

4

Prepared by:
DONALD E. JACKSON
P.O. Box 167
Amarillo, TX 79105-0167
Commitment No. 97158

AFTER RECORDING RETURN TO:
Donald E. Jackson
P.O. Box 167
Amarillo, TX 79105-0167

6819551
12/19/97 4:48 PM 30.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
REC BY: R FRESQUES , DEPUTY - WI

6819551

ASSIGNMENT OF RENTS
CONTAINING A PRESENT ASSIGNMENT OF RENT PROCEEDS

STATE OF UTAH

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF SALT LAKE

That STEVSIM, INC., a Delaware corporation, whose mailing address is 1507 Avenue M, Brooklyn, New York 11230, referred to as "Assignor," which term shall bind the undersigned, its successors and assigns), is the owner of the property and premises more particularly described on Exhibit "A," attached hereto and made a part hereof, together with the buildings, improvements, fixtures, equipment and personal property located thereon (hereinafter collectively referred to as the "Premises" or the "Mortgaged Property"); and

WHEREAS, Assignor has made, executed and delivered to CONSECO MORTGAGE CAPITAL, INC., whose mailing address is P. O. Box 9222, Amarillo, Texas 79105 (hereinafter referred to as "Assignee," which term shall be construed as including its successors and assigns), a certain Promissory Note of even date herewith (hereinafter referred to as the "Note"), in the principal sum of ONE MILLION FIVE HUNDRED TWENTY-SEVEN THOUSAND AND NO/100 DOLLARS (\$1,527,000.00), the payment of which Note is secured by a certain Deed of Trust and Security Agreement, Assignment of Leases, and other security instruments (hereinafter collectively referred to as the "Deed of Trust") covering the Premises and other security therein described; and

WHEREAS, the Assignor is desirous of further securing unto the Assignee the payment of the indebtedness evidenced by the Note and secured by the Deed of Trust;

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) to the Assignor in hand paid, and other good and valuable considerations, the receipt whereof is hereby acknowledged, and the mutual agreements herein contained, the Assignor does hereby presently sell, assign, transfer, set over and grant to Assignee

9K7835PG2591

LTC # 19078

all of 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 above described, or any part thereof, which may have heretofore or may be hereafter made or agreed to, or which may be made or agreed to by the Assignee under the power herein granted, it being the intention hereby to establish an absolute transfer and assignment of all the said leases and agreements and any and all avails thereof to the Assignee, and the Assignor does hereby appoint irrevocably the Assignee its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Premises), to rent, lease or let all or any portion of said Premises to any party or parties at such rental and upon such term in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter and now due or that may hereafter become due under each and all of the leases and agreements, written or verbal, or other tenancy existing or which may hereafter exist on said Premises, with the same rights and powers and subject to the same immunities, exonerations or liability and rights of recourse and indemnity as the Assignee would have upon taking possession of the said Premises pursuant to the provisions hereinafter set forth.

For the same consideration aforesaid the Assignor hereby expressly warrants, represents, covenants and agrees as follows:

1. THE FIXED MONTHLY RENT FROM THE WILLOW CREEK SYSTEMS, INC. LEASE WILL BE DELIVERED DIRECTLY TO ASSIGNEE BY WILLOW CREEK SYSTEMS, INC., TENANT. As long as there is no Event of Default under the terms of the Note or Deed of Trust, Assignor may collect all other rents and lease payments.

Assignee will give Assignor written notice of monetary defaults and allow Assignor 30 days to cure such default before exercising any of the remedies available to it under this or any other loan document. With respect to non-monetary defaults, Assignee will give Assignor written notice of such default and allow Assignor 30 days to cure the default or to commence reasonable efforts to cure the default before exercising any of the remedies available to it under this or any other loan document. If the non-monetary default is such that cannot be cured within the 30-day period Assignee will not exercise any of its default rights or remedies as long as Assignor has commenced cure efforts within the 30-day period and continues such efforts without interruption until the cure is effected.

2. That no rent has been or will be paid by any person in possession of any portion of the above described Premises for more than one 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, discounted, or otherwise discharged or compromised by the Assignor. The Assignor agrees that it will not assign any of the rents or profits to the purchaser or grantee of the Premises.

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

4. The Assignor further agrees to assign and transfer to the Assignee all future leases upon all or any part of the above described Premises and to execute and deliver, immediately upon the request of the Assignee, all such further assurances and assignments in the Premises as the Assignee shall, from time to time, require.

5. In any case in which under the provisions of the above described Deed of Trust the Assignee 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, forthwith upon demand of the Assignee the Assignor agrees to surrender to the Assignee, and the Assignee shall be entitled to take, actual possession of the Premises or any part thereof personally, or by its agents or attorneys, and the Assignee 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 said Premises, together with all the documents, books, records, papers and accounts of the Assignor or then owner of the Premises relating thereto, and may exclude the Assignor, its agents or servants, wholly therefrom and may, as attorney-in-fact or agent of the Assignor, or in its own name as Assignee and under the powers herein granted, hold, operate, manage and control the Premises and conduct 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 of security of the avails, rents, issues and profits of the Premises, including actions for the recovery of rent, actions in forcible entry and 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, without notice to the Assignor, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Assignor to cancel the same,

to elect to disaffirm any lease or sublease made subsequent to the aforesaid Deed of Trust or subordinated to the lien thereof, to make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements to the above described Premises that may seem judicious in its discretion, insure and reinsure the same for all risks incidental to Assignee's possession, operation and management thereof, and to receive all such avails, rents, issues and profits.

6. The Assignee 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 said Premises, and the Assignor shall and does hereby agree to indemnify and hold the Assignee 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 hereof, 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 perform, or discharge any of the terms, covenants or agreements contained in said leases except for claims that might arise when Assignee is in possession of the leased Premises. Should the Assignee incur any such liability, loss or damage under said leases or under or by reason of the assignment hereof, or in the defense of any claims or demands, the Assignor agrees to reimburse the Assignee for the amount hereof, including costs, expenses and a reasonable attorney's fee, immediately upon demand.

7. The Assignee shall, after payment of all reasonable and proper charges and expenses, credit the net amount of income which it may receive by virtue of this Assignment to any amounts due the Assignee from the Assignor under the terms and provisions of the Note and the Deed of Trust. The income shall be credited and applied in the following manner:

- (a) To cure any default under the terms of the Note or Deed of Trust;
- (b) To ground rentals, if any;
- (c) To taxes or special assessments which constitute a lien against the Assignee's security;
- (d) To any unperformed obligations of the Lessor under the terms of the leases hereinbefore described;
- (e) To interest as it accrues on the indebtedness;
- (f) To current principal and interest installments under the Note;

- (g) To fund any Escrow Deposits required by the Deed of Trust;
- (h) To any costs or expenses of executing the Deed of Trust and any advances secured thereby;
- (i) Any monies remaining after application of the lease payment in the manner stated above will be delivered by Assignee to Assignor addressed to **STEVSIM, INC.**, a Delaware corporation, whose mailing address is 1507 Avenue M, Brooklyn, New York 11230 by regular mail no later than ten (10) business days following receipt of the payment by Assignee.

Assignee acknowledges that if Assignee files a petition for bankruptcy under the Bankruptcy Code (11 USC Sec. 101 et seq.) or any successor statute, any amounts paid to Assignee which exceed the amounts payable under the Note and Deed of Trust shall not be considered property of Assignee's bankruptcy estate under Section 541 of the Bankruptcy Code.

Assignor shall not, under any circumstances, receive credit for the value or present value of the lease payments assigned before the lease payments are actually received by Assignee.

8. The Assignor does further specifically authorize and instruct each and every present and future lessee or tenant of the whole or any part of the above described Premises to pay all unpaid rental agreed upon in any tenancy to the Assignee upon receipt of demand from said Assignee to so pay the same.

9. It is understood and agreed that the provisions set forth in this Assignment herein shall be deemed as a special remedy given to the Assignee, and shall not be deemed exclusive of any of the remedies granted in the Deed of Trust, but shall be deemed as additional remedy and shall be cumulated with the remedies therein retained.

10. It is expressly understood and agreed that no judgment or decree which may be entered on any debt secured or intended to be secured by the Deed of Trust shall operate or abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness secured by said instruments in whatever form the said indebtedness may be and until the indebtedness secured by said instruments shall have been paid in full, and any bills incurred by virtue of the authority herein contained have been fully paid out of rents, issues and profits of the Premises, or by the Assignor, or until such time as this instrument may be voluntarily released. This instrument shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after

sale, until the issuance of a deed pursuant to foreclosure unless the indebtedness secured by the above described instruments is fully satisfied before such time. At such time as the indebtedness secured hereby is fully paid, Assignee will furnish, at Assignor's expense, a document in recordable form releasing this Assignment.

11. All of the rights, powers, privileges and immunities herein granted shall be binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns.

12. EXCULPATION CLAUSE: Notwithstanding anything to the contrary contained herein, it is understood and agreed that Assignor has executed the Note which this Assignment secures for the sole purpose of establishing the existence of the indebtedness secured hereby, and Assignee agrees by accepting this Assignment that it will look solely to the Mortgaged Property as defined in the Deed of Trust and the rents, issues, and profits therefrom for the payment of the indebtedness secured hereby, and all other amounts required to be paid under the terms of the Loan Documents and any other document executed in connection herewith and not to Assignor or the partners, officers, directors, members, managers or shareholders of Assignor, except as provided in this paragraph. Assignee further agrees that in connection with any action to foreclose or enforce any provisions of the Loan Documents or any other document executed in connection herewith, Assignee will not seek any deficiency judgment against Assignor or the partners, officers, directors, member, managers or shareholders of Assignor; provided, however, that nothing in this paragraph shall be, or be deemed to be, a release or impairment of said indebtedness or the lien created hereby upon the Mortgaged Property or preclude Assignee from suing upon the Note and foreclosing the Deed of Trust in case of any default or defaults hereunder or under the Note secured hereby or from enforcing any of its rights, including any remedy of injunctive or other equitable relief; and provided further that Assignor and any partner of Assignor shall be and shall remain personally liable for the following:

- (a) all loss, damage, cost, and expense, including, without limitation, reasonable attorneys' fees, suffered by Assignee as a result of a material intentional breach of Assignor's warranties and representations of this Assignment or as a result of the intentional or negligent waste of the Mortgaged Property; however, the liability of Assignor hereunder shall be limited to the actual damages caused by such material breach;
- (b) all rents, revenues, issues, and profits from the Mortgaged Property received during the period of any default under this Assignment or after acceleration of the indebtedness and other sums owing under the Note and the Deed of Trust and not applied to payment of the Note

or other sums due under the Loan Documents or to the payment of the normal operating expenses of the Mortgaged Property;

- (c) all rents from the Mortgaged Property collected more than one (1) month in advance which are not earned at the time of the occurrence of any event of default under this Assignment and which are not applied to the payment of the Note or other sums due under the Loan Documents or to the payment of normal operating expenses of the Mortgaged Property;
- (d) all insurance proceeds and condemnation awards in respect of the Mortgaged Property which are not applied in accordance with the provisions of the Deed of Trust;
- (e) any and all of Assignee's costs, losses, expenses, damages, or liabilities, including, without limitation, all reasonable attorneys' fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence on, under or about the Mortgaged Property during Assignor's ownership thereof of any materials, waste, or substances defined or classified as hazardous or toxic under federal, state, or local laws or regulations;
- (f) all loss, damage, cost, and expense, including, without limitation, reasonable attorneys' fees, suffered by Assignee as a result of any violation of the use restrictions and/or exclusivity restrictions in the WILLOW CREEK SYSTEMS, INC. lease.

XV. SPECIAL PROVISION:

If the present or any future Lessee(s) or Tenant(s) shall fail to pay to Assignee any installment of rent on the date the same is due, Assignee shall furnish Assignor with written notice thereof. Without incurring any late charge, default interest charge or charges, cost or premium, Assignor shall have not less than fifteen (15) days following Assignor's receipt of said notice to collect said rental from the Lessee(s) or Tenant(s) and to remit same to Assignee or to cause the Lessee(s) or Tenant(s) to make payment thereof to Assignee pursuant to the terms hereof. If the rental payment is not paid to Assignee upon the expiration of said fifteen (15) day period, or if the monthly installment under the Note is not paid by Assignor to Assignee upon the expiration of said fifteen (15) day period, Assignee may thereupon, without any further delay, impose the late charge or the penalty interest as provided in the Note, and Assignee shall give Assignor notice thereof and such notice shall be deemed equivalent to the initial

notice of default by Assignor under the Deed of Trust with respect to the non-payment of the monthly installment of principal and interest payable by Assignor thereunder. In such event, Assignor, as mortgagor under the Deed of Trust, shall be furnished with such further notices and cure periods as may be provided under the Deed of Trust with respect to such default.

IN WITNESS WHEREOF the undersigned has duly executed this Assignment this 11th day of December, 1997.

STEVSIM, INC.,
a Delaware corporation

By: [Signature]
Rafi Weiss, President

Attest:

Name: _____
Assistant Secretary

ACKNOWLEDGMENT

STATE OF NY
COUNTY OF Kings

§
§
§

December 11, 1997

Personally appeared before me the above-named Rafi Weiss, who being by me duly sworn, did say that he is President of STEVSIM, INC., a Delaware corporation, as aforesaid, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed of said corporation.

[Signature]
Notary Public
My commission expires: APR 4, 1998

ISAK D. MARYL
Notary Public, State of New York
No. 24-4920294
Qualified in Kings County
Commission Expires April 4, 1998

3K7835PG2598

EXHIBIT "A" TO
INSTRUMENT DATED DECEMBER 16, 1997
EXECUTED BY
STEVESIM, INC.,
a Delaware corporation
IN FAVOR OF
CONSECO MORTGAGE CAPITAL, INC.,
a Delaware corporation

LEGAL DESCRIPTION

Situated in Salt Lake County, State of Utah, to-wit:

PARCEL 1:

BEGINNING on the South right-of-way line of North Temple Street at a point North 89°12'01" East 504.03 feet, more or less, and North 700.45 feet, more or less, from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, said Section corner being an unmarked County Survey Monument located at the South right-of-way line of the Salt Lake Garfield and Western Railroad, said beginning point is also South 0°04'57" West 34.69 feet and North 89°12'01" East 504.03 feet, more or less, and North 700.45 feet, more or less, from an unmarked County Survey Monument which is South 89°57'27" West 2639.8 feet from the North Quarter corner of Section 3, Township 1 South, Range 1 West, Salt Lake Base and Meridian as shown on the Area Reference Plat on file in the Salt Lake County Surveyor's Office, and said point of beginning being also North 89°58'38" East 501.33 feet and South 66.60 feet from a Salt Lake City Survey Monument, said Monument being South 89°58'38" West 2577.29 feet from a Salt Lake City Monument at the intersection of North Temple Street and Redwood Road to the North, said point of beginning having also been described as being East 504 feet and North 704 feet, more or less, from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 210.00 feet; thence South 89°58'38" West 0.20 feet to a fence line; thence South 0°14'09" West along said fence line 121.51 feet; thence South 89°58'38" West 161.82 feet; thence North 331.51 feet to the South right-of-way line of said North Temple Street; thence North 89°58'38" East along said South line, 162.52 feet to the point of BEGINNING.

PARCEL 2:

A perpetual, non-exclusive easement for ingress and egress, appurtenant to PARCEL 1, created by that certain Easement And Maintenance Agreement recorded December 19, 1997 as Entry No. 0819547 of the Official Records of the Salt Lake County Recorder, over the following described tract of land, to-wit:

BEGINNING on the South line of North Temple Street at a point 323.33 feet North 89°58'38" East and South 66.60 feet from a Salt Lake City Survey

Monument, said monument being South 89°58'38" West 2577.29 feet from a Salt Lake City Monument at the intersection of North Temple Street and Redwood Road to the North, said point of beginning being also East 326 feet and North 704 feet, more or less, from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 360 feet, more or less; thence South 19°28'15" East 6.06 feet to the Southeast corner of the land conveyed to ROBERT H. BREINHOLT and JANE T. BREINHOLT in that certain Special Warranty Deed recorded April 16, 1993 as Entry No. 5479167 in Book 6640 at Page 2658 of the Official Records of the Salt Lake County Recorder; thence East 28 feet; thence North 19°28'15" West 6.06 feet; thence North 360 feet, more or less, to the South line of North Temple Street; thence West 28 feet to the point of BEGINNING.

PARCEL 3:

A perpetual, non-exclusive easement for ingress and egress, appurtenant to **PARCEL 1**, created by that certain Easement And Maintenance Agreement recorded December 19, 1997 as Entry No. 6819547 of the Official Records of the Salt Lake County Recorder, over the following described tract of land, to-wit:

BEGINNING at a point North 89°58'38" East 351.33 feet and South 383.91 feet from a Salt Lake City Survey Monument, said monument being South 89°58'38" West 2577.29 feet from a Salt Lake City Monument at the intersection of North Temple Street and Redwood Road to the North, said point of beginning being also East 354 feet and North 704 feet, more or less, and South 317.51 feet from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°58'38" East 149.36 feet to a fence line; thence South 0°14'09" West along said fence line 28.00 feet; thence South 89°58'38" West 149.25 feet; thence North 28.00 feet to the point of BEGINNING.

+++