

# UNOFFICIAL COPY

American Chartered Bank  
 1199 E. Higgins Rd.  
 Schaumburg, IL 60173  
 (Lender)

97132550

DEPT-01 RECORDING \$29.00  
 T90012 TRAN 4142 02/26/97 12:33:00  
 46819 CG \*-97-132550  
 COOK COUNTY RECORDER

## ASSIGNMENT OF LESSOR'S INTEREST IN LEASE

GRANTOR		BORROWER				
Ell-Oll Partnership <i>an Illinois general partnership</i>		Ell-Oll Partnership <i>an Illinois general partnership</i>				
ADDRESS		ADDRESS				
226 West Lake Street Barrington, IL 60010		226 West Lake Street Barrington, IL 60010				
TELEPHONE NO.	IDENTIFICATION NO.	TELEPHONE NO.	IDENTIFICATION NO.			
847-381-1100	36-3339821	847-381-1100	36-3339821			
OFFICER INITIALS	INTEREST RATE	PRINCIPAL AMOUNT/ CREDIT LIMIT	FUNDING AGREEMENT DATE	MATURITY DATE	CUSTOMER NUMBER	LOAN NUMBER
RLR	VARIABLE	\$1,275,000.00	02/24/97	02/24/02	2267403	9001

**1. ASSIGNMENT.** As security for the repayment of the promissory note described above and all other present and future obligations of Borrower and Grantor to Lender (whether for the same or different purposes than the promissory note), (together the "Obligations"), Grantor hereby assigns to Lender all of Grantor's title and interest as lessor in and to the lease(s) now or hereafter pertaining to, and the rentals now or hereafter payable by reason of, the premises identified on Schedule A attached hereto (the "Lease").

**2. EXTENT OF ASSIGNMENT.** This Assignment shall extend to all rights of Grantor under the Lease including, but not limited to, all rights to rents and other sums required to be paid under the Lease and the right to use the name of Grantor to enforce all covenants and terms of the Lease relating to the collection and enforcement of rental payments or other sums which may become due under the Lease. Nothing contained in this Assignment, nor any action taken by Lender pursuant to this Assignment, shall be construed to make Lender a "mortgagee-in-possession" of the premises described in the Lease.

**3. REPRESENTATIONS AND WARRANTIES OF GRANTOR.** All warranties shall be deemed to be reaffirmed on and as of the time of each disbursement of loan proceeds to Borrower. Grantor warrants and represents as follows:

- (a) The Lease is in full force and effect.
- (b) No default exists on the part of any tenant or Grantor under the Lease.
- (c) No rent has been collected more than one month in advance of its due date.
- (d) Neither the Lease nor any interest therein has been previously assigned or pledged.
- (e) The tenants under the Lease have no defense, setoff or counterclaims against Grantor.
- (f) All rent due to date under the Lease has been collected and no concession has been granted to the tenants in the form of a waiver, release, reduction, discount or other alteration of rent due or to become due.

**4. COVENANTS OF GRANTOR.** Grantor covenants and agrees with Lender as follows:

- (a) The Lease will remain in full force and effect despite any merger of the interest of Grantor and any tenants thereunder. Grantor shall not transfer or convey fee title to the leased premises to any tenant without the prior written consent of Lender. Where such consent is given or where under applicable law the requirement for such consent is not enforceable, Grantor shall require the tenants, in writing, to assume and agree to pay the indebtedness secured hereby in accordance with the terms, covenants and conditions of the promissory note. In no event shall any such transfer or conveyance operate to release or relieve Borrower or Grantor of any liability to Lender unless Lender specifically agrees otherwise in writing.

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- (b) Grantor will not terminate the Lease (except pursuant to the terms of the Lease upon a default by the tenants), or modify or amend the Lease or any of the terms thereof, or grant any concessions in connection therewith or accept a surrender thereof, without the prior written consent of Lender.
- (c) Grantor will not collect any rents and profits in advance of the date on which they become due under the terms of the Lease.
- (d) Grantor will not discount any future accruing rents and profits.
- (e) Grantor will not consent to any assignment of the Lease, or subletting thereunder, whether or not in accordance with its terms, without the prior written consent of Lender.
- (f) Grantor will not execute any further assignment of the Lease or of any of the rents and profits or any interest therein or permit any such assignment to occur by operation of law.
- (g) Grantor will not request, consent to, agree to or accept a subordination of the Lease to any mortgage, deed of trust or other encumbrance, or any other Lease, now or hereafter affecting the property or any part thereof, or permit conversion of any Lease to a sublease.
- (h) Grantor will perform and discharge all obligations of the landlord under the Lease, and will give prompt written notice to Lender of any notice of default received from any tenant or any other person. Grantor shall appear in and defend, at no cost to Lender, any action or proceeding arising under or in any manner connected with the Lease. If requested by Lender, Grantor shall enforce the Lease and all remedies available to Grantor against the tenants in the case of default under the Lease by the tenants.
- (i) Grantor shall manage the leased premises through its own personnel, and shall not hire, retain or contract with any third party for property management services without the prior written approval by Lender of such party and the terms of its contract for management services. Grantor shall deliver to Lender, promptly upon request, a duly executed estoppel certificate from the tenants as required by Lender attesting that the Lease is in full force and effect with no defaults thereunder on the part of any party, that no rental has been paid more than one month in advance, and that the tenants claim no defense or offset against the full and timely performance of Grantor under the Lease.

**5. SECURITY DEPOSITS.** If the Lease provides for a security deposit paid by the tenant to Grantor, this Assignment transfers to the Lender all of Grantor's right, title and interest in and to the security deposit. Grantor shall have the right to retain the security deposit so long as Grantor is not in default under this Assignment or the Promissory Note. Lender shall have no obligation to any tenant with respect to such security deposit unless and until Lender comes into actual possession and control of said deposit.

**6. RENTAL INSURANCE.** If the Lease provides for the abatement of rent during repair of the leased premises by reason of fire or other casualty, Grantor shall obtain rental insurance and assign such policy or policies to Lender. The policies shall be in the amount and form and written by such companies as shall be satisfactory to Lender.

**7. LENDER NOT TO BE OBLIGATED.** Nothing in this Assignment shall be construed to impose any liability or obligation upon Lender under or with respect to the Lease. Grantor agrees to indemnify and hold Lender harmless from and against any and all liabilities, losses and damages which Lender may incur under the Lease or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations to be performed or discharged by Lender under the Lease or this Assignment. Should Lender incur any liability, loss or damage under the Lease or under or by reason of this Assignment, Grantor shall immediately upon demand reimburse Lender for the amount thereof together with all costs and expenses and reasonable attorneys' fees incurred by Lender. All of the foregoing sums shall bear interest until paid at the rate set forth in the Promissory Note. Any rents and profits collected by Lender may be applied by Lender in its discretion in satisfaction of any such liability, loss, damage, claim, demand, costs, expense or fees.

**8. DEFAULT.** In the event of any default under the terms of the promissory note, this Assignment or any other obligation whether contained herein or in any other document, Lender shall have the right to exercise its status as an assignee under this Assignment and take the following action without presentment, notice or demand of any kind: (a) enter upon, take possession of, manage and operate the premises or any part thereof; (b) demand, collect and receive from the lessees the rents, income or profits under the Lease as they become due as well as all past due rents, income and profits which have been uncollected by Grantor; (c) endorse the name of Grantor or any subsequent owner of the premises on any checks, notes, or other instruments for the payment of money, deposit the same in bank accounts, and give any and all acquittances or any other instrument in relation thereto in the name of Grantor; (d) institute, prosecute, settle, or compromise any summary or legal proceedings in the name of the Grantor or in the name of Lender for the recovery of such rents, income or profits, for the recovery of any damages done to the premises, for the abatement of any nuisance thereon, for the eviction of any lessee or for the enforcement of any Lease, and defend any legal proceedings brought against the Grantor arising out of the operation of the premises; (e) pay all charges, expenses and fees deemed by it in its sole and absolute discretion necessary or expedient for the leasing, maintaining and operation of the premises; (f) exercise all the rights and privileges of Grantor as owner of the premises including the right to let or relet the premises, or any part thereof, and to collect the rents, income and profits under such new Lease in accordance with the foregoing; (g) perform any of Grantor's obligations to the lessees under the Lease, exercise any of Grantor's rights, power or privileges under the Lease, and modify the Lease; (h) apply the rentals received to expenses incurred by Lender hereunder or to reduce the indebtedness under the note and mortgage, in such amounts and in such order as Lender in its sole discretion shall determine; (i) at its election, assume any of the obligations of Grantor or its assigns to the lessees under the Lease; or (j) exercise any of Lender's rights or remedies under any other agreement or as provided by law.

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**9. OBLIGATIONS OF LENDER AND INDEMNITY.** (a) Grantor hereby appoints Lender as its agent to exercise, at Lender's option, any of the rights set forth in paragraph 8. All obligations created by the exercise of such agency shall be those of Grantor and not those of Lender except as otherwise provided herein. Grantor hereby ratifies and confirms all that Lender shall lawfully do or cause to be done by virtue hereof. (b) Lender shall only be accountable for money actually received pursuant to this Assignment. The manner of the application of such rentals, the reasonableness of the costs and charges to which such rentals are applied and the item or items which shall be credited thereby shall be within the sole and uncontrolled discretion of Lender. Lender shall in no way be responsible in excess of rents actually received by Lender for any debt incurred in respect of the premises. After Grantor shall have been barred and foreclosed of all right, title and interest in said premises, Lender shall not be liable to account to Grantor for the rents, income and profits thereafter accruing. (c) Lender shall in no way be responsible or liable for any failure to account for any rents collected by any agent, manager, receiver or collector of the premises whom it may designate or appoint to collect the rents or manage the premises, nor shall Lender be in any way liable to Grantor for the failure or refusal on its part to make repairs to the premises. (d) No security deposited by the lessees with the Grantor under the terms of Lease has been transferred to Lender, and Lender assumes no liability for any security so deposited. (e) Except as otherwise provided herein, this Assignment shall not operate to place responsibility for the control, care, management or repair of the premises upon Lender, nor for the carrying out of any of the terms and conditions of the Lease unless such responsibility is specifically assumed by Lender in writing; nor shall it operate to make Lender responsible or liable for any waste committed on the premises by the lessees or any other party, or for any dangerous or defective condition of the premises, or for any negligence in the management, upkeep, repair or control of said premises resulting in loss or injury or death to any tenant, licensee, employee or stranger. (f) Grantor hereby indemnifies and holds Lender harmless of and from any and all liability, loss or damage which Lender may incur under the Lease or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under the Lease or this Assignment. Should the Lender incur any such liability, loss or damage under the Lease or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Grantor shall reimburse Lender therefor immediately upon demand, and upon the failure of Grantor to do so Lender may declare all sums secured hereby immediately due and payable. (g) Nothing herein contained shall be construed to bind Lender to the performance of any of the terms and provisions contained in the Lease or otherwise to impose any obligation on Lender to do any act which it may be authorized hereunder to do.

**10. NOTICE TO LESSEE.** Grantor irrevocably consents that the lessee under the Lease, upon demand and notice from Lender of the occurrence of a default under the Lease, or under any other obligation of Borrower or Grantor to Lender, may and shall pay said rents, income and profits under the Lease to Lender without liability of lessee for the determination of the actual existence of any default claimed by Lender. Grantor hereby irrevocably authorizes and directs lessee, upon receipt of any notice of Lender stating that such a default exists, to pay to Lender the rents, income and profits due and to become due under the Lease. Grantor agrees that lessee shall have the right to rely upon any such notices of Lender and that lessee shall pay such rents, income and profits to Lender without any obligation or right to inquire whether such default actually exists, and notwithstanding any claim of Grantor to the contrary. Grantor shall have no claim against lessee for any rents paid by lessee to Lender. Upon the curing of all such defaults, Lender shall give written notice thereof to lessee and thereafter, until further notice from Lender, lessee shall pay such rents, income and profits to Grantor.

**11. TERMINATION.** This Agreement shall remain in full force and effect until Lender provides Grantor with written notice of the termination hereof.

**12. ASSIGNMENT.** Grantor shall not be entitled to assign any of its rights, remedies or obligations described in this Agreement without the prior written consent of Lender which may be withheld by Lender in its sole discretion. Lender shall be entitled to assign some or all of its rights and remedies described in this Agreement without notice to or the prior consent of Grantor in any manner.

**13. MODIFICATION AND WAIVER.** The modification or waiver of any of Grantor's obligations or Lender's rights under this Agreement must be contained in a writing signed by Lender. Lender may perform any of Grantor's obligations or delay or fail to exercise any of its rights without causing a waiver of those obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Grantor's obligations under this Agreement shall not be affected if Lender amends, compromises, exchanges, fails to exercise, impairs or releases any of the obligations belonging to any Grantor or third party or any of its rights against any Grantor, third party or collateral.

**14. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of Grantor and Lender and their respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees, and devisees.

**15. NOTICES.** Any notice or other communication to be provided under this Agreement shall be in writing and sent to the parties at the addresses indicated in this Agreement or such other address as the parties may designate in writing by notice hereunder from time to time.

**16. SEVERABILITY.** If any provision of this Agreement violates the law or is unenforceable, the rest of the Agreement shall remain valid.

**17. APPLICABLE LAW.** This Agreement shall be governed by the laws of the state of the location of the premises. Grantor consents to the jurisdiction and venue of any court located in the state of the location of the premises in the event of any legal proceeding under this Agreement.

**18. COLLECTION COSTS.** If Lender hires an attorney to assist in collecting any amount due or enforcing any right or remedy under this Agreement, Grantor agrees to pay Lender's attorneys' fees and collection costs.

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19. MISCELLANEOUS. This Agreement is executed for commercial purposes. All references to Grantor in this Agreement shall include all persons signing below. If there is more than one Grantor, their obligations shall be joint and several. Grantor waives any right to a jury trial Grantor may have under applicable law. This Agreement and any related documents represent the complete and integrated understanding between Grantor and Lender pertaining to the terms and conditions of those documents.

## 20. ADDITIONAL TERMS.

Property of Cook County Clerk's Office

GRANTOR ACKNOWLEDGES THAT GRANTOR HAS READ, UNDERSTANDS, AND AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Dated: FEBRUARY 24, 1997

GRANTOR: Ell-Oll Partnership

GRANTOR: Ell-Oll Partnership

Deborah Heath Scholl  
Deborah Heath Scholl  
Partner

Carol Heath-Angell  
Carol Heath-Angell  
Partner

GRANTOR:

GRANTOR:

GRANTOR:

GRANTOR:

GRANTOR:

GRANTOR:

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State of Ill )  
County of Cook ) SS.

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) SS.

I, De Underwood a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert Heath Schell and Carol Heath-Argall personally known to me to be the same person, whose name De Underwood subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that De Underwood he Y signed, sealed and delivered the said instrument as than free and voluntary act, for the uses and purposes herein set forth.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ by \_\_\_\_\_ as \_\_\_\_\_ on behalf of the \_\_\_\_\_

Given under my hand and official seal, this 24 day of February 1991  
\_\_\_\_\_  
Notary Public

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

Commission expires: \_\_\_\_\_

Commission expires: \_\_\_\_\_

### SCHEDULE A

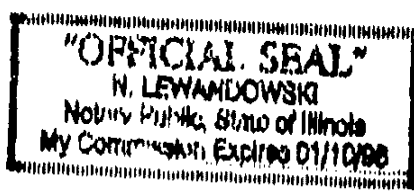
Lease dated \_\_\_\_\_ between Grantor as Lessor, and \_\_\_\_\_

as Lessee, along with any modifications or amendments to the Lease, covering the real property more particularly described below.

The legal description of the Property is:

PARCEL 1: LOT 15 (EXCEPT THAT PART LYING WEST OF E. LINE 50 FEET NORTHEASTERLY OF AND PARALLEL WITH EASTERLY LINE OF CHICAGO AND NORTHWESTERN RAILROAD COMPANY RIGHT OF WAY) IN BLOCK 13 IN WINNETKA PARK BLUFFS BEING A SUBDIVISION BY WILLIAM CAIRNDUFF OF PARTS OF SECTIONS 16, 17, 20, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;  
PARCEL 2: LOT 11 (EXCEPT WESTERLY 50 FEET THEREOF) IN BLOCK 12 IN PARK ADDITION TO WINNETKA SUBDIVISION BY WILLIAM H. CAIRNDUFF OF PART OF SECTIONS 16, 17, 20, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;  
PARCEL 3: THE SOUTH 5 FEET OF LOT 6 IN LEWIS D. WEBSTERS RESUBDIVISION OF BLOCK 11 (EXCEPT THE NORTH 75 FEET THEREOF) AND OF LOTS 6, 8, 9 AND 10 IN BLOCK 12 IN PARK ADDITION TO WINNETKA AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

97132550



Address of Real Property: 562-572 Lincoln Avenue  
Winnetka, IL 60093

Permanent Index No.(s): 05-20-203-013, 014 & 016

This document was prepared by: American Chartered Bank  
After recording return to Lender. AMERICAN CHARTERED BANK  
1199 E. Higgins Road  
Schaumburg, IL 60173

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