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2002-07-08 09:02:54  
Cook County Recorder 29.00



0020743702

PREPARED BY:  
Michael W. Luckey

WHEN RECORDED RETURN TO:

Commercial Loan Services  
IL1-1145  
120 S. LaSalle, Suite IL1-1145(B2)  
Chicago, IL 60603

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A BANK ONE Company

Assignment of Real Estate Leases and Rents

This Assignment is dated January 31, 2002, by Carboy Investments, Incorporated, whose address is 1645 E. Carboy Road, Arlington Heights, IL 60005 (the "Mortgagor"), to American National Bank and Trust Company of Chicago, whose address is 120 S. LaSalle, Chicago, IL 60603, and its successors and assigns (the "Bank").

The Mortgagor has executed and delivered to the Bank a mortgage of even date herewith (as amended, modified and replaced from time to time, the "Mortgage") related to the real property described as:

Located in the Village of Arlington Heights, County of Cook, State of Illinois:

LOT 10 IN ELMHURST ALGONQUIN INDUSTRIAL PARK UNIT NO. 2, BEING A SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as 1645 E. Carboy Road, Arlington Heights, Illinois 60005,  
Tax Parcel Identification No. 08-23-401-016-0000.

For the purpose of further securing the Liabilities (as defined in the Mortgage), the Mortgagor absolutely, unconditionally, irrevocably and presently assigns, grants, conveys and sets over unto the Bank all of the Mortgagor's right, title and interest in and to all present and future: (a) leases, subleases, licenses and other agreements for the use and/or occupancy of the Premises, (as defined in the Mortgage), oral or written, including, without limitation, all extensions, renewals, replacements and holdovers (collectively, the "Leases") and (b) rents, revenues, income, issues, royalties, profits, bonuses, accounts, cash, security deposits, advance rents and other payments and/or benefits, of every kind or nature, derived from the Leases and/or the Premises, including, without limitation, the Mortgagor's right to enforce Leases and to receive and collect all payments and proceeds under the Leases (collectively, the "Rents"). Copies of existing Leases and Lease amendments have been delivered to the Bank. The Mortgagor will provide copies of any future Leases and Lease amendments to the Bank.

BOX 333-CTI

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Subject to the license granted to the Mortgagor below, the Bank shall have the complete right and authority, at any time from and after the occurrence of any default under the Mortgage, to collect and receive the Rents. For this purpose, the Bank is hereby given and granted the following rights, powers and authority: (a) the Bank may send notices to any and all tenants of the Premises advising them of this Assignment and directing all the Rents to be paid directly to the Bank or the Bank's agent; (b) the Bank may (i) enter upon and take possession of the Premises, (ii) demand, collect and receive from the tenants (or from any other persons liable therefor) all of the Rents, (iii) institute and carry on all legal proceedings necessary for the protection of the Premises, including such proceedings as may be necessary to recover possession of the Premises and collect the Rents, (iv) remove any tenant or other persons from the Premises, (v) enter upon the Premises to maintain the Premises and keep the same in repair, and pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Premises in proper repair and condition and (vi) pay all taxes, assessments and water utilities and the premiums on fire and other insurance effected by the Bank on the Premises; (c) the Bank may do any and all things necessary or advisable to execute and comply with all applicable laws, rules, orders, ordinances and requirements of all governmental agencies; (d) the Bank may (i) rent or lease the whole or any part of the Premises for such term or terms and on such conditions as the Bank may deem appropriate, (ii) modify, terminate or accept the surrender of any Leases and/or (iii) waive, release, discharge or compromise any Rents or any obligations of any of the tenants under any Leases; (e) the Bank may make any payment, including necessary costs, expenses and reasonable attorneys' fees and court costs, or perform any action, required of the Mortgagor under any Lease, without releasing the Mortgagor from the obligation to do so and without notice to or demand on the Mortgagor; (f) the Bank may engage such agent or agents as the Bank may deem appropriate, either in the Bank's name or in the Mortgagor's name, to rent and manage the Premises, including the collection and application of the Rents; and (g) the Bank may do all such other things and acts with respect to the Premises, the Leases and the Rents as the Bank may deem appropriate and may act exclusively and solely in the place and stead of the Mortgagor. The Bank has all of the powers of the Mortgagor for the purposes stated above. The Bank shall not be required to do any of the foregoing acts or things and the fact that the Bank shall have performed one or more of the foregoing acts or things shall not require the Bank to do any other specific act or thing. The foregoing rights and remedies of the Bank are in addition to and not in limitation of the rights and remedies of the Bank at law, in equity, under the Mortgage or under any of the other Related Documents as defined in the Mortgage. The exercise by the Bank of any of the foregoing rights and remedies shall not constitute a cure or waiver of any default under the Mortgage.

Any Rents received by the Bank shall be applied against the Liabilities in such order or manner as the Bank shall elect in its sole discretion.

The Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to pay the Rents to the Bank upon written demand by the Bank, without further consent of the Mortgagor. The tenants may rely upon any written statement delivered by the Bank to the tenants. Any such payment to the Bank shall constitute payment to the Mortgagor under the Leases. The provisions of this paragraph are intended solely for the benefit of the tenants and shall never inure to the benefit of the Mortgagor or any person claiming through or under the Mortgagor, other than a tenant who has not received such notice. This Assignment is not contingent upon any notice or demand by the Bank to the tenants.

The Bank's acceptance of this Assignment shall not, prior to entry upon and taking possession of the Premises by the Bank, be deemed to constitute the Bank a "mortgagee in possession", nor obligate the Bank to: (a) appear in or defend any proceedings relating to any of the Leases, the Rents or to the Premises; (b) take any action hereunder; (c) expend any money, incur any expense or perform any obligation or liability under the Leases; or (d) assume any obligation for any deposits delivered to the Mortgagor by any tenant and not delivered to the Bank.

The Mortgagor consents to the appointment of a receiver for the Premises, without notice, if this is believed necessary or desirable by the Bank.

The Rents constitute cash collateral as defined under federal bankruptcy law.

Until a default occurs under the Mortgage, the Mortgagor shall have a license, subject to the other covenants of the Mortgage set forth in this Assignment, to (a) remain in possession and control of the Premises, (b) operate and manage the Premises and (c) collect the Rents; provided that the granting of such license shall not constitute the Bank's consent to the use of cash collateral in any bankruptcy proceedings. The foregoing license shall automatically and immediately terminate, without notice to the Mortgagor, upon the occurrence of any default under the Mortgage.

## **The Mortgagor Represents and Covenants as Follows:**

1. The Mortgagor will fulfill and perform its obligations under all Leases and give the Bank prompt notice of any default in the performance of the terms and conditions of the Leases by either the Mortgagor or the tenant, together with copies of notices sent or received by the Mortgagor in connection with any Lease;

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2. Without the prior written consent of the Bank, the Mortgagor shall not in any way (a) enter into any new Lease, (b) amend, modify, assign its interest under, cancel or terminate any Lease, (c) accept a surrender of any Lease, (d) accept any payment of Rent under any Lease more than thirty (30) days in advance, or (e) waive, release, discharge or compromise any Rent or any of the tenant's obligations under any Lease, except that the Mortgagor may increase Lease rentals without the Bank's consent;
3. The Mortgagor will appear and defend or prosecute any action growing out of any Lease at the Mortgagor's cost and expense;
4. The Bank may, but shall not be required to, make any payment including necessary costs, expenses and reasonable attorneys' fees and court costs, or perform any action required of the Mortgagor under any Lease, without releasing the Mortgagor from the obligation to do so and without notice to or demand on the Mortgagor. The Mortgagor will, immediately upon demand, reimburse the Bank for all such costs, expenses and fees, together with interest at the highest rate permitted by any instrument evidencing any of the Liabilities, all of which shall be added to the Liabilities;
5. The Mortgagor has not previously assigned any of its rights under any Lease. The Mortgagor has not accepted Rent more than thirty (30) days in advance of accrual. There is no present default under any Lease by either the Mortgagor or any tenant. All existing Leases are in full force and effect and unmodified. To the best of the Mortgagor's knowledge, no person or entity is in possession of the Premises, except pursuant to a valid and fully executed Lease that has been assigned to the Bank pursuant to this Assignment. The Mortgagor owns the Leases, is entitled to receive the Rents and has authority to assign the Leases and the Rents to the Bank as set forth in this Assignment. The Mortgagor will enforce the tenant's obligations under their respective Leases;
6. The Bank shall not be obligated by this Assignment to perform or discharge any obligation under any Lease; and
7. The Mortgagor covenants not to execute any other assignment of the Leases or the Rents as security for any debt without the prior written consent of the Bank.

**Notice.** Any notices and demands under or related to this document shall be in writing and delivered to the intended party at its address stated herein, and if to the Bank, at its main office if no other address of the Bank is specified herein, by one of the following means: (a) by hand, (b) by a nationally recognized overnight courier service, or (c) by certified mail, postage prepaid, with return receipt requested. Notice shall be deemed given: (a) upon receipt if delivered by hand, (b) on the Delivery Day after the day of deposit with a nationally recognized courier service, or (c) on the third Delivery Day after the notice is deposited in the mail. "Delivery Day" means a day other than a Saturday, a Sunday, or any other day on which national banking associations are authorized to be closed. Any party may change its address for purposes of the receipt of notices and demands by giving notice of such change in the manner provided in this provision.

**Indemnification.** The Mortgagor agrees to indemnify, defend and hold the Bank and BANK ONE CORPORATION, or any of its subsidiaries or affiliates or their successors, and each of their respective shareholders, directors, officers, employees and agents (collectively, the "Indemnified Persons") harmless from any and all obligations, claims, liabilities, losses, damages, penalties, fines, forfeitures, actions, judgments, suits, costs, expenses and disbursements of any kind or nature (including, without limitation, any Indemnified Person's attorneys' fees) (collectively, the "Claims") that may be imposed upon, incurred by or assessed against any Indemnified Person (whether or not caused by any Indemnified Person's sole, concurrent, or contributory negligence) arising out of or relating to this Assignment; the Mortgagor's use of the property covered by this Assignment; the exercise of the rights and remedies granted under this Assignment (including, without limitation, the enforcement of this Assignment and the defense of any Indemnified Person's action or inaction in connection with this Assignment); and in connection with the Mortgagor's failure to perform all of the Mortgagor's obligations under this Assignment, except to the limited extent that the Claims against any such Indemnified Person are proximately caused by such Indemnified Person's gross negligence or willful misconduct. The indemnification provided for in this section shall survive the termination of this Assignment and shall extend to and continue to benefit each individual or entity who is or has at any time been an Indemnified Person.

The Mortgagor's indemnity obligations under this section shall not in any way be affected by the presence or absence of covering insurance, or by the amount of such insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under any insurance policy or policies affecting the Mortgagor's assets or the Mortgagor's business activities. Should any Claim be made or brought against any Indemnified Person by reason of any event as to which the Mortgagor's indemnification obligations apply, then, upon any Indemnified Person's demand, the Mortgagor, at its sole cost and expense, shall defend such Claim in the Mortgagor's name, if necessary, by the attorneys for the Mortgagor's insurance carrier (if such Claim is covered by insurance), or otherwise by such attorneys as any Indemnified Person shall approve. Any Indemnified Person may also engage its own attorneys at its reasonable discretion to defend the Mortgagor and to assist in its defense and the Mortgagor agrees to pay the fees and disbursements of such attorneys.

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If any provision of this Assignment is in conflict with any statute or rule of law or is otherwise unenforceable for any reason whatsoever, then the provision shall be deemed null and void to the extent of such conflict or unenforceability and shall be deemed severable from but shall not invalidate any other provisions of this Assignment. No waiver by the Bank of any right or remedy granted or failure to insist on strict performance by the Mortgagor shall affect or act as a waiver of any other right or remedy of the Bank, nor affect the subsequent exercise of the same right or remedy by the Bank for any subsequent default by the Mortgagor, and all rights and remedies of the Bank are cumulative.

The promises and agreements set forth in this Assignment shall bind, and the rights and benefits set forth in this Assignment shall be to the benefit of, the parties and their respective successors and assigns. The Mortgagor agrees that the Bank may at any time sell or transfer one or more participation interests in all or any part of the Liabilities to one or more purchasers, whether or not related to the Bank.

If there is more than one Mortgagor, the obligations under this Assignment shall be joint and several.

This Assignment, the Mortgage and the Related Documents constitute the entire understanding of the parties hereto and may not be amended or altered except by a written instrument that has been signed by the party(ies) against which enforcement of the amendment or alteration is sought.

Time is of the essence in this Assignment.

The Mortgagor agrees that the Bank may provide any information or knowledge the Bank may have about the Mortgagor or about any matter relating to this Assignment, the Mortgage or the Related Documents to BANK ONE CORPORATION, or any of its subsidiaries or affiliates or their successors or to any one or more purchasers or potential purchasers of all or any part of the Liabilities and/or the Related Documents.

**Governing Law and Venue.** This Assignment is delivered in the State of Illinois and governed by Illinois law (without giving effect to its laws of conflicts); provided, however that if the real estate that is the subject of this Assignment is located in another state, the laws of such other state shall govern the validity, enforceability, perfection, priority, construction, effect, enforcement and remedies with respect to this Assignment, but nothing herein shall be construed to provide that the laws of any state other than the State of Illinois shall apply to the obligations and indebtedness secured by this Assignment. The Mortgagor agrees that any legal action or proceeding with respect to any of its obligations under this Assignment may be brought by the Bank in any state or federal court located in the State of Illinois, as the Bank in its sole discretion may elect. By the execution and delivery of this Assignment, the Mortgagor submits to and accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of those courts. The Mortgagor waives any claim that the State of Illinois is not a convenient forum or the proper venue for any such suit, action or proceeding.

**WAIVER OF SPECIAL DAMAGES.** THE MORTGAGOR WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM THE BANK IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

**JURY WAIVER.** THE MORTGAGOR AND THE BANK (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN THE MORTGAGOR AND THE BANK ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE BANK TO PROVIDE THE FINANCING DESCRIBED HEREIN.

Executed by the Mortgagor on the date first written above.

Mortgagor:

Carboy Investments, Incorporated

By: 

Printed Name

Title

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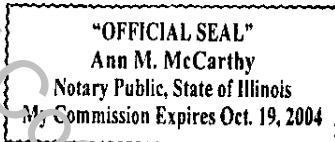
## ACKNOWLEDGMENT

State of ILLINOIS )  
County of COOK ) ss

I, ANN M. MCCARTHY, a Notary Public in and for said County and State, certify that GARY P. CORIKELL, a PRESIDENT of CARBOY INVESTMENTS, INC., a(n) ILLINOIS CORPORATION and \_\_\_\_\_, a \_\_\_\_\_ of said COMPANY, personally known to me to be the persons whose names are subscribed to the foregoing instrument as such PRESIDENT and \_\_\_\_\_, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said CORPORATION, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of February, 20 02

My Commission Expires: Oct. 19, 2004 Ann M. McCarthy, Notary Public



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