

This Document Prepared by  
and After Recording Return to:  
Arnstein & Lehr  
120 South Riverside Plaza  
Suite 1200  
Chicago, Illinois 60606  
Attn: Allan Goldberg, Esq.  
15819-000



Handwritten initials and numbers: #292, 2, 120, 1200, 60606, 15819-000

**ASSIGNMENT OF LEASES AND RENTS**

Dr. (S) (S) | MEMORIAL (R) (S)

THIS ASSIGNMENT OF LEASES AND RENTS (the "Assignment") is made this 14<sup>th</sup> day of August, by THOMAS BARCLAY FOUNDATION, an Illinois Not-for-Profit Corporation ("Assignor"), in favor of DELAWARE PLACE BANK, an Illinois banking corporation ("Assignee").

**I. ASSIGNMENT.**

Assignor, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, does hereby assign, transfer and set over unto Assignee, all right, title and interest of Assignor in, under or pursuant to any and all present or future leases or subleases, whether written or oral, or any letters of possession of, or any agreements for the use or occupancy of, the whole or any part of the real estate and premises hereinafter described which Assignor may have heretofore made or agreed to or may hereafter make or agree to, or which may be made or agreed to by Assignee under the powers hereinafter granted, including all amendments and supplements to and renewals thereof at any time made, a current schedule of which is attached hereto on **Exhibit "A"** and made a part hereof (collectively, the "**Leases**"), relating to that certain real estate commonly known as 2800 South Thomas Barclay Drive, Chicago, Illinois in the City of Chicago, County of Cook, State of Illinois which is legally described in **Exhibit "B"** attached hereto and made a part hereof and the improvements now or hereafter erected thereon (collectively, the "**Premises**"), including, without limiting the generality of the foregoing, all right, title and interest of Assignor in and to all the rents (whether fixed or contingent), earnings, renewal rents, security deposits, accounts, income, issues, profits and all other sums due or which may hereafter become due under or by virtue of the Leases and all rights under or against guarantors of the obligations of lessees and obligors under the Leases.

**II. SECURITY DOCUMENTS.**

This Assignment is made and given as collateral security for, and shall secure (i) the payment in full of all principal of and interest and other obligations, including penalties and

BOX 333-CTI

Handwritten notes and signatures: 17824483, Ms. [Signature]

Handwritten initials: LL, JL

late charges, on and under that certain Construction Note of Assignor bearing even date herewith, payable on demand to the order of Assignee in the face principal sum of Two Million and No/100 Dollars (\$2,000,000.00) and expressed to bear interest as thereon provided and any notes issued in extension or renewal thereof or in substitution therefor (the "**Note**"), (ii) the performance of all obligations, covenants, promises and agreements contained herein or in that certain Construction Mortgage bearing even date herewith from Assignor to Assignee (the "**Mortgage**"), conveying and mortgaging the Premises as security for the Note and any and all other indebtedness intended to be secured thereby, (iii) the performance of all obligations, covenants, promises and agreements of Assignor contained in that certain Construction Loan Agreement bearing even date herewith (the "**Construction Loan Agreement**"), (iv) the performance of all obligations, covenants, promises and agreements of Assignor in that certain Security Agreement and UCC-1 and UCC-2 Financing Statements bearing even date herewith and (v) the payment of all expenses and charges, legal or otherwise, paid or incurred by the Assignee in realizing upon or protecting the indebtedness referred to in the foregoing clauses (i), (ii), (iii) and (iv) or any security therefor, including this Assignment (the Note and the other indebtedness, obligations and liabilities referred to in clauses (i), (ii), (iii), (iv) and (v) above being hereinafter collectively referred to as the "**indebtedness hereby secured**") (the Note, the Mortgage, the Construction Loan Agreement, the Security Agreement, the UCC-1 and UCC-2 Financing Statements, and any other documents and instruments relating to the Note or the loan secured by the Mortgage shall be collectively referred to herein as the "**Loan Documents**").

III. ATTORNEY-IN-FACT.

Assignor does hereby irrevocably constitute and appoint Assignee the true and lawful attorney of Assignor with full power of substitution for Assignor and in Assignor's name, place and stead to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all sums due or to become due under any Lease, with full power to settle, adjust or compromise any claim thereunder as fully as Assignor could do, and to endorse the name of Assignor or on all commercial paper given in payment or in part payment thereof, and in Assignee's discretion to file any claim or take any other action or proceeding, either in Assignee's name or in the name of Assignor or otherwise, which Assignee may deem necessary or appropriate to protect and preserve the right, title and interest of Assignee in and to such sums and the security intended to be afforded hereby.

IV. ASSIGNOR'S REPRESENTATIONS AND WARRANTIES.

Assignor represents and warrants to Assignee the following: (i) that Assignor has good right, title and interest in and to the Premises in order to make this Assignment, (ii) that no rent has been received for a period of more than one (1) month in advance, (iii) that Assignor has not heretofore alienated, assigned, pledged or otherwise disposed of any of the rights, rents and other sums due or which may hereafter become due and which are

intended to be assigned hereunder, and (iv) that there are no existing defaults under any of the Leases, except as otherwise provided on Exhibit "A".

**V. ABSOLUTE ASSIGNMENT.**

This Assignment includes and establishes a present absolute and primary transfer and assignment of all rents, earnings, income, issues and profits of the Premises, but so long as no event of default shall exist under the Note or the Mortgage and no event shall exist which by lapse of time or service of notice, or both, has or would become an event of default thereunder, Assignor shall have the right and license to collect, use and enjoy all rents and other sums due or to become due under and by virtue of any Lease as they respectively become due, but not more than one (1) month in advance.

**VI. ATTORNEY BY TENANTS.**

Assignor hereby irrevocably consents to and authorizes and directs that the tenant or other obligor under any Lease upon demand and notice from Assignee of Assignee's right to receive rents and other sums hereunder, shall pay such rents and other sums to Assignee without any obligation on the part of such tenant or other obligor to determine the actual existence of any default or event claimed by Assignee as the basis for Assignee's right to receive such rents or other sums and notwithstanding any notices from or claim of Assignor to the contrary. Assignor hereby waive any right or claim against any tenant or other obligor for any such rents and other sums paid by tenant or other obligor to Assignee.

**VII. REMEDIES OF ASSIGNEE.**

Without limiting any legal rights of Assignee as the absolute assignee of the rents, issues and profits of the Premises and in furtherance thereof Assignor agrees that upon an event of default under said Mortgage, whether before or after the Note is declared due in accordance with its terms or under the terms of said Mortgage and whether before or after satisfaction of any requirement of the lapse of time or the giving of notice or both on which acceleration after default may be conditioned, Assignee may, at its option, (i) take actual possession of the Premises hereinabove described, or of any part thereof, personally or by agent or attorney, as for condition broken, and with or without force and with or without process of law, enter upon, take, and maintain possession of all or any part of said Premises together with all documents, books, records, papers and accounts relating thereto, and exclude Assignor, its agents or servants, therefrom and hold, operate, manage and control the Premises, and at the expense of the Premises, from time to time, cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments and improvements to the Premises as may seem judicious, and pay taxes, assessments and prior or proper charges on the Premises, or any part thereof, and insure and reinsure the same, and lease the Premises in such parcels and for such times and on such terms as Assignee may deem fit, including leases for terms expiring beyond

the maturity of the indebtedness secured by said Mortgage, and cancel, extend or modify any lease or sublease for any cause or on any ground which would entitle Assignor to cancel, extend or modify the same and in every such case have the right to manage and operate the said Premises and to carry on the business thereof as Assignee shall deem proper, or (ii) with or without taking possession of the Premises, Assignee may proceed to enforce the Leases and collect all sums due or to become due thereunder and by so doing Assignee shall not be deemed a mortgagee in possession nor to have assumed or become responsible or liable for any obligations of Assignor arising thereunder or in respect thereof. Any expenditures made by Assignee in connection with this Assignment or in curing a default by Assignor shall constitute such additional indebtedness to be secured by the Mortgage and shall bear interest from the date of such payment at the Default Rate (as defined in the Note).

**VIII. APPLICATION OF FUNDS.**

Any sums received by Assignee under or by virtue of this Assignment shall be applied to the payment of or on account of the following in such order and manner as Assignee may elect:

- (a) to the payment of all proper charges and expenses, including the just and reasonable compensation for the services of Assignee, its attorneys, agents, clerks, servants and others employed in connection with the operation, management and control of the Premises and the conduct of the business thereof and, if Assignee shall elect, to the establishment of a reserve which shall be sufficient in Assignee's judgment to indemnify it against any liability, loss or damage on account of any matter or thing done in good faith and in pursuance of the rights and powers contained herein;
- (b) to the payment of any sum secured by a lien or encumbrance upon the Premises;
- (c) to the cost of completing any improvements being constructed on or about the Premises; and
- (d) to the reduction of the indebtedness secured by the Mortgage whether or not the same may then be due or be otherwise adequately secured.

The manner of application of such sums and the items which shall be credited or paid out of same shall be within the sole discretion of Assignee and nothing herein contained shall obligate Assignee to use any such sums for a purpose other than reducing the indebtedness hereby secured unless it shall elect so to do. Assignee shall be subrogated to any lien discharged out of the rents, income and profits of the Premises.



**UNOFFICIAL COPY****IX. FURTHER ASSURANCES.**

Assignor hereby further covenants that Assignor will upon request of Assignee execute and deliver such further instruments and do and perform such other acts and things as Assignee may deem necessary or appropriate to more effectively vest in and secure to Assignee the rights and rents which are intended to be assigned to Assignee hereunder, including, without limitation, the execution of assignments of future leases which affect any part of the Premises and the transfer of all security deposits which Assignor may hold under the Leases. Assignor irrevocably waives any right it now or hereafter may have to offset any claim or liability owing from Assignor to any obligor on a Lease against sums due or to become due from such obligor under a Lease.

**X. CROSS-DEFAULT.**

The violation or breach by Assignor of any of the terms, covenants, representations or provisions contained herein shall be deemed an Event of Default under the Note, the Mortgage and the other Loan Documents, and the occurrence of an event of default under the Note, the Mortgage or any of the other Loan Documents shall be deemed to be an event of default hereunder.

**XI. ADDITIONAL COVENANTS OF ASSIGNOR.**

Assignor covenants and agrees to observe and perform all of the obligations imposed on Assignor under the Leases and not to do or permit to be done anything to impair the security thereof, not to execute any Lease on terms and conditions less satisfactory to the lessor than are usual and customary in leases with a similar term and for similar types of space in the general market area where the Premises is located, not to further assign or encumber its rights under the Leases or its rights to the rents or other sums due or to become due thereunder and not suffer or permit any of the Leases to be subordinated to any other liens or encumbrances whatsoever, any such subordination to be null and void unless done with the written consent of Assignee. Assignor further covenants and agrees not to amend, modify or terminate any of the Leases without the prior written consent of Assignee, provided that, unless and until an event of default or any event which with the lapse of time, the giving of notice, or both would constitute such an event of default has occurred under the terms of the Mortgage or Note, Assignor may enter into amendments and modifications to Leases which do not adversely affect the security thereof and may terminate Leases if, substantially concurrent with such termination, Assignor shall have entered into a new Lease of the space which was the subject of the terminated Lease upon terms and conditions no less beneficial to Assignor than those contained in the terminated Lease and with a lessee of at least equal creditworthiness to the terminated lessee, provided that the foregoing to the contrary notwithstanding no Lease shall be terminated if such termination would reduce the amount which any lender is then obligated to fund under any commitment issued to provide financing for the Premises. In the event of a material default by Assignor under any of the Leases, and such default

remains uncured for a period of seven (7) days after receipt of notice thereof from Assignee, such default shall constitute an event of default under this Assignment. Assignor further covenants and agrees that it will, at the request of Assignee, submit the executed originals of all Leases to Assignee.

**XII. INDEMNIFICATION.**

Assignor agrees to indemnify and hold Assignee harmless from and against any and all loss, cost, damage and expense (including reasonable attorneys' fees and court costs) incurred by Assignee arising out of any breach, violation or event of default under this Assignment.

**XIII. NO MORTGAGEE IN POSSESSION.**

The acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of actual physical possession of the Premises by Assignee, be deemed or construed to constitute Assignee a mortgagee in possession nor impose any obligation whatsoever upon Assignee, it being understood and agreed that Assignee does not hereby undertake to perform or discharge any obligation, duty or liability of the landlord under any Leases or under or by reason of this Assignment. Assignee shall have no liability to Assignor or anyone for any action taken or omitted to be taken by it hereunder, except for its willful misconduct. Should Assignee incur any liability, loss or damage under or by reason of this Assignment or for any action taken by the Assignee hereunder, or in defense against any claim or demand whatsoever which may be asserted against Assignee arising out of any lease, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate applicable to the Note at the time of incurrence (or if the Note has been paid in full at the time of incurrence, then at the rate applicable to the Note at the time of such payment in full), shall be secured by this Assignment and by the Mortgage, and Assignor agrees to reimburse Assignee therefore immediately upon demand. The foregoing obligation of reimbursement to Assignee shall survive payment of the indebtedness hereby secured and the release of this Assignment.

**XIV. CUMULATIVE RIGHTS.**

The rights and remedies of Assignee hereunder are cumulative and are not secondary to or in lieu of but are in addition to any rights or remedies which Assignee shall have under the said Note, Mortgage or any other instrument or document or under applicable law and the exercise by Assignee of any rights and remedies herein contained shall not be deemed a waiver of any other rights or remedies of Assignee, whether arising under the Mortgage or otherwise, each and all of which may be exercised whenever Assignee deems it in its interest to do so. The rights and remedies of Assignee may be exercised from time to time and as often as such exercise is deemed expedient and the failure of Assignee to enforce any of the terms, provisions and conditions of this

Assignment for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

**XV. RIGHT TO RECEIVE RENTS.**

The right of Assignee to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to Assignee shall, to the extent not prohibited by law, extend also to the period from and after the filing of any suit to foreclose the lien of the Mortgage, including any period allowed by law for the redemption of the premises after any foreclosure sale.

**XVI. SURVIVAL.**

This Assignment shall 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 a foreclosure decree, unless the indebtedness secured by the Mortgage is fully repaid and satisfied before the expiration of the redemption period, if any.

**XVII. ASSIGNABILITY; SEVERABILITY.**

This Assignment shall be assignable by Assignee and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective executors, administrators, legal representatives, successors and assigns of each of the parties hereto. All provisions hereof are severable and if any provisions hereof shall be invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall in no way be affected thereby.

**XVIII. GOVERNING LAW.**

This Assignment shall be governed and construed in accordance with Illinois law.

**XIX. NOTICES.**

Any and all communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or mailed postage prepaid, certified or registered mail, return receipt requested, or sent by a reputable carrier service or equivalent delivery addressed to the parties hereto as designated below, or to such other and different address as Assignor and Assignee may designate in writing from time to time. Any time period provided in the giving of any Notice hereunder shall commence upon the date such Notice is delivered to the other party, or two (2) business days after mailing.

If to Assignee: Delaware Place Bank  
190 Delaware Place  
Chicago, Illinois 60611  
Attn: Daniel C. Siadak  
Senior Vice President

with a copy to: Arnstein & Lehr  
Suite 1200  
120 South Riverside Plaza  
Chicago, Illinois 60606  
Attn: Allan Goldberg, Esq.

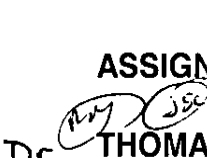
If to Assignor: Thoms Barclay Foundation  
c/o Robert Hsu  
8100 LeClaire Street  
Skokie, Illinois 60077

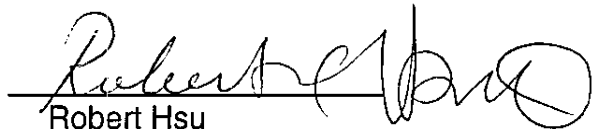
with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**X. MODIFICATIONS.**

This Assignment may not be amended, modified or changed nor shall any waiver of any provision hereof be effective as against Assignee, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

IN WITNESS WHEREOF, the undersigned has caused this Assignment to be executed as of the day and year first above written.

**ASSIGNOR:**  
Dr.  **THOMAS BARCLAY FOUNDATION, an Illinois Not-for-Profit Corporation**

By:   
Robert Hsu  
Its: President



UNOFFICIAL COPY

00716162

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

I, Anh Nguyen, a Notary Public, in and for the County and State aforesaid do hereby certify that Robert Hsu, the President of Thomas Barclay Foundation, an Illinois Not-for-Profit Corporation, 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, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes herein set forth.

Given under my hand and notarial seal this 19<sup>th</sup> day of ~~July~~ <sup>August</sup>, 2000.



Anh Nguyen  
Notary Public

My Commission Expires: 06/09/02.

*This instrument was drafted by:*  
Arnstein & Lehr  
120 South Riverside Plaza  
Suite 1200  
Chicago, IL 60606  
Attention: Allan Goldberg, Esq.  
15819-000

Cook County Clerk's Office

**EXHIBIT "A"**

**LEASES**

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

00716162

## EXHIBIT "B"

### LEGAL DESCRIPTION OF PREMISES

LOTS 1, 2, 3, 4, 5, 6, 7 AND 8 IN NEW ASIA FOUNDATION SUBDIVISION, BEING A SUBDIVISION OF SECTION 29, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 17-29-313-026-0000  
17-29-313-027-0000  
17-29-313-028-0000  
17-29-313-029-0000  
17-29-313-030-0000  
17-29-313-040-0000  
17-29-313-041-0000

Common Property Address: 2800 South Thomas Barclay Drive, Chicago, Illinois