

UNOFFICIAL COPY

00385367

31/0101 34 001 Page 1 of 9
2000-05-26 12:37:31
Cook County Recorder 37.50



PREPARED BY AND AFTER
RECORDING RETURN TO:

Jeffrey S. Arnold, Esq.
Piper Marbury Rudnick & Wolfe
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601

RECORDER'S BOX 416

This space reserved for Recorder's use only.

SS
②
N 990 2663 Cook Co, Ill.

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (the "Assignment"), is made as of the 22nd day of May, 2000, by GOODMAN/FRIEDMAN, LLC, a Delaware limited liability company ("Assignor"), with and in favor of LASALLE BANK NATIONAL ASSOCIATION, a national banking association ("Assignee").

Recital

A. Assignor and Assignee have entered into a Construction Loan Agreement of even date herewith (the "Construction Loan Agreement"), pursuant to which Assignee has agreed to lend Assignor up to a maximum principal amount of SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000) for the purpose of funding a portion of the cost of construction of the Development. Initially capitalized terms used but not expressly defined herein have the same meanings given them in the Construction Loan Agreement.

B. The Loan is evidenced by, among other things, a Mortgage Note in the amount of the Loan of even date herewith executed and delivered by Assignor to Assignee. The Note and all obligations of Assignor under the Construction Loan Agreement (collectively, the "Obligations"), are secured by a Construction Mortgage and Security Agreement (the "Mortgage") on the leasehold estate in certain land (the "Real Estate") in the City of Chicago, County of Cook, Illinois, legally described on EXHIBIT A attached hereto and made a part hereof created by and pursuant to the Ground Sublease (as hereinafter defined), and on the fee simple interest in all improvements thereon, and also by certain Additional Collateral as defined and described in the Construction Loan Agreement (the Note, Mortgage, Construction Loan Agreement and Additional Collateral and all other documents and instruments executed and delivered in connection with the Loan are collectively referred to herein as the "Loan Documents").

C. Assignee requires this Assignment (which is one of the Additional Collateral documents described in the Construction Loan Agreement) as further security for the Obligations.

Agreements

NOW, THEREFORE, in order to secure the payment of the principal and interest on the Note and to secure the performance and observance by Assignor of the Obligations and each and every term, covenant, agreement and condition contained herein, in the Note, in the Construction Loan Agreement and in the other Loan Documents, and in consideration of the agreement by Assignee to extend the Loan to or for the benefit of the Assignor under the terms of the Construction Loan Agreement, Assignor does hereby sell, assign, transfer and set over unto Assignee, its successors and assigns, all of the right, title and interest of Assignor in, to and under any and all leases (or extensions or renewals thereof) between the Assignor (or its predecessor) as lessor, and the lessee named in any of such leases (hereinafter called "Lessee"), now existing or hereafter arising, demising and leasing all or portions of the Real Estate or any improvements on the Real Estate, including, but not limited to, all Space Leases and all other leases, subleases and other agreements arising under or in connection with that certain Sublease by and between Chicago Theatre Group, Inc., an Illinois not for profit corporation ("Lessor"), as lessor, and Assignor, as lessee (the "Ground Sublease") (such leases are hereinafter referred to individually and collectively as the "Leases"), together with all rents payable under the Leases and all benefits and advantages to be derived therefrom to hold and receive them unto Assignee, and together with all rights against guarantors, if any, of Lessee's obligations under the Leases, together with the right to appear and participate, in the place of and in the name of Assignor or Assignee, in any proceedings under the United States Bankruptcy Code, 11 U.S.C. §101, et seq., as the same may be amended (the "Code") or any other insolvency proceedings with respect to any tenant under a Lease, including without limitation, any right of Assignor to file any claim or cast any vote in any such proceedings; the right to payment of damages arising from any breach or rejection of any Lease by the tenant thereunder or by a trustee for such tenant, under the Code; and the right to do any and all other things whatsoever which Assignor or any lessor is or may be entitled to do under any Lease.

1. Assignor does hereby empower Assignee, its agents or attorneys, to collect, sue for, settle, compromise and give acquittances for all of the rents that may become due under the Leases and avail itself of and pursue all remedies for the enforcement of the Leases and Assignor's rights in and under the Leases as Assignor might have pursued but for this Assignment.

2. Assignor represents and warrants to Assignee that there are no Leases affecting the Development as of the date hereof except those listed on the Rent Roll.

3. Assignor agrees not to enter into any Leases after the Loan Opening Date except in accordance with the provisions of the Construction Loan Agreement. Assignee further agrees:

(a) that if the Leases provide for the abatement of rent during repair of the demised premises by reason of fire or other casualty, Assignor shall furnish rental insurance to Assignee, the policies to be in amount and form and written by such insurance companies as shall be satisfactory to Assignee;

(b) not to terminate, modify or amend the Leases or any of the terms thereof, or grant any waivers or concessions in connection therewith, either orally or in writing, or to accept a surrender thereof without the written consent of Assignee and that any attempted termination, modification or amendment of the Leases without such written consent shall be null and void, provided that Assignor may, upon prior notice to Assignee, make ministerial changes to the Leases without Assignee's prior written consent;

(c) not to collect any of the rent, income and profits arising or accruing under the Leases more than one month in advance of the time when the same become due under the terms thereof;

(d) not to discount any future accruing rents;

(e) not to execute any other assignments of the Leases or any interest therein or any of the rents thereunder;

(f) to perform all of Assignor's covenants and agreements as lessor under the Leases and not to suffer or permit to occur any release of liability of the Lessee, or any right to the Lessee to withhold payment of rent; and to give prompt notices to Assignee of any notice of default on the part of Assignor with respect to the Leases received from the Lessee thereunder, and to furnish Assignee with complete copies of said notices;

(g) if so requested by Assignee, to enforce the Leases and all remedies available to Assignor against the Lessee, in case of default under the Leases by the Lessee;

(h) that none of the rights or remedies of Assignee under the Mortgage shall be delayed or in any way prejudiced by this Assignment;

(i) that notwithstanding any variation of the terms of the Mortgage or any extension of time for payment thereunder or any release of part or parts of the land conveyed thereunder, the Leases and benefits hereby assigned shall continue as additional security in accordance with the terms hereof;

(j) not to alter, modify or change the terms of any guarantees of the Leases or cancel or terminate such guarantees without the prior written consent of Assignee;

(k) not to consent to any assignments of the Leases, or any subletting thereunder, whether or not in accordance with their terms, without the prior written consent of Assignee;

(l) not to request, consent to, agree to or accept a subordination of the Leases to any mortgage or other encumbrance now or hereafter affecting the Real Estate; and

(m) that, if there shall be filed by or against Assignor a petition under the Code, and Assignor, as lessor under a Lease, shall desire to reject such Lease pursuant to Section 365(a) of the Code, Assignor shall give Assignee not less than thirty (30) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject such Lease. Instead of rejecting the Lease, Assignor shall, within thirty (30) days of Assignor's notice to Assignee, assume such Lease and assign such Lease to Assignee pursuant to Section 365 of the Code unless Assignee gives Assignor written notice, prior to the expiration of the aforesaid thirty (30) day period, that Assignee will not accept such assignment. If Assignee serves such notice that it will not accept such assignment, Assignor may proceed to reject the Lease.

An action taken by Assignor in violation of the foregoing agreements shall be void ab initio.

4. This Assignment is given as additional security for the payment of the Note held by Assignee, all other sums secured by the Mortgage and the performance and payment of the Obligations. The security of this Assignment is and shall be primary and on a parity with the leasehold estate in the Real Estate conveyed by the Mortgage and not secondary. All amounts collected hereunder, after deducting the expenses of operation of the Real Estate and after deducting the expenses of collection, shall be applied on account of the indebtedness secured by the Mortgage or other Loan Documents, or in such other manner as may be provided for in the Mortgage, or in any general assignment of rents given as additional security for said indebtedness. Nothing herein contained shall be construed as constituting Assignee a trustee or mortgagee in possession.

5. Upon issuance of a deed or deeds or assignment or assignments pursuant to foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor. Assignor hereby irrevocably appoints Assignee and its successors and assigns, as its agent and attorney in fact, to execute all instruments of assignment or further assurance in favor of such grantee or grantees in such deed or deeds or assignment or assignments, as may be necessary or desirable for such purpose.

6. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being hereby expressly waived and released by Assignor. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify, defend, protect and hold forever free and harmless the Assignee of, from and against any and all liability, loss, cost, expense or damage which it may a might incur under the Leases or under or by reason of this Assignment and of, from and against any and all claims, suits, judgments 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 the Leases, except such liability, loss, cost, expense, damage, claim, suit, judgment and demand arising out of the gross negligence or willful misconduct of Assignee. Should Assignee incur any such liability, loss, cost, expense or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims, suits, judgments or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby, and Assignor shall reimburse Assignee therefor immediately upon demand.

7. Although it is the intention of the parties that this instrument shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Assignee shall not exercise any of the rights or powers herein conferred upon it until an Event of Default shall occur under the terms and provisions of this Assignment or of the Note, Mortgage, Construction Loan Agreement or any other Loan Document. Upon the occurrence of an Event of Default, Assignee shall be entitled, upon notice to the Lessee, to all rents and other amounts then due under the Leases and thereafter accruing, and this Assignment shall constitute a direction and full authority to the Lessee to pay all such amounts to Assignee without proof of the default relied upon. Lessee is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by Assignee for the payment to Assignee of any rental or other sums which may be or thereafter become due under the Leases, or for the performance of any of Lessee's undertakings under the Leases and shall have no right or duty to inquire as to whether any default under the Mortgage or the Additional Collateral has actually occurred or is then existing.

8. Each of the following shall constitute an Event of Default under this Assignment:

(a) If an Event of Default as defined in the Construction Loan Agreement shall occur thereunder, or if an Event of Default shall be declared or occur under and as defined in any of the terms and provisions of any of the Note, Mortgage, any Additional Collateral, any Loan Document or any document or instrument (other than this Assignment), evidencing or securing the indebtedness secured hereby.

(b) If default shall be made in the due and punctual performance of any other term, covenant, provision, agreement, condition or obligation herein contained which is not included in the Note, Mortgage, Construction Loan Agreement, any Additional Collateral or any Loan Document or any document or instrument (other than this Assignment), evidencing or securing the indebtedness secured hereby, and, (1) if such default is a monetary default, such default shall continue for five (5) days after service of written notice thereof, and (2) if such default is a nonmonetary default, such default shall continue for thirty (30) days after service of written notice thereof or, where Assignee's security is not in Assignee's reasonable judgment impaired by such non-monetary default and if such non-monetary default cannot reasonably be cured within said 30-day period, the failure to commence curing said default within said 30-day period, to proceed with such cure thereafter in a reasonably diligent

manner, or to complete such cure within sixty (60) days after expiration of such 30-day period.

9. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents to secure said indebtedness contained in the Mortgage or in any other document.

10. This Assignment shall include any extensions and renewals of the Leases, and any reference herein to the Leases shall be construed as including any such extensions and renewals.

11. This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. The words "Assignor," "Assignee," and "Lessee," wherever used herein, shall include the persons named herein and designated as such and their respective successors and assigns, and all words and phrases shall be taken to include the singular or plural and masculine, feminine or neuter gender, as may fit the case.

12. All of the rights, powers, privileges and immunities herein granted and assigned to Assignee shall also inure to its successors and assigns, including all holders, from time to time, of said note or notes.

13. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered by messenger, when delivered, (b) if mailed, on the third business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, (c) if telexed, telegraphed or telecopied, six (6) hours after being dispatched by telex, telegram or telecopy, if such sixth hour falls on a business day within the hours of 9:00 a.m. through 5:00 p.m. of the time in effect at the place of receipt, or at 9:00 a.m. on the next business day thereafter if such sixth (6th) hour is later than 5:00 p.m. or (d) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

In the case of Assignor, to: Goodman/Friedman, LLC
c/o Albert M. Friedman
Friedman Properties Ltd.
500 North Dearborn Street
Suite 200
Chicago, Illinois 60610
Fax: (312) 644-2898

UNOFFICIAL COPY

00385367

with copies (which shall not constitute required notices) to:

Lawrence B. Swibel
Fox, Swibel & Levin
500 North Dearborn Street
Suite 200
Chicago, Illinois 60610
Fax: (312) 527-9606

In the case of Assignee, to:

LaSalle Bank National Association
135 South LaSalle Street
12th Floor
Chicago, Illinois 60603
Attention: Mr. David M. Patchin
Fax: (312) 904-6467

with a copy (which shall not constitute a required notice) to:

Jeffrey S. Arnold
Piper Marbury Rudnick & Wolfe
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601-1293
Fax: (312) 630-5329

or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection or refusal to accept or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

IN WITNESS WHEREOF, this Assignment has been executed and delivered as of the date first above written.

ASSIGNOR:

GOODMAN/FRIEDMAN, LLC, a
Delaware limited liability company

By: 

Name: Albert M. Friedman

Title: Manager

UNOFFICIAL COPY

EXHIBIT A

00385367

LEGAL DESCRIPTION

THOSE PARTS OF LOTS 7 AND 8 IN BLOCK 35 IN THE ORIGINAL TOWN OF CHICAGO LYING SOUTH OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF LOT 8 IN BLOCK 35, WHICH POINT IS 79.40 FEET NORTH FROM THE SOUTHEAST CORNER OF SAID LOT, AS MEASURED ALONG SAID EAST LINE; THENCE WEST, PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 87.81 FEET; THENCE NORTH, PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 5.00 FEET; THENCE WEST, PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 73.17 FEET TO A POINT ON THE WEST LINE OF AFOREMENTIONED LOT 7 WHICH IS 82.25 FEET NORTH FROM THE SOUTHWEST CORNER OF SAID LOT, AS MEASURED ALONG SAID WEST LINE; ALL IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: Part of 17-09-437-006, 17-09-437-009-8001 [REDACTED]

Address: Northeast Corner of North Dearborn Street and West Randolph Street, Chicago, Illinois