

UNOFFICIAL COPY

NAB Loan No. 78980

Prepared by and after
recording return to:

Thomas G. Jaros
Levenfeld Pearlstein, LLC
33 West Monroe
21st Floor
Chicago, IL 60603

0011037420

9784/0238 32 001 Page 1 of 10
2001-11-05 13:10:39
Cook County Recorder 39.00



0011037420

Property Addresses:

1324 North Claremont
Chicago, Illinois 60622

P.I.N(s): SEE EXHIBIT A

NAB BANK
ASSIGNMENT OF LEASES AND RENTS
(Claremont)

THIS ASSIGNMENT OF LEASES AND RENTS (*this "Assignment"*) dated as of October 29, 2001 from **NAB BANK**, a corporation of Illinois, not individually, but as trustee under a trust agreement dated October 1, 2001 known as Trust No. 2-106-0 (*the "Trust"*) and **JOHN S. MENDOZA** (*"Mendoza"*; *Trust and Mendoza are individually and collectively referred to herein as the "Borrower"*) in favor of **NAB BANK** (*the "Lender"*) has reference to the following;

10
[Signature]

WHEREAS, Trust (*among others*) has executed and delivered to the Lender a Secured Note dated October 29, 2001 in the original principal amount of One Million Four Hundred Forty-Nine Thousand Eight Hundred and no/100ths Dollars (\$1,449,800.00) (*the "Mortgage Note"*);

WHEREAS, Borrower has also delivered its mortgage (*the "Mortgage"*) to secure the repayment of, among other things, the Mortgage Note, which Mortgage conveys the premises to Lender described in EXHIBIT A hereto (*the "Mortgaged Property"*);

WHEREAS, Borrower desires to further secure (*collectively the "Liabilities"*): (i) the repayment of the Mortgage Note, and any amendments, renewals, substitutions or replacements thereto; and (ii) the performance of Borrower's obligations under the Mortgage and the Mortgage Note; and

BOX 333-CTI

C# 7953535
D / Touchell

UNOFFICIAL COPY

NOW, THEREFORE, for and in consideration of the above and the mutual agreements herein contained and as further and additional security to the Lender for the repayment and performance of the Liabilities, and in consideration of the sum of ONE DOLLAR (\$1.00) to the Lender in hand paid, the receipt whereof is hereby acknowledged, Lender and Borrower agree as follows:

1. Assignment. Borrower, does hereby sell, assign and transfer unto the Lender:

(a) all Current Leases (*as hereinafter defined*), future leases, options, contracts or any other agreements relative to the ownership, sale or occupancy of all or any portion of the Mortgaged Property (*or any part thereof*), whether written or verbal, whether heretofore now or hereafter made or agreed to or which may be made or agreed to by the Lender under the powers granted in this Assignment (*the "Leases"*);

(b) all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (*including all deposits or money as advance rent, for security or as earnest money or as down payment for the purchase of all or any part of the Mortgaged Property*) now due and which may hereafter become due under or by virtue of: (a) the Leases; and/or (b) any letting of, or any agreement for the use and occupancy of, the Mortgaged Property of any part thereof; and

(c) all guaranties of any of the foregoing.

2. Representations and Warranties Re: Leases. Borrower agrees, represents and warrants unto Lender, its successors and assigns as follows:

(a) Borrower is the sole owner of the entire lessor's interest under any Leases existing as of the present date with respect to the Mortgaged Property or part thereof (*the "Current Leases"*);

(b) no default exists on the part of lessor or lessee under the terms of any Current Leases and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Current Leases;

(c) any Current Leases are, and any future Leases will be, valid and enforceable in accordance with their terms and shall remain in full force and effect irrespective of any merger of the interest of lessor and lessee thereunder;

(d) if any Current Leases or future Leases provide for the abatement of rent during repair of the demised Mortgaged Property by reason of fire or other casualty, Borrower shall furnish rental insurance to Lender in amount and form and written by insurance companies as shall be satisfactory to Lender;

UNOFFICIAL COPY

(e) Borrower shall perform all of the covenants and agreements as lessor under any Current Leases and any future Leases and shall not suffer or permit to occur, any release of liability of the lessee therein, or any right of the lessee therein to withhold payment of rent;

(f) if so requested by the Lender after default under any Current Leases or any future Leases, the Borrower shall enforce any one or several of the Current Leases and all remedies available to Borrower against the lessee therein named;

(g) all Leases shall be executed in the name of Trust or Mendoza, as landlord, and, when executed, a copy shall be immediately delivered to Lender.

3. Representations and Warranties Re: Rent. Borrower represents and agrees that no rent has been or will be paid by any person under any Lease for more than one installment in advance and that no payment of rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by Borrower. Borrower waives any right of set-off against any person in possession of any portion of the Mortgaged Property. Borrower agrees not to make any other or further assignment of the rents or profits or Leases prior to the release of this Assignment.

4. Further Assurances. Borrower further agrees to execute and deliver immediately upon the request of the Lender, all such further assurances and assignments in the Mortgaged Property as the Lender shall from time to time reasonably require.

5. Absolute Transfer/Default. It is the parties' intention to establish an absolute transfer and assignment of the Leases and agreements, and all the avails thereof, to the Lender. Borrower hereby irrevocably appoints Lender as its true and lawful attorney in its name and stead to effectuate the purposes of this Assignment. Although it is the intention of the parties that this Assignment is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Lender shall not exercise any of the rights and powers conferred upon it herein until and unless one or more of the following events shall occur, which shall constitute "Events of Default" hereunder:

(a) default or Event of Default shall occur under the terms of the Mortgage Note or in the payment or performance of the Liabilities;

(b) default shall occur in performance or observance of any of the agreements or conditions in the Mortgage;

(c) default shall be made in the performance or observance of any of the conditions or agreements hereunder and Borrower shall fail to cure such within ten (10) days after being served with written notice from Lender; and/or

UNOFFICIAL COPY

(d) default or an Event of Default under any other agreement, security agreement, assignment, instrument or other agreement made by Borrower in favor of Lender;

and in each instance, all applicable cure or grace periods, if any, shall have expired, and nothing herein contained shall be deemed to affect or impair any rights which the Lender may have under said Liabilities or any other instrument herein mentioned.

6. Remedies. Upon the occurrence of an Event of Default, Borrower hereby authorizes Lender to:

(a) direct and instruct each and every present and future lessee or tenant of the whole or any part of the Mortgaged Property to pay all unpaid rental or other amounts agreed upon in any Leases to the Lender directly;

(b) collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all 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 the Mortgaged Property; and

(c) rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such terms, as Lender in its discretion may determine;

all with the same rights and power and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

7. Special Remedies. In any case in which under the provisions of the Mortgage the Lender has a right to institute foreclosure proceedings, forthwith, upon demand of the Lender, Borrower agrees to surrender to the Lender and the Lender shall be entitled to take actual possession of the Mortgaged Property or any part thereof personally, or by its agents or attorneys, and Lender in its discretion may:

(a) with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all the documents, books, records, papers and accounts of Borrower or then owner of the Mortgaged Property relating thereto;

(b) exclude the Borrower, its agents or servants, wholly therefrom; and

(c) as attorney in fact or agent of the Borrower, or in its own name as Lender and under the powers herein granted, hold, operate, manage and control the Mortgaged Property and conduct the 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

UNOFFICIAL COPY

proper or necessary to enforce the payment of security of the avails, rents, issues and profits of the Mortgaged Property, including: (i) actions for the recovery of rent, actions in forcible 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, (ii) cancellation or termination of any Lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same; (iii) disaffirm any Lease or sublease made subsequent to the Mortgage or subordinated to the lien thereof; (iv) making all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property that may seem judicious, in its discretion; and/or (v) insuring and reinsuring the same for all risks incidental to Lender's possession, operation and management and to receive all such avails, rents, issues and profits.

8. Application of Rents. The Lender in the exercise of the rights and powers conferred upon it by this Assignment shall have full power to use and apply the avails, rents, issues and profits of the Mortgaged Property to the payment of or on account of the following, in such order as the Lender may determine:

(a) To the payment of the operating expenses of the Mortgaged Property, including cost of management and leasing thereof (*which shall include reasonable compensation to the Lender and its agent or agents, if management be delegated to an agent or agents, and it shall also include Lease commissions and other compensation, and expenses of seeking and procuring tenants and entering into Leases establishing claims for damages, if any, and premiums on insurance hereinabove authorized*);

(b) To the payment of all construction, repairs, decorating, renewals, replacements, alterations, additions, or betterments, and improvements of the premises, including, without limitation, the cost from time to time of installing or replacing such fixtures, furnishings and equipment therein, and of placing the Mortgaged Property in such condition as will, in the reasonable judgment of the Lender, make it readily rentable;

(c) To the payment of the Liabilities and any other indebtedness secured by the Mortgage or any deficiency which may result from any foreclosure sale.

9. No Obligation, Indemnity. The Lender 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 the Mortgaged Property, and Borrower shall and does hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any Lease or under or by reason of the assignment thereof 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. Should the Lender incur any such liability, loss or damage, under said Leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, Borrower agrees to reimburse the Lender for the amount thereof,

UNOFFICIAL COPY

including direct costs, direct expenses and reasonable attorneys' and paralegals' fees, immediately upon demand.

10. Remedies Cumulative, Governing Law. It is understood and agreed that the provisions set forth in this Assignment herein shall be deemed a special remedy given to the Lender, and shall not be deemed exclusive of any of the remedies granted in the Mortgage, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted and elsewhere granted in any instrument securing the Liabilities, all of which remedies shall be enforceable concurrently or successively. This Assignment shall be governed by and construed under the laws of the State of Illinois.

11. Notices. Any notice required hereunder shall be sent to Borrower via hand delivery, via nationally recognized over-night mail courier, or registered or certified U.S. mail, return receipt requested, sent to the address listed below (*or any different address specified by Borrower in writing to Lender*) and shall be deemed served on (a) the date hand delivered or delivered by nationally recognized over-night mail courier or (b) two (2) days after mailing the notice if served by registered or certified mail. Notices to be served on Lender shall be served in the same manner at 222 West Cermak Road, Chicago, Illinois 60616.

12. Mortgagee-In-Possession. Nothing herein contained shall be construed as constituting the Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by the Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted to the Lender, no liability shall be asserted or enforced against the Lender, all such liability being expressly waived and released by Borrower.

13. Successors and Assigns, Joint and Several. Whenever the word "Borrower" is mentioned herein, it is hereby understood that the same includes and shall be binding upon their successors and assigns (*including successors by consolidation*), and any party or parties holding title to the Mortgaged Property by, through or under them. All of the rights, powers, privileges and immunities granted and assigned to the Lender shall also inure to its successors and assigns, including all holders, from time to time, of the Mortgage Note or the Liabilities. If this instrument is executed by more than one person or entity, all obligations and undertakings of Borrower herein shall be joint and several. Further, the term "Mortgage Note" as used herein shall also be read to refer to any note or instrument executed in renewal, substitution, amendment or replacement thereto.

14. No Merger. It is expressly understood that no judgment or decree which may be entered on any debt secured or intended to be secured by the Mortgage shall operate to abrogate or lessen the effect of this instrument, but the same shall continue in full force and effect until the payment and discharge of any and all indebtedness secured by the Mortgage, in whatever form the said indebtedness may be until the indebtedness secured by the Mortgage shall have been paid in full and all bills incurred by virtue of the authority herein contained have been fully paid out of rents, issues and profits of the Mortgaged Property, or by Borrower, or until such time as this instrument may be voluntarily released. This instrument shall also remain in full force and effect during the

UNOFFICIAL COPY

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 satisfied before the expiration of any period of redemption.

15. Fees and Expenses. In the event that the Lender incurs any reasonable costs (including attorneys' and paralegals' fees, court costs and advances) to enforce the provisions of this Assignment, the Borrower on demand by the Lender, immediately shall reimburse the Lender therefor. Borrower's liability for all reasonable expenses and fees hereunder shall also extend to the collection of any judgment which shall result from Lender's enforcement of its rights and remedies under this Assignment.

16. Forum Selection. BORROWER AND LENDER IRREVOCABLY AGREE THAT, ALL ACTIONS OR PROCEEDINGS IN ANY WAY OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS ASSIGNMENT SHALL BE LITIGATED IN COURTS HAVING SITUS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS. BORROWER AND LENDER HEREBY CONSENT TO THE JURISDICTION OF ANY LOCAL, STATE, OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE AND WAIVE ANY OBJECTION THEY MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING HEREUNDER.

17. Jury Waiver. BORROWER AND LENDER IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING: (a) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS ASSIGNMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH; OR (b) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS ASSIGNMENT OR ANY SUCH AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

18. Multiple Properties. Borrower hereby acknowledges that the repayment of the Liabilities is secured by mortgages and other liens against one or more separate parcels of real estate as referenced in the Mortgage Note, including the Mortgaged Property described herein. Upon the occurrence of an Event of Default, Lender may exercise its rights with respect to any parcel(s) of real estate securing the repayment of the Liabilities. Lender shall be under no obligation to exercise its rights with respect to one parcel of real estate securing the Liabilities to the exclusion or inclusion of the others. Lender shall have no obligation to marshal any collateral which secures the Liabilities. In that regard, the full amount of the Liabilities shall be deemed to encumber the Mortgaged Property described herein and Lender shall be under no obligation to release any of said parcels of real estate until such time as the Liabilities have been paid in full. Borrower hereby waives all of its defenses and counter-claims which it may have against Lender arising out of or related to Lender's election to proceed against all, some or none of the real estate securing the Liabilities upon the occurrence of an Event of Default.

UNOFFICIAL COPY

19. Trustee Exculpation. This Assignment is executed by the Trustee, not personally, but solely as trustee in the exercise of the power and authority conferred upon and vested in it as trustee. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the Mortgaged Property and has no agents, employees or control over the management of the Mortgaged Property and no knowledge of other factual matters except as represented to it by the beneficiaries of the trust. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this Assignment.


IN WITNESS WHEREOF, this Assignment has been delivered as of the date first set forth above.

BORROWER:

NAB BANK, a corporation of Illinois, not individually, but as trustee under a trust agreement dated October 1, 2001 and known as 2-106-0

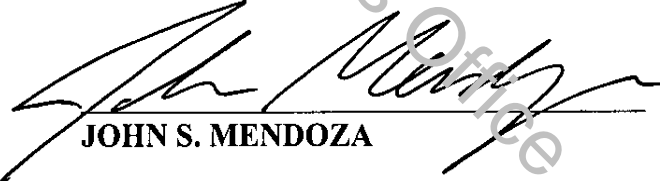
Address:

4928 North Broadway
Chicago, Illinois 60640.

By: 
Name: DOUGLAS W. DANGER
Title: ASST. TRUST OFFICER

Address:

1946 West Diversey
Chicago, Illinois 60614


JOHN S. MENDOZA

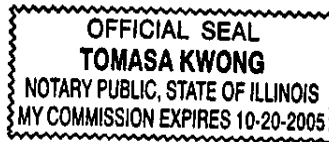
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DOUGLAS DANCER a Asst TRUST OFFICER of **NAB BANK**, a corporation of Illinois, not individually, but as trustee under a trust agreement dated October 1, 2001 and known as 2-106-0 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 before me (s)he signed and delivered the said instrument as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 25th day of October, 2001.

Tomasa Kwong
Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **JOHN S. MENDOZA**, 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 before me that he signed and delivered the said instrument as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 25th day of October, 2001.



Margaret A. Herron
Notary Public

UNOFFICIAL COPY

ASSIGNMENT OF LEASES AND RENTS

EXHIBIT A

LEGAL DESCRIPTION

LOT 15 OF BLOCK 12 IN WATSON, TOWER AND DAVIS SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMON ADDRESS: 1324 NORTH CLAREMONT
CHICAGO, ILLINOIS 60622

P.I.N. 17-06-114-039-0000

H:\Docs\36400\36493\Final\ASG-RENT (Claremont).doc