

Subject Property

2801-15 S. Halsted Street
Chicago, Illinois 60608

PIN: 17-28-309-001 thru - 009

0020609349

4117/0068 30 001 Page 1 of 9
2002-05-30 13:36:48
Cook County Recorder 37.50



0020609349

Prepared By and
To Be Mailed To:

John J. Turner, Esq.
527 South Wells Street
Chicago, IL 60607
(312) 987-1900

6702138 HOWARD
384

ASSIGNMENT OF RENTS AND LEASES
(Halsted Parcels)

This Assignment of Rents and Leases ("**Assignment**"), dated as of May 1, 2002, is made to and in favor of **LAKESIDE BANK**, an Illinois banking corporation (the "**Lender**"), 55 West Wacker Drive, Illinois 60601, by and from the following assignors (singly and collectively, "**Borrower**"):

LAKESIDE BANK, not personally but solely in its capacity as a "land trustee" (the "**Trustee**") under Trust Agreement No. 10-2318 dated January 3, 2002 (the "**Trust**"), and **ANTHONY E. BENINATO, SR.**, and **SAM D. BENINATO**.

1. For Value received, and to secure the payment and performance of the "**Obligations**" hereinafter defined, Borrower does hereby sell, assign and transfer to the Lender all of the following described Leases, and all rents, avails, issues and profits now and hereafter due (collectively, the "**Rents**") under or by virtue of any such Leases (including without limitation the rights to all security therefor given by tenants thereunder, including guaranties, cash or proceeds of letters of credit); as used herein, the term "**Leases**" means and includes any and all written or verbal leases or, or agreements for the use or occupancy of, all or any part of the real estate described in attached Exhibit A (the "**Premises**"), heretofore or hereafter made or agreed to by Borrower (or by the Lender in the exercise of the powers herein granted). It is the intention of Borrower to establish an absolute transfer and assignment to the Lender of all the Leases and Rents, and Borrower hereby appoints the Lender as its true and lawful attorney in Borrower's name and stead (with or without taking possession of the Premises) to lease or let all or any portion of the Premises to such parties and at such rentals and upon such terms as the Lender in its reasonable discretion may determine, and to collect all Rents now or hereafter due, and with the same rights and powers 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 Premises pursuant to the provisions hereof.

2. Although, as provided above, this Assignment constitutes a present assignment, it is expressly understood and agreed that the Lender shall not exercise any of its rights and powers hereunder unless and until an "Event of Default" occurs under, and as the term is used in, that certain **\$921,000.00** promissory note of even date herewith and executed and delivered by the Borrower in favor of the Lender (the "**Note**"), hereby incorporated herein by reference.

3. As used herein, the term "**Obligations**" means the indebtedness and obligations owed to the Lender under the Note, and under the "Loan Documents" as that term is used and defined in the Note. The Loan Documents are hereby incorporated herein by reference; included therein is that certain mortgage of the Premises of even date herewith and executed and delivered by the Trustee in favor of the Lender (the "**Mortgage**").

4. Immediately upon demand of the Lender following any such Event of Default, Borrower shall surrender the Premises to the Lender and the Lender shall be entitled to take actual possession of part or all of the Premises personally or by its agents, and in its discretion may enter upon and take and maintain possession of all or any part of the Premises, together with all the documents, books, records, papers and accounts of Borrower relating thereto, and may exclude Borrower and its agents or servants wholly therefrom and may as attorney-in-fact or agent of Borrower or in the Lender's own name and under the powers herein granted, hold, operate, manage and control the Premises and conduct any business thereof, either personally or by the Lender's agents, with full power to use legal or equitable measures, as in the Lender's reasonable discretion may be deemed proper or necessary to enforce the payment or security of the Rents or the Premises. Borrower hereby grants the Lender 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 Borrower, and with full power to: cancel or terminate any Lease for any cause or on any ground which would entitle Borrower to cancel the same; elect to disaffirm any Lease made subsequent to or subordinated to the lien of the Mortgage; make necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises that may seem judicious to the Lender in its reasonable discretion (collectively, the "**Repairs**"); and insure and reinsure the Premises for all risks and incidental to the Lender's possession, operation and management thereof.

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

6. In the exercise of its rights and powers hereunder, the Lender may use and apply any Rents collected by it to the payment of or on account of the following with respect to the Premises and in such order as it determines: operating, management and leasing fees, expenses and commissions; reserves for insurance premiums, taxes and assessments; alterations, additions, and improvements; and the Repairs.

7. The Lender shall not be obligated, and does not hereby undertake, to perform or discharge any obligation, duty or liability under any Leases, and, except for the Lender's gross negligence or willful misconduct, Borrower shall and does hereby agree to indemnify and hold the Lender harmless from any and all liability, loss or damage which the Lender may or might incur under any Lease by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligations or undertakings on the Lender's part to perform or discharge any of the terms, covenants or agreements contained in the Leases or in the defense of any claims or demands arising prior to the Lender taking possession of the Premises. Borrower hereby agrees to immediately reimburse the Lender upon demand for any amount due the Lender by reason of this paragraph, including its reasonable costs, expenses and legal fees.

8. Borrower covenants and agrees that so long as this Assignment shall be in effect:

(a) Borrower shall not lease any portion of the Premises unless Borrower obtains the Lender's prior written consent to all aspects of such Lease, provided, however, that the Lender's prior written consent shall not be required if and only if (i) at the time Borrower enters into such Lease, no Event of Default shall have occurred hereunder and be continuing, (ii) such Lease substantially conforms with a form of lease previously approved by Lender, (iii) the term of such Lease, the rental rate per square foot of net rentable space thereunder and all of the other economic terms and provisions thereunder are in accordance with leasing guidelines approved from time to time by Lender in writing and then in effect, **but further provided** that Borrower shall give Lender written notice of Borrower's intent to enter into such Lease together with a true, complete and correct copy thereof, at least seven business days in advance of the expected execution of such Lease

(b) Borrower shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Borrower shall not do or suffer to be done anything to impair the security thereof. Borrower shall not (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(c) Borrower shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Borrower shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents;

(e) Borrower shall not modify the terms and provisions of any Lease, nor shall Borrower give any consent (including, but not limited to, any consent to any assignment of, or

subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease, without Lender's prior written consent; provided, however, that Borrower may cancel or terminate any Lease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Lease;

(f) Borrower shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Lease for the early termination or surrender thereof shall be paid jointly to Borrower and Lender;

(g) Borrower shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;

(h) Borrower shall not waive or excuse the obligation to pay rent under any Lease;

(i) Borrower shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Lender, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Lender may appear;

(j) Borrower shall give prompt notice to Lender of any notice of any default by the lessor under any Lease received from any tenant or guarantor thereunder;

(k) Borrower shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and shall immediately notify Lender of any material breach by the tenant or guarantor under any such Lease;

(l) Borrower shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(m) Borrower shall not execute hereafter any Lease unless there shall be included therein a provision providing that the tenant thereunder acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to Lender as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by Lender as security for tenant's performance under such Lease;

(n) If any tenant under any Lease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Borrower covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Lender, and any check in payment of damages for termination or rejection of any such] Lease will be made payable both to Borrower and Lender. Borrower hereby assigns any such payment to Lender and further covenants and agrees that upon the request of Lender, it will duly endorse to the order of Lender any such check, the proceeds of which shall be applied in such order as Lender shall elect; and

(o) Not later than thirty (30) days after the end of each calendar quarter, Borrower shall deliver to Lender a certified rent roll for the Premises as of the last day of such period in a form reasonably satisfactory to Lender.

9. As used herein, the term "Borrower" includes, and this Assignment shall be binding upon, the successors and assigns of each of the parties Borrower and any party holding title to the Premises by, through or under them. All of the Lender's rights, powers, privileges and immunities herein shall inure to its successors and assigns.

10. The provisions set forth herein shall be deemed as a special remedy given to the Lender in addition to and cumulative with the remedies granted in the Note and said Loan Documents.

11. No judgment which is entered with respect to any of the Obligations shall operate to abrogate or lessen the effect of this Assignment, which shall continue in full force and effect during the pendency of any foreclosure of the Mortgage and until the payment and discharge of all of the Obligations and all bills incurred by virtue of the authority granted herein.

12. At the option of the Lender, the Mortgage shall become subject and subordinate in whole or in part (but not with respect to priority to entitlement to insurance proceeds or any award in condemnation) to any or all of the Leases, upon the recording of the Lender's unilateral declaration of such subordination with the appropriate County Recorder(s) of Deeds. In the event that, at the time of recording hereof, there is attached hereto an exhibit entitled "**Exhibit B - Specific Leases**", the tenancies described therein shall be deemed included, without limitation, in the Leases which are the subject hereof.

13. Borrower agrees to promptly execute and deliver such further assurances and acknowledgments consistent with the terms hereof that the Lender may from time to time require. Borrower hereby waives notice of the Lender's acceptance hereof.

14. If any provision of this Assignment or the application thereof to any person, party or circumstance shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Assignment nor any other provision hereof, nor shall it affect the application of any provision hereof to other persons, parties or circumstances. This Assignment is executed and delivered at Chicago, Illinois and shall be governed by and construed in accordance with the laws of the State of Illinois. Actions for all disputes shall, at the Lender's option

(but subject to any non-waivable venue or forum provisions of applicable law), be commenced in or transferred to such Department (and such Division or District thereof) of the Circuit Court of Cook County as the Lender may select. Borrower hereby waives, and the Lender hereby reserves, any right now or in the future to remove any such action to the Courts of the United States of America.

15. **Instructions to Tenants.** Borrower hereby specifically and irrevocably authorizes, instructs and directs each present and future lessee or tenant under each of the Leases to pay directly to the Lender, upon its written demand therefor and without any inquiry as to the Lender's rights thereto, all Rents then and thereafter due under each Lease. By making such demand the Lender assumes no responsibility for, nor shall any tenant have a claim or setoff against the Lender for, any security deposit under any Lease.

16. **Notices.** Any notice, demand or other communication intended for Borrower or the Lender with respect to this Assignment, shall be addressed and given in the same manner as provided in the "Notices" Section of the Note.

17. **Exculpation of Trustee.** This Assignment is executed and delivered by the aforesaid Trustee in the exercise of the authority conferred upon it as a trustee under its aforesaid Trust Agreement, and not in its individual capacity. Other than its warranty, hereby made, that it possesses full power and authority to execute and deliver this Assignment, nothing contained herein shall be construed as creating any personal liability of the Trustee in its individual capacity to pay or perform any indebtedness or obligation created, evidenced or secured by this Assignment. The foregoing exculpation shall not apply to, nor limit or diminish the liability of, any party or person other than the Trustee.

Counterparts. This Document may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

SEE RIDER ATTACHED HERETO AND MADE A PART HEREOF.

LAKESIDE BANK, not personally but as Trustee as aforesaid.

By: [Signature]
Its VICE PRESIDENT & TRUST OFFICER

[Signature]
ANTHONY E. BENINATO

[Signature]
SAM D. BENINATO, individually as aforesaid and, as trustee thereof, for and on behalf of The Sam David Beninato Trust as beneficiary of the aforesaid Lakeside Bank Trust.

STATE OF ILLINOIS

COUNTY OF COOK

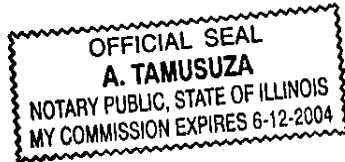
The foregoing Instrument was acknowledged before me on MAY 3, 2002,

by Anthony E. Beninato and Sam D. Beninato, individually and as trustee as aforesaid



[Signature]
NOTARY PUBLIC

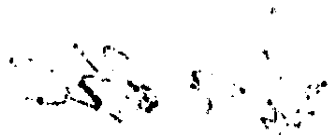
The foregoing Instrument was acknowledged before me on May 16, 2002, by Vincent J. Tolve, the Vice President and Trust Officer of Lakeside Bank, an Illinois banking corporation, on behalf of the corporation as Trustee



[Signature]
NOTARY PUBLIC

UNOFFICIAL COPY

Property of Cook County Clerk's Office



8:48 AM

COOK COUNTY CLERK'S OFFICE

OFFICIAL SEAL
PAUL J. QUINN
CLERK OF THE COUNTY OF COOK
JANUARY 1, 1831

UNOFFICIAL COPY

20609343

EXHIBIT A
Legal Description
(Halsted Parcels)

Parcel 1:

LOTS 41 THROUGH 48, BOTH INCLUSIVE, IN BLOCK 2 IN ALBERT CRANE'S SUBDIVISION OF THE SOUTH 3/4 OF THE SOUTH 3/4 OF THE WEST QUARTER OF THE SOUTHWEST 1/4 OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 17-28-309-001 thru - 003

Parcel 2:

LOTS 35 THROUGH 40, BOTH INCLUSIVE, IN BLOCK 2 IN ALBERT CRANE'S SUBDIVISION OF THE SOUTH 3/4 OF THE SOUTH 3/4 OF THE WEST QUARTER OF THE SOUTHWEST 1/4 OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 17-28-309-004 thru - 009

Commonly known as 2801-15 South Halsted, Chicago, Illinois

Property of Cook County Clerk's Office

UNOFFICIAL COPY
20609349



Lakeside Bank

55 WEST WACKER DRIVE • CHICAGO, ILLINOIS 60601-1699 • (312) 435-5100

ASSIGNMENT OF RENTS RIDER

THIS ASSIGNMENT OF RENTS IS EXECUTED BY LAKESIDE BANK, NOT personally but as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed that nothing herein or in said mortgage or trust deed or in said note shall be construed as creating any liability on the said **lakeside bank** 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 express 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 **lakeside bank** personally is concerned the legal holder or holders of said note and the owner or owners of any indebtedness accruing hereunder or anyone making any claim hereunder shall look solely to the premises hereby conveyed and the rents hereby assigned for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said mortgage or trust deed and note provided.