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FOR RECORDED ONLY

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1998-08-28 09:48:26  
Cook County Recorder 47.00

## WHEN RECORDED MAIL TO:

Robert I. Boehm, Esq.  
Boehm & Associates, P.C.  
205 North Michigan Avenue  
38th Floor  
Chicago, Illinois 60601

7751881 DT C/R

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of August 7, 1998, by **MIDWEST TRUST SERVICES, INC.**, not individually, but solely as Trustee under that certain Trust Agreement dated January 21, 1997 and known as Trust No. 97-1-7107 ("Assignor") with a mailing address at 1606 N. Harlem Avenue, Elmwood Park, Illinois 60635 in favor of **LASALLE NATIONAL BANK** (hereinafter referred to as "Assignee") with a mailing address of 135 South LaSalle Street, Chicago, Illinois 60603 and pertains to the real estate described in Exhibit "A", attached hereto and made a part hereof.

### I. RECITALS

1.01 Note. Pursuant to that certain Loan and Security Agreement dated the date of this Assignment entered into by and among Assignor, Assignee and Sergio Martinucci (said Loan and Security Agreement as may be amended or restated from time to time shall be hereinafter referred to as the "Loan Agreement"); that certain Note (said Note as may from time to time be amended, modified, substituted, restated, renewed and/or extended, shall hereinafter be referred to as the "Note") in the principal amount of \$130,000.00 payable along with interest as specified in the Note has been, or is being, contemporaneously executed and delivered by Assignor to Lender.

1.02 This Assignment. To induce Assignee to both enter into the Loan Agreement and make the loan which is the subject of the Note and as security for the repayment of the Note and payment and performance of all other indebtedness, obligations, and liabilities of Assignor to Assignee, howsoever created, arising or evidenced and whether now existing or hereafter arising including, but not limited to, under the Loan Agreement and any document entered into or given pursuant to the Loan Agreement (all of the indebtedness, liabilities, and obligations referenced in

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this Section 1.02 shall be collectively referred to as the "Obligations"), Assignor has agreed to execute and deliver to Assignee this Assignment. This Assignment is given as equal security for all of the Obligations without preference or priority of any part of the Obligations by reason of priority of time or of the negotiation thereof or otherwise.

This Assignment is given in part to secure the Loan as evidenced and witnessed by the Note and secures not only the indebtedness from Assignor existing on the date hereof, but all such future advances whether such advances are obligatory or to be made at the option of the Assignee or otherwise as are made within twenty (20) years from the date hereof to the same extent as if such future advances were made on the date of the execution of this Assignment, although there may be no indebtedness outstanding at the time any advance is made. The lien of this Assignment as to third persons without actual notice thereof shall be valid as to all indebtedness and future advances from the time this Assignment is filed for record in the Office of the Recorder of Deeds of Cook County. The total amount of indebtedness that may be secured by this Assignment may increase or decrease from time to time, but the total unpaid balances of the Note secured at any one time shall not exceed the maximum principal amount of the aggregate of the Note (as amended, extended, substituted, restated, replaced or renewed from time to time) plus interest thereon and any disbursements made by the Assignee for the payment of taxes, special assessments or insurance on the above described real estate with interest on such disbursements.

## II. ASSIGNMENT AND SECURITY

2.01. Assignment. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor grants, transfers, sets over, and assigns to Assignee, Assignor's entire interest in and to any and all leases, subleases and any agreements for the use or occupancy of the Premises (as hereinafter defined) (including all extensions and renewals thereof), now or hereafter existing (collectively, the "Leases"), and any and all rents, issues, deposits, income and profits of and from that certain real estate located and more particularly described in Exhibit A, attached hereto and made a part hereof, and all buildings, structures and improvements now or hereafter erected thereon (collectively, the "Premises").

2.02. Security. This Assignment is given to secure:

- (a) payment and performance by Assignor of the Obligations and observance and performance by Assignor of each and every of the covenants, terms, conditions and agreements contained in the Note, the Loan Agreement, this Assignment, and the Documents (as defined in the Loan Agreement); and
- (b) reimbursement of Assignee for and of all costs, expenses and damages incurred or suffered by Assignee after the occurrence of an Event of Default under the provisions of this Assignment for, or in respect of, taking and retaining

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possession of the Premises; managing the Premises and collecting the rents, issues, income and profits thereof including, but not limited to, reasonable salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary or desirable and reasonable attorneys' fees; operating and maintaining the Premises, including, but not limited to, taxes, charges, claims, assessments, water rents, sewer rents, other liens and premiums for any insurance which Assignee may deem necessary; and making any reasonable alterations, renovations, repairs or replacements of or to the Premises which Assignee may deem necessary to preserve the security, together with interest thereon as provided herein; and

- (c) reimbursement of Assignee for any and all sums with respect to which Assignee is indemnified pursuant to Paragraph 4.04 hereof together with interest thereon as provided herein.

### III. GENERAL AGREEMENTS

3.01. Representations and Warranties of Assignor. Assignor represents and warrants to Assignee that:

- (a) This Assignment, as executed by Assignor, constitutes a legal and binding obligation of Assignor enforceable in accordance with its terms and provisions.
- (b) As to each of the Leases now existing:
  - (i) such Lease is in full force and effect and is valid and enforceable according to its terms and the tenants(s) thereunder are duly bound thereby; and
  - (ii) Assignor has completed its obligations to date under such Lease and is not now in default thereunder;
- (c) Except as expressly advised otherwise by Assignor in writing on the date of execution of this Assignment and as to each of the Leases now existing:
  - (i) there is now accruing, and the tenant(s) under such Lease are now paying, the full

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rent thereunder unless otherwise provided in the Lease;

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- (ii) the tenant(s) under such Lease do not now have any defenses or offsets to the payment of rent or other covenants or obligations undertaken by the tenant(s) thereunder;
  - (iii) the tenant(s) under such lease have not made, nor has Assignor accepted, any payments of rent more than thirty (30) days in advance thereunder;
  - (iv) the tenant(s) under such Lease have performed all of their obligations to date under the terms thereof and are not now in default thereunder;
  - (v) no event has occurred and is continuing and no condition exists which, after passing of time or giving of notice, or both, would constitute a default under such Lease by Assignor or, to the best knowledge of Assignor, the tenant(s) thereunder; and
  - (vi) Assignor has not waived, reduced, excused, discounted or otherwise discharged or compromised any obligation, including, but not limited to, the obligation to pay rent, under such Lease;
- (d) Assignor has not heretofore made any other assignment of its entire or any part of its interest in and to any or all of the Leases or any or all of the rents, issues, income or profits assigned hereunder which is now outstanding or enforceable or entered into any agreement to subordinate any of the Leases or Assignor's right to receive any of the rents, issues, income or profits assigned hereunder which is now outstanding or enforceable; and
- (e) Assignor has not heretofore executed any instrument or performed any act which may or might prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation.

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3.02. Covenants of Assignor. Assignor covenants and agrees that, so long as this Assignment shall be in effect:

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- (a) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by Assignor, and shall not do or suffer to be done anything to materially impair the security thereof (i) to release the liability of any tenant thereunder, (ii) to permit any tenant thereunder to withhold the payment of rent or to make monetary advances and offset the same against future rentals, (iii) to permit any tenant thereunder to claim a total or partial eviction, (iv) to permit any tenant thereunder to terminate or cancel any Lease;
- (b) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due except for security or similar deposits;
- (c) Assignor shall not hereafter make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder without the prior written consent of Assignee;
- (d) Assignor shall not hereafter agree to subordinate any of the Leases or its right to receive any of the rents, issues, income or profits assigned hereunder to any mortgage or other encumbrance now or hereafter affecting the Premises;
- (e) Assignor shall not, except either (i) with the prior written consent of Assignee or (ii) for arms-length transactions entered into upon fair market terms, agree, enter into or consent to any new lease or any extension, modification, assignment, cancellation or termination of any then existing lease or sublease or occupancy agreement affecting the Property;
- (f) Assignor shall not alter, modify or change the terms of any guaranty of any lease, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law without the prior written consent of Assignee;
- (g) Assignor shall not waive or excuse the obligation to pay rent under any Lease if such waiver or excuse is not

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consistent with good business and property management practices;

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- (h) Assignor shall enforce the Lease and all rights and remedies of Assignor thereunder in case of default thereunder by any tenant if consistent with good business and property management practices;
- (i) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Assignor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including attorneys' fees, in any such action or proceeding in which Assignee may appear;
- (j) Assignor shall give prompt notice to Assignee of any notice of default on the part of Assignor with respect to any Lease received from any tenant or guarantor thereunder; and
- (k) Assignor shall enforce the observance and performance of each and every covenant, term, condition and agreement contained in each and every Lease to be observed and performed by the tenant(s) thereunder if consistent with good business and property management practices.

3.03. Rights Prior to Default. So long as Assignor is not in default hereunder, Assignor shall have the right to collect at the time, but not more than thirty (30) days in advance of the date provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

## IV. DEFAULTS AND REMEDIES

4.01 Events of Default. Each of the following shall constitute an "Event of Default" for purposes of this Assignment:

- (a) Assignor shall default in the payment when due of any amount due and owing to Assignee under the Note.

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- (b) Except for a Default set forth in clause (a) above, Default (and continuance thereof for five (5) days after written notice thereof to Assignor by Assignee) in the payment of any of the other Obligations.
- (c) Any representation or warranty made by Assignor in this Assignment shall at any time prove to have been incorrect in any material respect when made.
- (d) Assignor shall default in the performance or observance of any term, covenant, condition or agreement on its part to be performed or observed under the Documents (not constituting a Default under any other clause of this Section 4.01 of this Agreement) and such default shall continue unremedied for five (5) days after written notice thereof shall have been given by the Assignee to Assignor.
- (e) Any Default or Event of Default (howsoever such terms are defined) under the Loan Agreement, the Note or any of the Documents (as defined in the Loan Agreement) shall occur.

4.02. Rights and Remedies upon Default. At any time upon or following the occurrence of any one or more Events of Default under this Assignment, Assignee may, at its option and without any obligation to do so, without in any way waiving such Event or Events of Default, without notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby and without releasing Assignor from any obligation hereunder:

- (a) Declare all the Obligations including, but not limited to, the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable.
- (b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper with full power to make from time to time all alterations, renovations, repairs or replacements thereto and thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper.

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- (c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all Assignor's rights therein and thereunder, provided that, for such purpose, this Assignment shall constitute an authorization, and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee without proof of default hereunder upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided further that Assignor will facilitate in all reasonable ways Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Assignee, provided that any action taken by Assignee under this paragraph shall not result in additional liability of Assignor to third parties.
- (d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the highest "Default Rate" as defined in the Note which evidences the loans and shall be secured by this Assignment.
- (e) Exercise all other rights and remedies of Assignee pursuant to this Assignment and under applicable law.

All rights and remedies of Assignee pursuant to this Assignment shall be and are severable and cumulative.

4.03. Application of Proceeds. All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default under this Assignment shall be applied as follows:

- (a) First, to reimbursement of Assignee for any and all expenses of taking and retaining possession of the Premises; of managing the Premises and collecting the rents, issues, income and profits thereof including, but not

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limited to, salaries, fees and wages of a managing agent and such other employees as Assignee may deem reasonably necessary and proper and reasonable attorneys' fees; or operating and maintaining the Premises, including, but not limited to, taxes, charges, claims, assessments, water rents, sewer rents, other liens and premiums for any insurance provided in the Mortgage; and of all alterations, renovations, repairs or replacements of or to the Premises which Assignee may deem reasonably necessary and proper with interest thereon at the Default Rate.

- (b) Second, to the reimbursement of Assignee for any and all sums expended by Assignee pursuant to Paragraph 4.02(d) hereof to make any payment or do any act required herein of Assignor together with interest thereon as provided herein.
- (c) Third, to reimbursement of Assignee for any and all other sums with respect to which Assignee is indemnified pursuant to Paragraph 4.04 hereof together with interest thereon as provided herein.
- (d) Fourth, to reimbursement of Assignee for any and all other sums expended or advanced by Assignee pursuant to the terms and provisions of c. constituting additional indebtedness under or secured by the Loan Agreement, the Mortgage (as defined in the Loan Agreement) or this Assignment with interest therein as provided therein.
- (e) Fifth, to payment of all accrued and unpaid interest on the principal sum of the Obligations.
- (f) Sixth, to payment of the unpaid balance of the principal sum of the Obligations.
- (g) Seventh, any balance remaining to Assignor, its successors, and assigns.

4.04. Limitation of Assignee's Liability. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises following the occurrence of any one or more Events of Default under the provisions hereof or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of any one or more Events of Default under the provisions hereof unless such loss is caused by the willful misconduct or gross negligence of Assignee. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be

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observed or performed by Assignor or any obligation, duty or liability of Assignor under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify Assignee for, and to hold Assignee harmless of and from, any and all liability, loss or damage which Assignee may or might incur under any Lease or under or by reason of this Assignment and of 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 observe or perform any of the covenants, terms, conditions and agreements contained in any Lease except for Assignee's negligence. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment or in the defense of any such claim or demand, the amount thereof including costs, expenses and attorneys' fees shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease upon Assignee nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party or for any dangerous or defective condition of the Premises or for any negligence (except gross negligence) in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger to any of their property.

## V. MISCELLANEOUS

5.01 Notices. Any notice that Assignee or Assignor may desire or be required to give to the other shall be in writing, personally delivered, or sent by facsimile machine or sent by overnight courier to the intended recipient thereof at its address hereinabove set forth or at such other address as such intended recipient may, from time to time, by notice in writing designate to the sender pursuant hereto. Any such notice shall be deemed to have been delivered one (1) business day after being sent by overnight courier or on the day that such writing is delivered in person or sent by facsimile machine to an officer of Assignee or Assignor (as the case may be). Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Assignee by this Assignment is not required to be given.

5.02 Covenants Run with Land. All of the covenants of this Assignment shall run with the land constituting the Premises.

5.03 Governing Law. The validity and interpretation of this Assignment shall be governed and construed in accordance with the laws of Illinois. To the extent that this Assignment may operate as a security agreement under the Uniform Commercial Code, Assignee shall have all rights and remedies conferred therein for the benefit of a secured party as such term is defined therein.

5.04 Severability. If any provision of this Assignment or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance is held invalid, the validity of the remainder of this Assignment shall be construed as if such invalid part were never included herein.

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5.05 Non-Waiver. Unless expressly provided in this Assignment to the contrary, no consent or waiver, express or implied, by Assignee to or of any breach or default by Assignor in the performance by Assignor of any obligations contained herein shall be deemed a consent to, or waiver by, Assignee of such performance in any other instance or any other obligations hereunder.

5.06 Headings. The headings of sections and paragraphs in this Assignment are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

5.07 Grammar. As used in this Assignment, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable where the context so requires.

5.08 Successors and Assigns. This Assignment and all provisions hereof shall be binding upon Assignor and its successors, assigns, legal representatives and all other persons or entities claiming under or through Assignor, and the word "Assignor", when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof whether or not they have executed the Note or this Assignment. The word, "Assignee," when used herein, shall include Assignee's successors, assigns and legal representatives including all other holders, from time to time, of the Note.

5.09 Release. Assignee shall release this Assignment and the lien thereof by proper instrument upon presentation of satisfactory evidence that all indebtedness secured by this Assignment has been fully paid.

5.10 Fees and Expenses. Assignor shall pay all of the reasonable and necessary fees and expenses of Assignee with respect to the preparation of this Assignment, the Note and any other documents, instruments or agreements deemed necessary by Assignee in connection with this transaction including, without limitation, reasonable attorneys' fees.

## VI. EXCULPATION

6.01 Exculpation. This Assignment is executed by Assignor, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred and fixed in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be constituted as creating any liability on Assignor as trustee aforesaid or on Assignor personally to pay the Obligations or any interest that may accrue thereon, or any indebtedness accruing hereunder or to perform any covenant either express or implied herein contained, all such liability on Assignor, if any, being expressly waived by Assignee and by every person now or hereafter claiming any right or security hereunder. Each and all of the representations, warranties, covenants, undertakings and agreements made by Assignor as trustee aforesaid are made for the purpose of binding (and shall be enforceable against) the beneficiaries, and their successors and assigns. So far as Assignor as trustee aforesaid and its successors and Assignor personally are concerned, Assignee and the holder or holders of the Note and the owner or

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owners of the indebtedness accruing hereunder shall look solely to the Premises for the payment thereof by the enforcement of the lien hereby created in the manner herein and in the Note provided or by action to enforce the personal liability of any guarantor or co-maker.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of \_\_\_\_\_, 1998.

MIDWEST TRUST SERVICES, INC., not individually, but solely as Trustee under Trust Agreement dated January 21, 1997 and known as Trust No. 97-1-7107

By: *Martha M. Manna*

Title: *Trust Administrator*

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Exhibit A

Lots 1, 4 and 5 (except the east 51 ½ feet thereof) in block 30 in Irving Park, a subdivision of the southeast ¼ of section 15 and the north ½ of the north east ¼ of section 22, township 40 north, range 13 east of the third principal meridian, in Cook County, Illinois.

Permanent index number: 13-22-200-031-0000

Common address: 4323 W. Irving Park Road, Chicago, Illinois

This document prepared by and to be returned to:

Robert Boehm  
205 N. Michigan Avenue  
38<sup>th</sup> Floor  
Chicago, Illinois 60601

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