

UNOFFICIAL COPY

0020196614

1993 0017 4 001 Page 1 of 13
2002-02-20 08:13:36
Cook County Recorder 45.00



This instrument was prepared by
and after recording return to:

Anthony J. Nasharr
Foran, Nasharr & O'Toole Ltd.
55 West Wacker Drive, Suite 925
Chicago, Illinois 60601

**ASSIGNMENT OF
LEASES AND RENTS**

Loan Number: _____
(1050 Remington)

(The Above Space For Recorder's Use Only)

13 Jan

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this 14th day of February, 2002, by **COLE TAYLOR BANK**, not personally, but as Trustee under Trust Agreement dated March 1, 1978 and known as Trust No. 38082 and with its office at 111 West Washington Street, Chicago, Illinois 60602 ("Assignor"), in favor of **BEN FRANKLIN BANK OF ILLINOIS**, a federal banking association, with its office at 14 North Dryden Place, Arlington Heights, Illinois 60004 ("Lender").

PRELIMINARY STATEMENT

This Assignment is made to secure all of the following (individually and collectively the "Indebtedness"):

A. Payment in the sum of Three Hundred Thousand and 00/100 Dollars (\$300,000.00), together with interest, costs and all other sums on that amount, to be paid according to certain Promissory Note, Mortgage, indemnity agreement(s) or other evidence(s) of indebtedness to Lender made as of the date of this Assignment by the Assignor; and any and all extensions, renewals, modifications, substitutions or replacements thereof. This reference to a particular dollar amount does not in any way limit the dollar amount secured by this Assignment.

B. The payment of any and all amounts of any kind now owing or later to become due to the Lender from the Assignor during the term of this Assignment, however created or arising, whether under the above mentioned note(s), guaranty(ies), loan and/or letter of credit agreement(s), indemnity agreement(s), evidence(s) of indebtedness or under any other instrument, or agreement now or hereafter existing between the Assignor and the Lender, or otherwise, and whether direct, indirect, primary, secondary, fixed, contingent, joint or several, due or to become due, together with interest, costs and all other sums on that amount; and including, without limit, all present and future indebtedness or obligations

797/562 VAK

BOX 333-CTI

of third parties to the Lender which is guaranteed by the Assignor, and the present or future indebtedness originally owing by the Assignor, to third parties and assigned by third parties to the Lender, and any and all renewals, extensions, modifications, substitutions or replacements of any of them.

C. The performance of the covenants and obligations due or to become due to the Lender, including, without limit, those due under this Assignment, and the repayment of all sums expended by the Lender in connection with performance of those covenants and obligations.

AGREEMENT

1. **ASSIGNMENT.** For consideration received and as security for the purposes stated in this Assignment, the Assignor unconditionally and irrevocably grants, transfers, assigns and sets over to the Lender all of the right, title and interest of Assignor in and to:

(a) **Leases.** All existing and future leases (or subleases if the Assignor is the owner of the primary leasehold estate) and use and occupancy agreements, whether written or oral, applying to all or any part of the premises described on the attached **Exhibit A** ("Premises"), together with all extensions, renewals or replacements of such leases (or subleases) and use and occupancy agreements (collectively, "Leases"), and specifically including those leases identified on the attached **Exhibit B**.

(b) **Guarantees.** Any and all guarantees of performance under any of the Leases.

(c) **Rent.** The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits due or to become due or to which the Assignor is now or in the future (including the period of redemption, if any) entitled to or may demand or claim, arising with respect to the Leases or the Premises, including, without limit, minimum rents, additional rents, percentage rents, parking, maintenance, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents and liquidated damages following default, the premium payable by any lessee upon the exercise of cancellation privilege provided in any Lease, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises or any part thereof, together with any and all rights and claims of any kind which the Assignor may have against any lessee under any Lease or any subtenants or occupants of the Premises (collectively, "Rents").

(d) **Security Deposits.** All security deposits, damage deposits and other funds paid to the Assignor by any lessee under any Lease, whether paid in a lump sum or installments.

2. **GRANT OF SECURITY.** This Assignment is made and intended to secure the Indebtedness.

3. **GRANT OF LICENSE.** So long as no Event of Default (defined below) exists, the Assignor is granted a license to collect the Rents arising under the Leases. The Assignor shall receive all Rents, and shall hold all Rents, as well as the right and license to receive all Rents, in trust for the benefit of the Lender. The Assignor covenants to apply all Rents: first, to the payment of taxes and assessments; second, to the payment of insurance premiums and maintenance and repairs of the Premises; third, to the satisfaction of all obligations under the Leases; and fourth, to the payment of interest and principal becoming due on the Indebtedness.

4. **REPRESENTATIONS AND WARRANTIES.** The Assignor represents and warrants that:

(a) **Title.** The Assignor is the owner in fee simple of the Premises, or if the Assignor is lessee under a ground lease, that the Assignor is owner of the primary leasehold estate. The Assignor has good title to the Leases and Rents, and good right to assign the same. No other person or entity has any right, title or interest in the Leases or Rents.

(b) **Performance.** The Assignor has duly and punctually performed all terms, covenants, conditions and warranties under the Leases on the Assignor's part to be performed.

(c) **Valid Leases.** The Leases are valid, unmodified and in full force and effect, except as otherwise indicated on **Exhibit B** attached to this Assignment.

(d) **No Prior Assignment.** The Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents.

(e) **Collection of Rents.** The Rents from the Premises for any period subsequent to the date of this Assignment have not been collected and payment of the Rents has not been waived, released, discounted, set-off or otherwise discharged or compromised, except as otherwise indicated on **Exhibit B** attached to this Assignment.

(f) **Deposits.** The Assignor has not received any deposit from any lessee under any Lease, except as otherwise indicated on **Exhibit B** attached to this Assignment.

UNOFFICIAL COPY

20196614

(g) **No Default.** The lessees under the Leases are not in default under any of the terms of the Leases, except as otherwise indicated on **Exhibit B** attached to this Assignment.

5. **AFFIRMATIVE COVENANTS.** The Assignor covenants and agrees as follows:

(a) **Performance.** To perform all obligations, terms, covenants, conditions and warranties under the Leases on the Assignor's part to be performed, and to give prompt written notice to the Lender of any failure on the Assignor's part to perform the same.

(b) **Notice of Assignment.** To notify, in writing, and direct each lessee or occupant of the Premises that any security deposit or other deposits delivered to the Assignor have been retained by the Assignor or have been assigned and delivered to the Lender, as the case may be.

(c) **Enforcement.** To enforce the performance by each lessee of each and every obligation, term, covenant, condition and agreement in the Leases to be performed.

(d) **Notice of Default.** To give the Lender written notice of default by any lessee under any Lease.

(e) **Actions.** To appear in and defend any action or proceeding arising under, or in any manner connected with, the Leases or the obligations, duties or liabilities of the Assignor or any lessee under the Leases, and upon request by the Lender, do so in the name and on behalf of the Lender, but at the expense of the Assignor.

(f) **Costs.** To pay all reasonable costs and expenses of the Lender, including reasonable attorneys' fees with respect to the Assignment or the enforcement of the Lender's rights under this Assignment.

(g) **Settlement.** In the event any lessee or guarantor of any Lease should be the subject of any bankruptcy proceeding or any other federal, state or local statute which provides for the possible termination or rejection of any Lease, or any guarantee of any Lease, and in the event such Lease is rejected or guarantee terminated, the Assignor will make no damages settlement without the prior written consent of the Lender.

(h) **Delivery of Leases.** Until the Indebtedness is paid and performed in full, to deliver to the Lender, within thirty (30) days of the date of execution of a Lease, an executed copy thereof, and to transfer and assign future Leases upon the same terms and

conditions as contained in this Assignment, and to make, execute and deliver, upon the Lender's demand, any and all assignments and other instruments sufficient for that purpose.

6. **NEGATIVE COVENANTS.** The Assignor further covenants and agrees as follows:

(a) **Collection of Rents in Advance.** Not to receive or collect Rents from any lessee for a period of more than one (1) month in advance, nor pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents.

(b) **Waivers.** Not to waive, excuse, discount, compromise or in any manner release or discharge any lessee from any obligations, covenants, conditions or agreements arising under any Lease.

(c) **Modifications.** Not to cancel, terminate or consent to any surrender of any Lease nor modify or in any way alter the terms of any Lease.

7. **EVENTS OF DEFAULT.** The occurrence of an Event of Default under any document evidencing or securing the Indebtedness shall constitute an Event of Default under this Assignment.

8. **REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default, the Lender, at its option, shall have the rights, power and authority under this Assignment to exercise and enforce any or all of the following rights and remedies:

(a) **Termination of License.** To terminate the license granted to the Assignor to collect the Rents, and thereafter, without taking possession, in Lender's name, to demand, collect, receive, sue for, attach and/or levy the Rents, to give proper receipts, releases and acquittances for the Rents, and after deducting all necessary and proper costs and expenses of operation and collection, as reasonably determined by the Lender, including reasonable attorneys' fees, to apply the net proceeds, upon the Indebtedness in such manner as the Lender may determine.

(b) **Acceleration of Indebtedness.** To declare all or part of the Indebtedness immediately due and payable.

(c) **Actions of Lender.** Without regard to the adequacy of the security, with or without legal action or proceeding, through any person or agent, or by a receiver appointed by court, and irrespective of the Assignor's possession of the Premises, to enter upon, take possession of, manage and operate the Premises; make, modify, enforce, cancel or accept surrender of any Lease; remove and evict any lessee; increase or decrease rents; decorate, clean and repair; and otherwise do any act or incur any costs or expense as the Lender shall deem proper to protect the security of this Assignment as fully and to the

same extent as the Assignor could do if in possession; and, in such event, to apply the Rents collected to the operation and management of the Premises, but in such order as the Lender shall deem proper (including the payment of reasonable management, brokerage and attorneys' fees) and to the payment of Indebtedness in such manner as the Lender may determine.

(d) **Secured Party.** Exercise all rights, remedies and privileges afforded a "secured party" under Article 9 of the Illinois Uniform Commercial Code.

(e) **No Obligation by Lender.** Acceptance by the Lender of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Premises by the Lender, be deemed or construed to constitute the Lender a mortgagee in possession, nor thereafter or at any time or in any event obligate the Lender to appear in or defend any action or proceeding relating to the Leases or to the Premises, or to take any action under this Assignment, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to the Assignor by any lessee and not assigned and delivered to the Lender; nor shall the Lender be liable in any way for any injury or damage to any person or property sustained in or about the Premises.

(f) **No Waiver.** The collection of the Rents and application as provided in this Assignment and/or the entry upon and taking possession of the Premises shall not cure or waive any default or waive, modify or affect any notice of default under any document evidencing or securing the Indebtedness or invalidate any act done pursuant to such notice, and the enforcement of any such right or remedy by the Lender, once exercised, shall continue for so long as the Lender shall elect, notwithstanding that the collection and application of the Rents may have cured for the time the original default. If the Lender shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy under this Assignment may be reasserted at any time and from time to time following any subsequent default.

(g) **Additional Remedies.** The Lender shall have all the rights and remedies provided by law or equity or by agreement of the parties. The remedies of the Lender are cumulative and not exclusive.

9. **POWER OF ATTORNEY.** The Assignor constitutes and appoints the Lender the true and lawful attorney of the Assignor, coupled with an interest, and in the name, place and stead of the Assignor:

(a) **Collection Upon Cancellation.** To demand, sue for, attach, levy, recover and receive any premium or penalty payable upon the exercise, by any lessee under any Lease, of a privilege of cancellation originally provided in any Lease.

(b) **Collection of Rents.** To give proper receipts, releases and acquittances for the collection of Rents and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion of the Indebtedness. The Assignor authorizes and directs each lessee to deliver payment to the Lender in accordance with the foregoing.

(c) **Subordination.** To subject and subordinate any Lease affecting the Premises to the lien of any mortgage on the Premises.

The foregoing appointment is irrevocable and continuing so long as any part of the Indebtedness shall remain unpaid or unperformed.

10. **HOLD HARMLESS.** The Assignor agrees to indemnify and hold the Lender harmless from all liability, loss, damage or expense which the Lender may incur under or by reason of this Assignment, or for any action taken by the Lender under this Assignment, or by reason or in defense of any and all claims and demands asserted against the Lender arising out of the Leases. Should the Lender incur any such liability, loss, damage or expense, the amount thereof (including reasonable attorneys' fees), with interest thereon at the highest default rate provided for under the Indebtedness, shall be payable by the Assignor immediately, without demand.

11. **CONTINUATION DURING FORECLOSURE.** The rights of the Lender to collect and receive the Rents due under the Leases or to take possession of the Premises, or to exercise any of the other rights or powers granted to the Lender shall, to the extent not prohibited by law, also extend to the period from and after the filing of any suit to foreclose the lien of any mortgage on the Premises, including any period allowed by law for the redemption of the Premises after any foreclosure sale.

12. **NO MERGER.** So long as any of the Indebtedness shall remain unpaid or unperformed, unless the Lender shall otherwise consent in writing, the fee title and the leasehold estates on the Premises shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in the Assignor or in any lessee or in any third party by purchase or otherwise.

13. **MISCELLANEOUS.**

(a) **Governing Law.** This Assignment shall be construed in accordance with the laws of the State of Illinois.

(b) **Successors and Assigns.** This Assignment shall be binding upon the successors and assigns of the Assignor including, without limit, any debtor in possession or trustee in bankruptcy for the Assignor, and the rights and privileges of the Lender under

this Assignment shall inure to the benefit of its successors and assigns. This shall not be deemed a consent by the Lender to a conveyance by the Assignor of all or any part of the Premises, any Lease or of any ownership interest in the Assignor.

(c) **Notices.** Notice from one party to another relating to this Assignment shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's address, telex number or telecopier number set forth in this Assignment by any of the following means: (i) hand delivery, (ii) registered or certified mail, postage prepaid, (iii) express mail or other overnight courier service, or (iv) telecopy, telex or other wire transmission with request for assurance of receipt in a manner typical with respect to communications of that type. Notice made in accordance with these provisions shall be deemed delivered on receipt if delivered by hand or wire transmission, on the third business day after mailing if mailed by registered or certified mail, or on the next business day after mailing or deposit with the postal service or an overnight courier service if delivered by express mail or overnight courier. The Assignor's telecopier number is (847)205-9723 and the Lender's telecopier number is (847) 398-1362.

(d) **Amendments.** Any amendment of this Assignment shall be in writing and shall require the signature of the Assignor and the Lender.

(e) **Partial Invalidity.** The invalidity or unenforceability of any provision of this Assignment shall not affect the validity or enforceability of the remaining provisions of this Assignment.

(f) **Inspections.** Any inspection, audit, appraisal or examination by the Lender or its agents of the Premises or of information or documents pertaining to the Premises; including, without limit, the Leases, is for the sole purpose of protecting the Lender's interests under this Assignment and is not for the benefit or protection of the Assignor or any third party.

(g) **Joint and Several Liability.** In the event that more than one person or entity executes this Assignment, the obligations of each person or entity shall be joint and several.

(h) **Automatic Reinstatement.** Notwithstanding any prior revocation, termination, surrender or discharge of this Assignment, the effectiveness of this Assignment shall automatically continue or be reinstated, as the case may be, in the event that any payment received or credit given by the Lender in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of trust funds, or otherwise under any applicable state or federal law, including, without limit, laws pertaining to bankruptcy or insolvency, in which case this Assignment shall be enforceable as if the returned, disgorged or rescinded payment or

credit had not been received or given, whether or not the Lender relied upon this payment or credit or changed its position as a consequence of it.

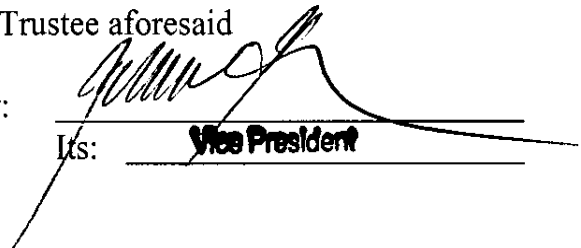
In the event of continuation or reinstatement of this Assignment, Assignor agrees upon demand by the Lender to execute and deliver to the Lender those documents which the Lender determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of the Assignor to do so shall not affect in any way the reinstatement or continuation. If Assignor does not execute and deliver to the Lender upon demand such documents, the Lender and each officer of the Lender is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of the Assignor (with full power of substitution) to execute and deliver such documents in the name and on behalf of the Assignor.

(i) **WAIVER OF JURY TRIAL.** THE ASSIGNOR AND THE LENDER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS ASSIGNMENT OR THE INDEBTEDNESS.

IN WITNESS WHEREOF, the Assignor has executed this Assignment as of the day and year noted above.

Trustee's Exoneration Rider Attached Hereto And Made A Part Hereof
ASSIGNOR:

COLE TAYLOR BANK,
as Trustee aforesaid

By: 
Its: Vice President

ATTEST:

By: 
Its: TRUST OFFICER

UNOFFICIAL COPY

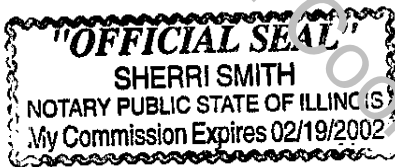
20196614

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Sherril Smith, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MARIO V. GOTANCO, the Vice President of COLE TAYLOR BANK ("Trust"), and LINDA L. HORRIGAN, the TRUST OFFICER of said Trust, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and TRUST OFFICER respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trust, as Borrower for the uses and purposes therein set forth.

GIVEN UNDER my hand and notarial seal this 13th day of February, 2002.

[SEAL]



Sherril Smith
NOTARY PUBLIC

My commission expires: _____

County Clerk's Office

UNOFFICIAL COPY

20196614

This ASSIGNMENT OF RENTS is executed by Land Trustee, not personally but as Trustee as aforesaid in the exercise of the power of authority conferred and vested in it as such Trustee, and it is expressly understood and agreed that nothing herein or in said deed or in said note contained shall be construed as creating any liability on the said Land Trustee personally to pay the said note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any agreement or covenant either expressed or implied herein contained, all such liability, if any, being expressly waived by trustee and by every person now or hereafter claiming any right or security hereunder, and that so far as the Land Trustee personally is concerned, the legal holder of holders of said note and the owner or owners of any indebtedness accruing hereunder or any making any claim hereunder shall look solely to the premises hereby conveyed and to the rents hereby assigned for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said trust deed and note provided.

UNOFFICIAL COPY

20196614

EXHIBIT A

THIS ADDENDUM IS ATTACHED TO AND MADE A PART OF THE CERTAIN ASSIGNMENT OF LEASES AND RENTS, EXECUTED BY COLE TAYLOR BANK, IN FAVOR OF BEN FRANKLIN BANK OF ILLINOIS.

LEGAL DESCRIPTION

LOT 2 IN THE PLAT OF RESUBDIVISION OF LOT 2 (EXCEPT THE NORTH 68.69 FEET THEREOF, AS MEASURED AT RIGHT ANGLES TO THE NORTH LINE THEREOF) IN THE RESUBDIVISION OF PART OF OUT-LOT 'D' IN SCHAUMBURG INDUSTRIAL PARK AS RECORDED JUNE 10, 1969 UNDER DOCUMENT NUMBER 20866510 AND FILED WITH THE REGISTRAR OF DEEDS UNDER TORRENS REGISTRATION NUMBER 2455597, BEING A SUBDIVISION OF THE SOUTH EAST $\frac{1}{4}$ OF SECTION 11 THE NORTHEAST $\frac{1}{4}$ OF SECTION 11 PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 12, PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 13 AND PART OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON FEBRUARY 27, 1978 AS DOCUMENT NUMBER 3001374 IN COOK COUNTY, ILLINOIS

Permanent Tax Index No.: 07-11-400-050-0000

Address: 1050 Remington Road, Schaumburg, Illinois 60173-4518

UNOFFICIAL COPY

EXHIBIT B

20196614

LEASE INFORMATION

<u>Tenant Name and Address</u>	<u>Lease Date</u>	<u>Leased Premises</u>	<u>Security Deposit Amount</u>
APV North America 1050 Remington Road Schaumburg IL 60	10/25/94	entire bldg	n/a

Property of Cook County Clerk's Office