or any other party to secure or guarantee the payment of indebtedness under the Note (the Note, the Loan Commitment, this Assignment, the Mortgage, and all such other documents and instruments including any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "Loan Instruments" and individually as a "Loan Instrument") (all indebtedness secured hereby being hereinafter sometimes referred to as "Borrower's Liabilities"), Mortgagor and any Beneficiary of Mortgagor executing this Assignment (Mortgagor and all such Beneficiaries being collectively referred to herein as "Assignor") hereby assign to Lender, all of their respective right, title and interest in:

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(a) All oral and written leases with, or other agreements for use or occupancy made by, any person or entity, and any and all amendments, extensions, renewals, modifications and replacements thereof, pertaining to all or any part of the Mortgaged Property, whether such leases or other agreements have been heretofore or are hereafter made including those specific leases, if any, listed in Exhibit B attached hereto (the "Leases");

(b) The rents which are due or payable pursuant to any of the Leases and any other payments in addition to rent due or payable thereunder, including, without limitation, security deposits and any monies, awards, damages or other payments made or due under the Leases (the "Rents");

(c) All rights, powers, privileges, options and other benefits of Assignor under the Leases (collectively, the "Rights"); (the Leases, Rents and Rights being sometimes collectively referred to as the "Collateral") and Assignor authorized Lender;

(d) To manage the Mortgaged Property and take possession of the books and records relating thereto;

(e) To prosecute or defend any suits in connection with the Mortgaged Property or errors or take any other action in connection with the Leases in the name of Lender, Mortgagor or any such Beneficiary;

(f) To make such repairs to the Mortgaged Property as Lender may deem advisable; and

(g) To do any and all other things with respect to the Mortgaged Property and the Collateral which an absolute owner or landlord has the right to do.

COVENANTS AND WARRANTIES

1.1 Present Assignment. Notwithstanding that this Assignment constitutes a present assignment of leases and rents, Assignor may collect the Rents and manage the Mortgaged Property in the same manner as if this Assignment had not been given, but only if and so long as an Event of Default (defined hereafter) has not occurred. If an Event of Default occurs, the right of Assignor to collect the Rents and to manage the Mortgaged Property shall thereupon automatically terminate and such right together with the other rights, powers and authorizations contained herein shall belong exclusively to Lender.

1.2 Power Coupled with Interest. This Assignment of Leases and Rents confers upon Lender a power coupled with an interest and cannot be revoked by Assignor.

1.3 Warranties. Assignor represents, covenants and warrants as follows: (i) Assignor is the sole owner of the lessor's entire interest in the Leases and the other Collateral and has full right to assign the

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BOX 333-CTI

Collateral; (i) there has been no previous assignment in writing; (ii) without Lender's prior written consent, Assignor will permit no future assignment (as collateral or otherwise) of the assignor's right, title or interest in any of the Leases or other Collateral; (iii) the Leases are valid and enforceable in accordance with their terms; (iv) none of the Leases listed in Exhibit B has been altered or amended except as shown on said exhibit; (v) the lessees are not in default under the Leases and have no defenses, set-offs or counterclaims against the lessor under the Leases; (vi) no rent reserved in the Lease has been assigned; and (vii) no rent for any period subsequent to the date hereof has been collected more than thirty (30) days in advance of the date due.

1.4 **Additional Covenants.** Assignor covenants that (i) it will not accept rent more than thirty (30) days in advance under any of the Leases; and (ii) it will not assert any claim or take any action against any lessee under any of the Leases, or otherwise seek recovery, damages or other relief against any such lessee, which would have the effect of relieving such lessee from any obligation or liability or which would affect, impair or discharge any right of Lender.

1.5 **Lender to be Creditor of Lessees.** Lender shall be deemed to be the creditor of each lessee under the Leases in any assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, receivership or probate proceedings affecting such lessee.

II

DEFAULTS AND REMEDIES

2.1 **Event of Default.** The term "Event of Default," wherever used in this Assignment, shall mean any one or more of the following events:

- (a) If Assignor shall (i) fail to pay when due any indebtedness evidenced by the Note; or (ii) fail to keep, perform or observe any other covenant, condition or agreement on the part of the Assignor in this Assignment and such failure shall continue for thirty (30) days.
- (b) If a default shall occur under any of the Loan Instruments and the same is not cured within the applicable cure period, if any, provided in such Loan Instrument.

2.2 **Exercise of Lender's Rights.** Lender may exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Lender.

2.3 **Nature of Remedies.** No delay or omission on the part of Lender in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to lender under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the other Loan Instruments.

2.4 **Application of Rents.** Lender may apply the Rents, in such order as Lender may determine, to the payment of Borrower's Liabilities in such order and manner as Lender may elect, and all expenses for the expenses, care and management of the Mortgaged Property.

2.5 **Limitations of Lender's Obligations.** Lender's obligations as to any Rents actually collected shall be discharged by application of such Rents to any of the purposes specified in Paragraph 2.4 hereof. Lender shall not be liable for uncollected Rents or for failure to collect Rents or for any claim for damages or set-offs arising out of Lender's management of the Mortgaged Property. Lender shall not be liable to any lessee for the return of any security deposit made under any Lease unless Lender shall have received such security deposit from the lessor or such lessee. Lender shall not by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the lessor under any of the Leases, nor shall Lender be responsible for any act committed by the lessor, or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making Lender a mortgagee in possession of the Mortgaged Property or any part thereof.

2.6 **Reimbursement.** Assignor shall reimburse Lender for and indemnify Lender against all expenses, losses, damages and liabilities which Lender may incur by reason of this Assignment or the exercise of any of the rights granted hereunder. Any and all amounts due to Lender under this Paragraph 2.6 shall be immediately due and payable, shall be added to Borrower's Liabilities, shall bear interest after disbursement by Lender at the Default Rate (as defined in the Note) and shall be secured by this Assignment and the other Loan Instruments.

2.7 **Authorization to Lessees.** Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Lender upon written demand from Lender stating that an Event of Default has occurred without inquiry as to whether any such default has occurred or whether Lender is rightfully entitled to such rent. Following receipt of any such demand, no lessee shall be given credit for any rent paid other than to Lender thereafter until Lender instructs such lessee otherwise in writing.

III

MISCELLANEOUS

3.1 **Successors and Assigns.** This Assignment shall inure to the benefit of Lender and be binding upon Assignor, the heirs, legal representatives, successors and assigns of Assignor and all persons and entities (including owners and lessees) which may hereafter have any interest in the Mortgaged Property.

3.2 **No Merger.** Notwithstanding the conveyance or transfer of title to any or all of the

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Mortgaged Property to any lease under any of the Lease, the lessee's leasehold estate under such Lease shall not merge into the fee estate and the lease shall remain obligated under such Lease or assigned by him Assignment.

3.3 Notices. All notices, reports, requests, demands or other instruments required or contemplated to be given or furnished under this Assignment to Assignor or Lender shall be directed to Lender at the place stated in the Note as the place of payment and to Assignor at the Address for Notices set forth on page 1 of the Note. Any such notices, requests, reports, demands or other instruments shall be (i) personally delivered to the address referred to above, in which case they shall be deemed delivered on the date of delivery to said address or (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three business days after deposit in the U. S. mail, postage prepaid. Either party may change the address to which any such notice, report, demand or other instrument is to be delivered by furnishing written notice of such change to the other party in compliance with the foregoing provisions.

3.4 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Assignment are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

3.5 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Assignment or in any other Loan Instrument shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other Loan Instrument shall be in no way affected, prejudiced or disturbed thereby.

3.6 Changes. The terms and provisions hereof may be released, changed, waived, discharged or terminated only by an instrument in writing signed by Assignor and Lender. Any agreement hereafter made by Assignor and Lender relating to this Assignment shall be superior to the rights of the holder of any intervening lien or encumbrance.

3.7 Governing Law. This Assignment shall be construed, interpreted, enforced and governed by and in accordance with the law of the State of Illinois.

3.8 Future Advances. This Assignment is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of Lender, or otherwise, as are made by Lender under the Note, to the same extent as if such future advances were made on the date of the execution of this Assignment. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured hereby shall, in no event, exceed five times the aggregate face amount of the Note.

3.9 Joint and Several Liability. The liability hereunder of Mortgagor and any and all Beneficiaries executing this Assignment shall be joint and several.

3.10 Exculpatory Clause. If this Assignment is executed by the trustee under an Illinois land trust, such trustee has attached its customary exculpatory clause hereto and such clause is incorporated herein.

IN WITNESS WHEREOF, Mortgagor and Beneficiary have executed this Assignment on the date first above written.

MORTGAGOR:

FSE Management, Inc.

By: Jack B. Fishman
Jack B. Fishman
Its: President

ATTEST:

By: John Sfikas
John Sfikas
Its: Secretary

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Joyce M. Sparr
The First National Bank of Chicago
439 West Schick Road
Bloomington, Illinois 60108
Attention: Commercial Real Estate Department

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ACKNOWLEDGMENT FOR INDIVIDUAL

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____
19__ by _____.

Notary Public

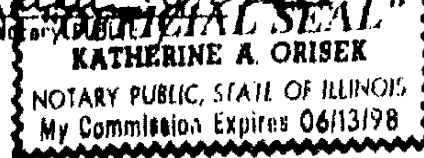
My Commission Expires: _____

ACKNOWLEDGEMENT FOR CORPORATION OR CORPORATE LAND TRUSTEE

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 3rd day of
November, 1994 by Judith A. Sommer (name), President (title) and
Judith A. Sommer (name), Secretary (title) of F.I.'s Management, Inc., a(n) Illinois
corporation, on behalf of the corporation.

My Commission Expires: 6/13/98



ACKNOWLEDGMENT FOR PARTNERSHIP

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___
19__ by _____, partner (or agent) on behalf of
_____, a(n) _____ partnership.

Notary Public

My Commission Expires: _____

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Legal Description

Unit 2E in 2724 West Rascher Condo as delineated on Survey of the following described parcel of real estate (hereinafter referred to as Parcel).

Lot 860 and Lot 861 (except the East 10 feet) in William M. Britigan's Budlong Woods Golf Club Addition Number 3, being a subdivision of the North West 1/4 of the North East 1/4 (except that part lying Northeasterly of Lincoln Avenue and except the street), also that part of the North 1/2 of the West 1/2 of the East 1/2 of the Northeast 1/4 lying West of Lincoln Avenue the North East 1/4 in Section 12, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois, which Survey is attached as Exhibit A to a Declaration of Condominium made by LaSalle National Bank, as Trustee under Trust Agreement dated November 3, 1950 and known as Trust Number 12899 recorded in the office of the Recorder of Cook County, Illinois, as Document No. 24447489 together with an undivided percentage interest in said parcel (excepting from said parcel all the property and space comprising all the unit thereof as defined and set forth in said Declaration and Survey.

P.I.N. 13-12-210-058-1004

Common Address: 2724 W. Rascher, Unit 2E
Chicago, Illinois 60625

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Scheduled Lease

Property of Cook County Clerk's Office

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