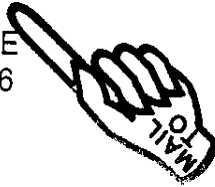




Doc#: 0333510064
Eugene "Gene" Moore Fee: \$42.50
Cook County Recorder of Deeds
Date: 12/01/2003 12:44 PM Pg: 1 of 10

THIS INSTRUMENT PREPARED
BY AND UPON RECORDING TO
BE RETURNED TO:

THOMAS P. DUFFY
WILDMAN HARROLD ALLEN
& DIXON LLP
225 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606



ASSIGNMENT OF RENTS AND LESSOR'S INTEREST IN LEASES

THIS ASSIGNMENT is made as of the 20th day of October, 2003, by and between PRAIRIE STATION TOWNHOUSE 2 PARTNERS, L.L.C., an Illinois limited liability company (hereinafter referred to as "Assignor"), whose mailing address is 3611 South Normal, Chicago, Illinois 60609 to and for the benefit of COLE TAYLOR BANK, whose mailing address is 5501 West 79th Street, Burbank, Illinois 60459, Attention: Real Estate Department (hereinafter referred to as "Assignee").

WITNESSETH:

WHEREAS, Assignor is the owner of the fee simple estate in and to the estate described in Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter referred to as the "Property"); and,

WHEREAS, pursuant to a Construction Loan Agreement dated of even date herewith (hereinafter referred to as the "Loan Agreement") Assignee has agreed to make a revolving credit construction loan (hereinafter referred to as the "Loan") to Assignor in the amount of Twelve Million and No/100 Dollars (\$12,000,000.00); and

WHEREAS, to evidence the Loan, Assignor has concurrently herewith executed and delivered to Assignee a certain Note (hereinafter referred to as the "Note") in the principal amount of Twelve Million and No/100 Dollars (\$12,000,000.00), which Note is secured by a Construction Mortgage and Security Agreement encumbering the Property (hereinafter referred to as the "Mortgage") and by other collateral and security documents securing or executed in connection with the debt evidenced by the Note in favor of Assignee (this Assignment, the Note, the Mortgage, the Loan Agreement and such other collateral and security documents are hereinafter collectively referred to as the "Loan Documents"); and

NOW, THEREFORE, for the purpose of securing payment of the indebtedness evidenced by the Note and the payment of all advances and other sums with interest thereon becoming due and payable to Assignee under the provisions hereof or of the Note and the Loan Documents, or any sums secured by said instruments, and the

STEWART TITLE OF ILLINOIS
1920 SOUTH WACKER DRIVE
CHICAGO, IL 60606

338072 283 AP

UNOFFICIAL COPY

performance and discharge of each and every obligation covenant and agreement of Assignor herein or arising from the Note and Loan Documents, and also in consideration of TEN AND NO/100 (\$10.00) DOLLARS, the receipt whereof is hereby acknowledged; it is hereby agreed as follows:

1. Assignment Clause. Assignor, intending to be legally bound and in consideration of the making of the Loan described in the Loan Agreement and represented by the Note, does hereby sell, assign, transfer and set over unto Assignee all right, title and interest of Assignor in and to (i) all rents, issues, profits and avails and other sums of every kind and nature, including, but not limited to, payments or contributions for taxes, operating expenses and the like (hereinafter referred to collectively as "Rents"), payable by lessees or guarantors under "Leases" (as hereinafter defined) of and from the Property, (ii) all right, title and interest of Assignor in and to any leases which may be hereafter entered into for all or any portion of the Property (hereinafter referred to collectively as the "Leases"), and any and all extensions and renewals thereof, and including any security deposits or interests therein now or hereafter held by Assignor and the benefit of any guarantees executed in connection with any of the Leases, (iii) rights and claims for damages against tenants arising out of defaults under Leases, including rights to compensation with respect to rejected Leases pursuant to Section 365(a) or replacement Section thereto of the Bankruptcy Code of the United States, and (iv) the proceeds payable upon exercise of any option including an option to terminate or an option to purchase contained in any Lease. This Assignment is absolute and is effective immediately; provided, however, that until notice is sent by Assignee to Assignor in writing that an "Event of Default" (as hereinafter defined) has occurred under the Note or under any other Loan Document (each such notice to Assignor is hereinafter referred to as the "Notice"), Assignor may receive, collect and enjoy the Rents accruing from the Property. The security of this Assignment is and shall be primary and on a parity with the Property conveyed by the Mortgage, and not secondary. 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 Loan Document.

2. Representations. Assignor represents and warrants that: (i) there is no Lease in effect with respect to the Property; and (ii) it has made no prior assignment or pledge of the Rents assigned hereby or of the Assignor's interest in any of the Leases.

3. Negative Covenants of Assignor. Assignor will not (i) execute an assignment or pledge of the Rents from the Property or any part thereof, or of the Assignor's interest in any of the Leases, except to Assignee; or (ii) modify, change, alter, supplement or amend in any material manner; surrender, terminate or cancel; or permit or accept any surrender, termination or cancellation of any of the Leases or of any guarantees of any of the Leases; or (iii) accept prepayments of any installments of Rents to become due under any of the Leases for more than one (1) month; or (iv) other than in the ordinary course of business, execute any lease of all or any portion of the Property; or (v) in any manner impair the value of the Property or permit the value of the Property to be impaired; or (vi) permit the Leases to become subordinate to any lien other than a lien created by the Loan Documents or a lien for general real estate taxes

UNOFFICIAL COPY

not delinquent; or (vii) consent to any assignment of any Leases or any subletting thereunder.

4. Affirmative Covenants of Assignor. Assignor will at its sole cost and expense (i) fulfill and perform each and every covenant and condition of each of the Leases by the lessor thereunder to be fulfilled or performed; (ii) enforce or secure the performance of all of the material covenants, conditions and agreements of the Leases on the part of the lessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of Assignor, as lessor, and of the lessees thereunder, and pay all costs and expenses of Assignee, including reasonable attorneys' fees in any such action or proceeding in which Assignee may appear; (iv) transfer and assign to Assignee any and all Leases subsequently entered into, upon the same terms and conditions as are herein contained, and make, execute and deliver to Assignee upon demand any and all instruments required to effectuate said assignment; (v) furnish to Assignee, within ten (10) days after a request by Assignee to do so, a written statement containing the names of all lessees of the Property or any part thereof, the terms of their respective Leases, the spaces occupied and the rentals payable thereunder; (vi) exercise within five (5) days of the demand therefor by Assignee any right to request from the lessee under any of the Leases a certificate with respect to the status thereof; (vii) furnish Assignee promptly with copies of any notices of default which Assignor may at any time forward to any lessee of the Property or any part thereof; and (viii) pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the "Default Rate" provided in the Note.

5. Agreement of Assignor.

A. Should Assignor fail to make any payment or to do any act as herein provided for, then Assignee, but without obligation so to do, and without releasing Assignor from any obligation hereof, may make or do the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Assignor in the Leases contained, and in exercising any such powers to incur and pay necessary costs and expenses, including reasonable attorneys' fees, all at the expense of Assignor.

B. This Assignment shall not operate to place responsibility for the control, management, care and/or repair of the Property upon Assignee and Assignee shall not be obligated to perform or discharge, nor does it hereby undertake 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 and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by

UNOFFICIAL COPY

reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except any such claims or demands resulting from the willful acts or actions of Assignee. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse Assignee therefor with interest at the "Default Rate" provided in the Note immediately upon demand.

C. Nothing herein contained shall be construed as constituting Assignee a "Mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee, pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

D. A demand on any lessee by Assignee for the payment of the Rents on any default claimed by Assignee, which demand may be sent by regular mail, shall be sufficient warrant to the lessee to make future payment of Rents to Assignee without the necessity for further consent by Assignor.

E. Assignor does further specifically authorize and instruct each and every present and future lessee of the whole or any part of the Property to pay all unpaid Rents agreed upon in any tenancy to Assignee upon receipt of demand from Assignee as provided aforesaid to pay the same, and Assignor hereby waives the right, claim or demand it may now or hereafter have against any such lessee by reason of such payment of Rents to Assignee or compliance with other requirements of Assignee pursuant to this Assignment. Assignee shall be entitled to make such demand only after the occurrence of an Event of Default.

F. Upon issuance of a deed or deeds pursuant to a foreclosure of the Mortgage, all right, title and interest of the 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 the Assignor. Assignor hereby irrevocably appoints Assignee and its successors and assigns, as its agent and attorney-in-fact, to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose.

G. Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification, or amendment of any of the Leases prohibited by the terms of this Assignment and any amounts received by Assignor as Rents from the Premises for any month in which occurs the act giving rise to any Event of Default or other Event of Default under the Note or under any of the Loan Documents, shall be held by Assignor as Trustee for Assignee and all such amounts shall be accounted for to Assignee and shall not be commingled with other funds of the

UNOFFICIAL COPY

Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Assignee as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith. By way of example and not of limitation, a notice of the foregoing may be given by an instrument recorded with the Recorder of Deeds of the county in which the Property is located stating that Assignor has received or will receive such amounts in trust for Assignee.

H. Assignor hereby irrevocably appoints Assignee as its true and lawful attorney with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor, from and after the service on Assignor of the Notice of any Event of Default not having been cured, to demand, collect, receive and give complete acquittances for any and all Rents accruing from the Property, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the Rents. Lessees of the Property are hereby expressly authorized and directed to pay any and all Rents and other amounts due Assignor pursuant to the Leases directly to Assignee or such nominee as Assignee may designate in writing delivered or mailed 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.

I. In the event any lessee under the Leases should be 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, the Assignor covenants and agrees that if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to whatever portion of the indebtedness secured by this Assignment Assignee may elect.

6. Event of Default. "Event of Default" shall mean the occurrence of any one or more of the events (subject to applicable cure periods if any) defined as an Event of Default in the Loan Agreement, all of which are hereby incorporated by reference herein. Upon, or at any time, after the occurrence of an Event of Default hereunder, Assignee may, at its option, from and after the Notice and without regard to the adequacy of the security for the indebtedness hereby secured, either in person, or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate the Property or any part thereof; and do any acts which Assignee deems proper to protect the security hereof; and, either with or without taking possession of the Property, in the name of Assignor or in its own name sue for or otherwise collect and receive such Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, but not being limited to, reasonable attorneys' fees,

UNOFFICIAL COPY

management fees and broker's commissions, upon any indebtedness secured hereby, and in such order as Assignee may determine. Assignee reserves, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent Rents shall be prosecuted, and shall not be accountable for more monies than it actually receives from the Property. The entering upon and taking possession of the Property or the collection of such Rents and the application thereof, as aforesaid, shall not cure or waive any Event of Default under the Loan Documents. Assignor agrees that it will facilitate in all reasonable ways Assignee's collection of Rents, and will, upon request by Assignee, promptly execute a written notice to each lessee directing the lessee to pay Rents to Assignee.

7. Assignee's Right to Exercise Remedies. No remedy conferred upon or reserved to Assignee herein or in the Loan Documents or in any other agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy, and all representations herein and in the Loan Documents, contained shall be cumulative and concurrent, and shall be in addition to every other remedy given hereunder and thereunder or now or hereafter existing at law or in equity or by statute. The remedies may be pursued singly, successively or together against the Assignor and/or the Property at the sole discretion of Assignee. No delay or omission of Assignee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein, and every power and remedy given by this Assignment to Assignee may be exercised from time to time as often as may be deemed expedient by Assignee.

8. Defeasance. Notwithstanding anything contained in this Assignment to the contrary, as long as Assignor shall not have defaulted in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant, or agreement herein, or in the Loan Documents, Assignor shall have the right to collect upon, but not prior to accrual, all Rents from the Property and to retain, use and enjoy the same. Upon the payment in full of all indebtedness secured hereby and the compliance with all obligations, covenants and agreements herein and in the Loan Documents, this Assignment shall become and be void and of no effect, but the affidavit of any officer of Assignee showing any part of said indebtedness remaining unpaid or showing non-compliance with any such terms or conditions shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

9. Miscellaneous.

A. This Assignment may not be modified, amended, discharged or waived orally, except by an agreement in writing and signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

B. The covenants of this Assignment shall bind the Assignor, the successors and assigns of Assignor, all present and subsequent encumbrances,

UNOFFICIAL COPY

lessees and sub-lessees of the Property or any part thereof, and shall inure to the benefit of Assignee, its successors and assigns.

C. As used herein the singular shall include the plural as the context requires, and all obligations of each Assignor shall be joint and several.

D. The article headings in this instrument are used for convenience in finding the subject matters, and are not to be taken as part of this instrument, or to be used in determining the intent of the parties or otherwise in interpreting this instrument.

E. In the event any one or more of the provisions contained in this Assignment or in the Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Assignee, not affect any other provision of this Assignment, but this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

F. This Assignment shall be governed by and construed in accordance with the laws of the State in which the Property is located.

G. Each Notice given to Assignor pursuant to this Assignment shall be sufficient and shall be deemed served if sent as provided in the Loan Agreement. Notices or demands to lessees or tenants of the Property may be sent by regular mail service.

H. The terms "Assignor," "Assignee," "Borrower" and "Beneficiary" shall be construed to include the heirs, personal 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.

I. In the event of any conflicts or inconsistencies between the terms and provisions hereof and those of any other Loan Document, then the terms and provisions deemed most favorable to Assignee shall govern.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

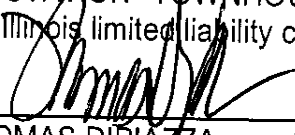
UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed on the day and year first above written.

ASSIGNOR:

PRAIRIE STATION TOWNHOUSE 2 PARTNERS,
L.L.C., an Illinois limited liability company

By:


THOMAS DIPIAZZA

By:


RICHARD C. FERRO

Being All of the Managers of Prairie Station
Townhouse 2 Partners, L.L.C.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

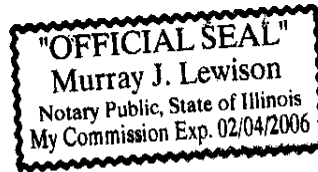
STATE OF ILLINOIS)
) ss.
 COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Thomas Dipiazza and Richard C. Ferro, personally known to me to be the sole Managers of Prairie Station Townhouse 2 Partners, L.L.C., an Illinois limited liability company, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Managers, they signed and delivered said instrument as their free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of October, 2003.

Murray J. Lewison
 Notary Public

My Commission Expires:



UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION****Parcel 1:**

That part of the Southwest Fractional Quarter of Section 22, Township 39 North, Range 14, East of the Third Principal Meridian, described as follows: Commencing at the intersection of the North line of the 66 foot wide East 18th Street with the East line of 66 foot wide South Prairie Avenue; thence North 00 degrees 05 minutes 55 seconds West along the East line of South Prairie Avenue, aforesaid, 255.00 feet to the point of beginning; thence North 89 degrees 54 minutes 05 seconds East, 110.00 feet; thence South 00 degrees 05 minutes 55 seconds East, 20.00 feet; thence North 89 degrees 54 minutes 05 seconds East, 198.00 feet to a point on the West right of way line of the Illinois Central Railroad; thence North 27 degrees 20 minutes 27 seconds West along the West right of way line of the Illinois Central Railroad, aforesaid, 199.50 feet; thence North 90 degrees 00 minutes 00 seconds West 90.34 feet; thence South 00 degrees 02 minutes 31 seconds East, 7.82 feet; thence North 90 degrees 00 minutes 00 seconds West 126.33 feet to a point on the East line of South Prairie Avenue, aforesaid; thence south 00 degrees 05 minutes 55 seconds East along the East line of South Prairie Avenue, aforesaid, 149.92 feet to the point of beginning, in Cook County, Illinois.

Parcel 2:

Non-exclusive easement for the benefit of Parcel 1 for vehicular and pedestrian ingress and egress as contained in the Grant of Easement recorded October 23, 2003 as document number 0329632054.

CK/A: VACANT LAND, PRAIRIE AVE. & 18th ST.
Chicago, IL

PINS: 17-22-304-017
018
17-22-501-017