

UNOFFICIAL COPY

0020986769

1570/0094 20 001 Page 1 of 8

2002-09-09 10:46:18

Cook County Recorder 38.00



0020986769

2 of 4 LHYMES 8032256-D1

Prepared by:

Ron D. Talley
Hunter, Maclean, Exley & Dunn, P.C.
Post Office Box 9848
Savannah, Georgia 31412-0948

Recording requested by,
and after recording, return to:

General Electric Capital BAF Corporation
Attn: Middle Market Risk
10900 Northeast Fourth Street, Suite 500
Bellevue, Washington 98004

Loan Number: 2402995-102

Tax Identification No. 08-34-101-041-0000

ASSIGNMENT OF RENTS AND LEASES

(1501 Tonne Road, Elk Grove Village, Cook County, Illinois)

8/31

THIS ASSIGNMENT, made as of August 30, 2002 by THE NORAN COMPANY, a California general partnership, with a mailing address of 2503 East Vernon Avenue, Los Angeles, California 90058 (hereinafter called "Assignor"), in favor of GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION, a Delaware corporation, with a mailing address of Middle Market Risk, 10900 Northeast Fourth Street, Suite 500, Bellevue, Washington 98004 (hereinafter called "Lender").

WITNESSETH:

Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto Lender all right, title and interest of Assignor in, to and under all written and oral leases and rental agreements of the real estate described in Exhibit A attached hereto and incorporated herein ("Property"), whether now in existence or hereafter entered into, and all guaranties, amendments, extensions, renewals and subleases of said leases and any of them, all of which are hereinafter called the "Leases," all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Property, any award

BOX 333-CT

hereafter made in any bankruptcy, insolvency or reorganization proceeding in any state or federal court involving any of the tenants of the Leases, and any and all payments made by such tenants in lieu of rent.

This Assignment is made for the purpose of securing the following (the "Secured Obligations"):

- A. The payment of the indebtedness (including any extensions or renewals thereof) evidenced by a certain Promissory Note ("Note") of Assignor of even date herewith in the principal sum of Six Hundred Eighty-Six Thousand Five Hundred and no hundredths Dollars (\$686,500.00) and secured by a certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing ("Mortgage") of even date herewith encumbering the Property; and
- B. The payment of the "Other Notes", as defined in the Mortgage, and all other sums with interest thereon becoming due and payable to Lender under the provisions of the Mortgage and any other instrument constituting security for the Note; and
- C. The performance and discharge of each and every term, covenant and condition contained in the Note, Mortgage and any other instrument constituting security for the Note.

Assignor represents, warrants, covenants and agrees with Lender as follows:

1. The sole ownership of the entire lessor's interest in the Leases is or shall be vested in Assignor, and Assignor has not, and shall not, perform any acts or execute any other instruments which are likely to prevent Lender from fully exercising its rights under any of the terms, covenants and conditions of this Assignment.
2. The Leases are and shall be valid and enforceable in accordance with their terms and have not been altered, modified, amended, terminated, canceled, renewed or surrendered nor have any of the terms and conditions thereof been waived in any manner whatsoever except as approved in writing by Lender.
3. Assignor shall not materially alter the term of or the amount of rent payable under any Lease without notice to Lender and Lender's consent, which shall not be unreasonably withheld.
4. To the best of Assignor's knowledge, there are no defaults now existing under any of the 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 Leases.
5. Assignor shall give prompt notice to Lender of any notice received by Assignor claiming that a default has occurred under any of the Leases on the part of Assignor, together with a complete copy of any such notice.
6. insofar as Assignor can control this, each of the Leases shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the Leases.
7. Assignor will not knowingly permit any Lease to become subordinate to any lien other than the lien of the Mortgage and current real estate taxes and assessments not yet due or payable.

8. All existing Leases are described on Exhibit B attached hereto and incorporated herein. Assignor has delivered to Assignee true and correct copies of all existing Leases and all amendments and modifications thereto.

The parties further agree as follows:

This Assignment is an absolute, present assignment from Assignor to Lender, effective immediately, and is not merely an assignment for security purposes. Notwithstanding the foregoing, until an Event of Default (as defined in the Mortgage) has occurred and a notice thereof is sent to the Assignor in writing that an Event of Default has occurred under the terms and conditions of the Note or any other instrument constituting additional security for the Note (which notice is hereafter called a "Notice"), Assignor is granted a license to receive, collect and enjoy the rents, income and profits accruing from the Property.

If an Event of Default shall occur at any time under the Note, Mortgage or any other Loan Document (as defined in the Mortgage) constituting additional security for the Note, Lender may, at its option, after service of a Notice, receive and collect all such rents, income and profits as they become due, from the Property. Lender shall thereafter continue to receive and collect all such rents, income and profits, until Lender shall otherwise agree in writing, including but not limited to during the pendency of any foreclosure proceedings, and if there is a deficiency, during any redemption period. All sums received by Assignor after service of such Notice shall be deemed received in trust and shall be immediately turned over to Lender.

Assignor hereby irrevocably appoints Lender its true and lawful attorney with power of substitution and with full power for Lender in its own name and capacity or in the name and capacity of Assignor, from and after service of Notice, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property, either in its own name or in the name of Assignor or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. Such appointment is coupled with an interest and is irrevocable. In such event, Assignor also hereby irrevocably appoints Lender as its true and lawful attorney to appear in any state or federal bankruptcy, insolvency, or reorganization proceeding in any state or federal court involving any of the tenants of the Leases. Lessees of the Property are hereby expressly authorized and directed to pay any and all amounts due Assignor pursuant to the Leases to Lender or such nominee as Lender may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.

Upon or at any time after the occurrence of any Event of Default under the Note, Mortgage, or any other Loan Document, Lender shall, after service of a Notice, be entitled to the possession, use and enjoyment of the Property and the rents, issues and profits thereof, from the date of such occurrence and continuing during the pendency of any proceedings for sale by the public trustee or foreclosure proceedings, and the period of redemption, if any. Lender shall be entitled to a receiver for the Property, and of the rents, issues and profits thereof, after any such default, including, without limitation, the time covered by any proceedings for sale by the public trustee or foreclosure proceedings and the period of redemption, if any. **Lender shall be entitled to such receiver as a matter of right, without regard to the solvency or insolvency of Assignor, or of the then owner of the Property, and without regard to the value thereof, and such receiver may be appointed by any court of competent jurisdiction upon ex parte application, and without notice, notice being hereby expressly waived, and all rents, issues and profits, income and revenue therefrom shall be applied by such receiver to the payment of the Secured Obligations according to the orders and directions of the court, or in the absence of such orders or directions, in the manner set forth in the Loan Documents.**

From and after service of a Notice Lender is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Lender or its designee, to enter upon the Property, or any part thereof, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Assignor relating thereto, and may exclude the Assignor, its agents and servants, wholly therefrom. Assignor hereby grants full power and authority to Lender to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Assignor to Lender, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Property or of making the same rentable, reasonable attorneys' fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due from Assignor to Lender on the Note and the Mortgage, all in such order as Lender may determine. LENDER SHALL BE UNDER NO OBLIGATION TO EXERCISE OR PROSECUTE ANY OF THE RIGHT OR CLAIMS ASSIGNED TO IT HEREUNDER OR TO PERFORM OR CARRY OUT ANY OF THE OBLIGATIONS OF THE LESSOR UNDER ANY OF THE LEASES AND DOES NOT ASSUME ANY OF THE LIABILITIES IN CONNECTION WITH OR ARISING OR GROWING OUT OF THE COVENANTS AND AGREEMENTS OF ASSIGNOR IN THE LEASES. IT IS FURTHER UNDERSTOOD THAT, UNLESS LENDER SHALL TAKE POSSESSION OF THE PROPERTY, THIS ASSIGNMENT SHALL NOT OPERATE TO PLACE RESPONSIBILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PROPERTY, OR PARTS THEREOF, UPON LENDER, NOR SHALL IT OPERATE TO MAKE LENDER LIABLE FOR THE PERFORMANCE OF ANY OF THE TERMS AND CONDITIONS OF ANY OF THE LEASES, OR FOR ANY WASTE OF THE PROPERTY BY ANY LESSEE UNDER ANY OF THE LEASES OR ANY OTHER PERSON, OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF THE PROPERTY OR FOR ANY NEGLIGENCE IN THE MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY LESSEE, LICENSEE, EMPLOYEE OR STRANGER.

Waiver of or acquiescence by Lender in any default by the Assignor, or failure of Lender to insist upon strict performance by the Assignor of any covenants, conditions or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

The rights and remedies of Lender under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Lender shall have under the Note or any other instrument constituting security for the Note, or at law or in equity.

If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

Assignor hereby authorizes Lender to give written notice of this Assignment, which may include a copy hereof, at any time to any tenant under any of the Leases.

The terms "Assignor" and "Lender" shall be construed to include the legal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

This Assignment may not be amended, modified or changed nor shall any waiver of any provisions hereof be effective, 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.

Notwithstanding anything contained herein to the contrary, in no event shall this Assignment be deemed to reduce the indebtedness evidenced by the Note by an amount in excess of the actual amount of cash received by Lender under the Leases, whether before, during or after the occurrence of an Event of Default, and Assignor acknowledges that in no event shall the indebtedness secured hereby be reduced by the value from time to time of the rents, income and profits of or from the Property. In addition, Lender reserves the right, at any time, whether before or after the occurrence of an Event of Default, to recharacterize this Assignment as merely constituting security for the indebtedness of Assignor to Lender, which recharacterization shall be made by written notice delivered to Assignor. Lender's receipt of any rents, issues, and profits pursuant to this Assignment after the institution of foreclosure proceedings, either by court action or by the private power of sale contained in any deed of trust now or hereafter securing the Note, shall not cure an Event of Default, as defined in the Note, or affect such proceedings or sale.

This Assignment shall be construed and enforced under the laws of the State of Illinois (excluding choice-of-law principles).

IN WITNESS WHEREOF, the said Assignor has caused this instrument to be signed and sealed as of the date first above written.

ASSIGNOR:

THE MORAN COMPANY,
a California general partnership

By: Donald E. Friese [L.S.]
Donald E. Friese, as Trustee under the Friese Living Trust under Trust Agreement dated December 7, 1995, and not individually, General Partner

Exhibits:

- Exhibit A - Legal Description
- Exhibit B - List of Leases

STATE OF CALIFORNIA)
)
) ss
COUNTY OF _____)

ACKNOWLEDGMENT OF BORROWER

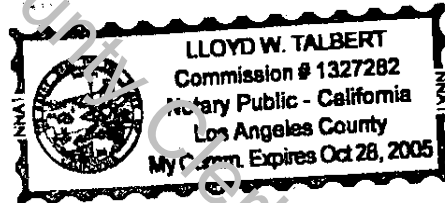
On this 29 day of AUGUST, 2002, before me, a Notary Public in and for said county, personally appeared Donald E. Friese, to me personally known [or proven upon the basis of credible evidence], who, being by me duly sworn or affirmed did say that he is a Trustee under the Friese Living Trust under Trust Agreement dated December 7, 1995, a partner in THE NORAN COMPANY, a California general partnership, that the foregoing instrument was signed on behalf of the partnership by authority of its partnership agreement or the consent of its partners, and the said partner acknowledged the execution of said instrument to be the voluntary act and deed of said partnership by it voluntarily executed.

WITNESS MY HAND AND OFFICIAL SEAL.



Notary Public

My commission expires: _____



UNOFFICIAL COPY

20986769

Loan No: 2402995-102

EXHIBIT A

(1501 Tonne Road, Elk Grove Village, Cook County, Illinois)

Legal Description:

LOT 329 IN CENTEX INDUSTRIAL PARK UNIT 202, BEING A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST ON THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART DEDICATED FOR STREETS), IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Loan No. 2402995-102

20986769

EXHIBIT B

(1501 Tonne Road, Elk Grove Village, Cook County, Illinois)

List of Leases

Date

Tenant

April 19, 1988

C.R. Laurence Co., Inc.

Property of Cook County Clerk's Office