

UNOFFICIAL COPY



Doc#: 0600632125 Fee: \$46.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/06/2006 02:12 PM Pg: 1 of 12

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Squire, Sanders & Dempsey LLP
801 S. Figueroa Street
14th Floor
Los Angeles, California 90017
Attn: P. Fields



(Space Above This Line For Recorders Use Only)

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (the "Assignment") is made as of October 5th, 2005, by CFT DEVELOPMENTS, LLC, a California limited liability company (together, "Assignor"), whose address is 1683 Walnut Grove Avenue, Rosemead, California 91770-3711, to United Overseas Bank Limited, a Singapore bank acting through its Los Angeles Agency ("Assignee"), whose address is 777 South Figueroa Street, Suite 518, Los Angeles, California 90017.

RECITALS

A. Assignor is the present owner of the real property described in Exhibit A attached hereto (the "Land") together with the improvements ("Improvements") now existing or to be constructed thereon. The Land and the Improvements are herein referred to collectively as the "Property."

450345

UNOFFICIAL COPY

B. Assignee has agreed to make a loan (the "Loan") to Assignor in the original principal sum of Nine Hundred Seventy-Five Thousand United States Dollars (US\$975,000) pursuant to that certain Term Loan Agreement between Assignor and Assignee of even date herewith (as the same may be amended, supplemented, or extended from time to time, the "Loan Agreement"), which Loan is evidenced by that certain Promissory Note Secured by Mortgage (as the same may be amended, supplemented, or extended from time to time, the "Note") of even date herewith, in the original principal amount of the Loan, and executed by Assignor in favor of Assignee. The Note is secured, inter alia, by that certain Mortgage, Security Agreement and Fixture Filing (as the same may be amended, supplemented, or extended from time to time, "Mortgage") of even date herewith executed by Assignor, as mortgagor, to Assignee, as mortgagee, and by this Assignment. The Loan Agreement, the Note, the Mortgage and this Assignment and all other documents and instruments evidencing or securing the Loan (as the same may be amended, supplemented, or extended from time to time) shall hereinafter be collectively referred to as the "Security Documents".

C. Pursuant to the Loan Agreement, and in order to induce Assignee to make the Loan to Assignor, Assignor has agreed to execute this Assignment.

NOW, THEREFORE, with reference to the foregoing Recitals and in reliance thereon and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor agrees as follows:

1. Definitions. All initially capitalized terms used herein which are defined in the Security Documents shall have the same meaning herein unless the context otherwise requires.

2. Assignment. To the extent permissible under applicable Illinois law, Assignor hereby absolutely and irrevocably grants, sells, assigns, transfers and sets over to Assignee all of the rents, issues, profits, royalties, income and other benefits (collectively, the "Rents") derived from any lease, sublease, license, franchise, concession or other agreement (collectively, the "Leases") now existing or hereafter created and affecting all or any portion of the Property or the use or occupancy thereof; together with all of Assignor's right, title and interest in the Leases, including all modifications, amendments, extensions and renewals of the Leases and all rights and privileges incident thereto; together with all security deposits, guaranties and other security now or hereafter held by Assignor as security for the performance of the obligations of the tenants thereunder.

This Assignment is intended by Assignor and Assignee to create and shall be construed to create an absolute assignment to Assignee of all of Assignor's right, title and interest in the Rents and in the Leases and shall not be deemed to create a security interest therein for the payment of any indebtedness or the performance of any obligations of Assignor under the Security Documents. Assignor and Assignee further agree that, during the term of this Assignment, the Rents shall not constitute property of

UNOFFICIAL COPY

Assignor (or of any estate of Assignor) within the meaning of 11 U.S.C. §541, as amended from time to time. By its acceptance of this Assignment and so long as an Event of Default shall not have occurred and be continuing under the Security Documents, Assignee hereby grants to Assignor a revocable license to enforce the Leases, to collect the Rents, to apply the Rents to the payment of the costs and expenses incurred in connection with the development, construction, operation, maintenance, repair and restoration of the Property and to any indebtedness secured thereby, in the discretion of Assignee, and to distribute the balance, if any, to Assignor as may be permitted by the terms of the Security Documents.

3. Revocation of License. Upon the occurrence of an Event of Default and at any time thereafter during the continuance thereof, Assignee shall have the right to revoke the license granted to Assignor hereby by giving written notice of such revocation to Assignor. Upon such revocation, to the extent permissible under applicable Illinois law, Assignor shall promptly deliver to Assignee all Rents then held by Assignor and Assignee shall thereafter be entitled to enforce the Leases, to collect and receive, without deduction or offset, all Rents payable thereunder, including but not limited to all Rents which were accrued and unpaid as of the date of such revocation and to apply such Rents as provided in Section 7 hereof.

4. Appointment of Assignor as Agent for Assignee. Upon such revocation, Assignee may, at its option, appoint Assignor to act as agent for Assignee for the purpose of (i) managing and operating the Property and paying all expenses incurred in connection therewith and approved by Assignee, (ii) enforcing the provisions of the Leases; and (iii) collecting all Rents due thereunder. If Assignee so elects, Assignee shall give written notice thereof to Assignor and Assignor agrees to act as agent of Assignee for the purpose or purposes specified in such notice. Assignor shall promptly comply with all instructions and directions from Assignee with respect thereto. Assignor shall not be entitled to any management fee, commission or other compensation unless expressly agreed to in writing by Assignee. All Rents collected by Assignor as agent for Assignee pursuant to this Section 4 shall be immediately deposited in an insured account in the name of Assignee in a bank or other financial institution designated by Assignee. All Rents collected by Assignor and all amounts deposited in such account, including interest thereon, shall be the property of Assignee and Assignor shall not be entitled to withdraw any amount from such account without the prior written consent of Assignee. The agency hereby created shall be solely for the purpose of implementing the provisions of this Assignment and collecting the Rents due Assignee hereunder. Nothing contained herein shall place upon Assignee the responsibility for the management, control, operation, repair, maintenance or restoration of the Property nor shall Assignee be liable under or be deemed to have assumed Assignor's obligations with respect to the Leases. Assignee may, at any time, terminate the agency relationship with Assignor by written notice to Assignor.

5. Collection by Assignee. Upon the occurrence of an Event of Default under any Security Document and at any time thereafter during the continuance thereof, to the

UNOFFICIAL COPY

extent permissible under applicable Illinois law, Assignee shall have the right, in addition to the rights granted pursuant to Section 4 hereof, to collect all or any portion of the Rents assigned hereby directly or through a court-appointed receiver. Such right may be exercised and shall include the following:

(a) The right to notify the tenant or tenants under the Leases in accordance with the provisions of Section 6 hereof and, with or without taking possession of the Property, to demand that all Rents under such Leases thereafter be paid to Assignee;

(b) The right to enter into possession of the Property, to assume control with respect to and to pay all expenses incurred in connection with the development, construction, operation, maintenance, repair or restoration of the Property, to enforce all Leases and to collect all Rents due thereunder, to apply all Rents received by Assignee as provided in Section 7 hereof, to amend, modify, extend, renew and terminate any or all Leases, to execute new Leases and to do all other acts which Assignee shall determine, in its sole discretion, to be necessary or desirable to carry out the purposes of this Assignment; and

(c) The right to specifically enforce the provisions of this Assignment and, if Assignee shall so elect, to obtain the appointment of a receiver pursuant to and in accordance with the provisions of Section 2.4 of the Mortgage.

6. Protection of Tenants. Assignor and Assignee agree that all tenants under the Leases shall be bound by and required to comply with the provisions of this Assignment. In connection therewith, Assignor and Assignee further agree as follows:

(a) If requested by Assignee, Assignor shall (i) notify each tenant under any Lease now affecting all or any portion of the Property of the existence of this Assignment and the rights and obligations of Assignor and Assignee hereunder; (ii) provide each tenant with a copy of this Assignment; and (iii) obtain such tenant's agreement to be bound by and comply with the provisions hereof;

(b) All Leases hereafter executed with respect to the Property or any portion thereof shall contain a reference to this Assignment and shall state that such tenant shall be bound by and shall comply with the provisions hereof;

(c) Upon the occurrence of an Event of Default under any Security Document and at any time thereafter during the continuance thereof, Assignee may, at its option, send any tenant a notice pursuant to Section 5 hereof to the effect that: (i) an Event of Default has occurred and that Assignee has revoked Assignor's license to collect the Rents; (ii) Assignee has elected to exercise its rights under this Assignment; and (iii) such tenant is thereby directed to thereafter make all payments of Rent and to perform all obligations under its Lease to or for the benefit of Assignee or as Assignee shall direct;

UNOFFICIAL COPY

(d) Upon receipt of any such notice from Assignee, each tenant is hereby instructed by Assignor and Assignee to comply with the provisions of such notice, to make all payments of Rent and to perform all obligations under the Lease to and for the benefit of Assignee or as Assignee shall direct. Such notice and direction shall remain effective until the first to occur of: (i) the receipt by tenant of a subsequent notice from Assignee to the effect that such Event of Default has been cured or that Assignee has appointed Assignor to act as agent for Assignee pursuant to Section 4 hereof; (ii) the appointment of a receiver pursuant to Section 5 hereof, in which event such tenant shall thereafter make payments of Rent and perform all obligations under the Leases as may be directed by such receiver; or (iii) the issuance of an order of a court of competent jurisdiction terminating this Assignment or otherwise directing such tenant to pay Rent and perform obligations in a manner inconsistent with said notice;

(e) Each tenant shall be entitled to rely upon any notice from Assignee and shall be protected with respect to any payment of Rent made pursuant to such notice, irrespective of whether a dispute exists between Assignor and Assignee with respect to the existence of an Event of Default or the rights of Assignee hereunder;

(f) Each tenant who receives a notice from Assignee pursuant to this Assignment shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this Assignment. Assignor hereby agrees to indemnify, defend and hold such tenant harmless from and against any and all losses, claims, damages or liabilities arising from or related to any payment of Rent or performance of obligations under any Lease by such tenant made in good faith in reliance on and pursuant to such notice;

(g) The payment of Rent to Assignee pursuant to any such notice and the performance of obligations under any Lease to or for the benefit of Assignee shall not cause Assignee to assume or be bound by the provisions of such Lease including but not limited to the duty to return any security deposit to the tenant under such Lease unless and to the extent such security deposit was paid to Assignee by Assignor; and

(h) The provisions of this Section 6 are expressly made for the benefit of and shall be binding on and enforceable by each tenant under any Lease now or hereafter affecting all or any portion of the Property.

7. Application of Rents; Security Deposits. All Rents received by Assignee pursuant to this Assignment shall be applied by Assignee, in its sole discretion, to any of the following:

(a) the costs and expenses of collection, including without limitation actual attorneys' fees, para-professional expenses, court costs and related costs and expenses;

UNOFFICIAL COPY

(b) the costs and expenses incurred in connection with the development, construction, operation, maintenance, repair or restoration of the Property;

(c) the establishment of reasonable reserves for working capital and for anticipated or projected costs and expenses, including without limitation capital improvements which may be necessary or desirable or required by law; and

(d) the payment of any indebtedness then owing by Assignor to Assignee.

In connection therewith, Assignor further agrees that all Rents received by Assignee from any tenant may be allocated first, if Assignee so elects, to the payment of all current obligations of such tenant under its Lease and not to amounts which may be accrued and unpaid as of the date of revocation of Assignor's license to collect such Rents. Assignee may, but shall have no obligation to, pursue any tenant for the payment of Rent which may be due under its Lease with respect to any period prior to the exercise of Assignee's rights under this Assignment or which may become due thereafter. Assignee shall not be liable to any tenant for the payment or return of any security deposit under any Lease unless and to the extent that such security deposit has been paid to and received by Assignee and Assignor agrees to indemnify, defend and hold Assignee harmless from and against any and all losses, claims, damages or liabilities arising out of any claim by a tenant with respect thereto. Assignor further agrees that the collection of Rents by Assignee and the application of such Rents by Assignee to the costs, expenses and obligations referred to in this Section 7 shall not cure or waive any Event of Default or invalidate any act (including but not limited to any sale of all or any portion of the Property or any property now or hereafter securing the Loan) done in response to or as a result of such Event of Default or pursuant to any notice of default or notice of sale issued pursuant to any Security Document.

8. Covenants of Assignor. Assignor agrees as follows:

(a) Assignor will not enter into any Lease of all or any portion of the Property except in accordance with the provisions of the Security Documents;

(b) Assignor will not accept any advance Rent in excess of one month from any tenant or enter into any agreement whereby Rent is abated or reduced in each case without the prior written consent of Assignee;

(c) Assignor will not amend, modify or terminate any Lease or accept the surrender of any space thereunder or permit the assignment or subletting of any space thereunder without the prior written consent of Assignee, except as may be permitted by the Security Documents;

UNOFFICIAL COPY

(d) Assignor shall provide Assignee with true, correct and complete copies of all Leases together with such other information relating to the Leases or to the tenants thereunder as Assignee shall reasonably request;

(e) Assignor shall not lease any space in the Property to or for the benefit of any affiliate of Assignor without the prior written consent of Assignee;

(f) Upon request of Assignee, Assignor shall make available to Assignee all books, records, financial statements and other information relating to the Leases of the Property, the collection of all Rents and the disposition and disbursement thereof; and

(g) Assignor shall promptly notify Assignee and shall send to Assignee copies of any notice or correspondence given or received by Assignor relating to any default by Assignor or by any tenant under any Lease or any event which, if not promptly cured, may become a default thereunder.

9. Priority of Assignment; Further Assurances. Assignor hereby represents and warrants that the Assignment hereby granted is a first priority assignment and that no other assignments of all or any portion of the Rents or the Leases exist or remain outstanding. Assignor agrees to take such action and to execute, deliver and record such documents as may be reasonably necessary to evidence such assignment, to establish the priority thereof and to carry out the intent and purpose hereof. If requested by Assignee, Assignor shall execute a specific assignment of any Lease now or hereafter affecting all or any portion of the Property and shall cause the tenant or tenants thereunder to execute, deliver and record a Subordination, Nondisturbance and Attornment Agreement, in Assignee's standard form.

10. Successors and Assigns. The provisions of this Assignment shall be binding upon Assignor, its legal representatives, successors or assigns and shall be for the benefit of Assignee, its successors and assigns.

11. Remedies Cumulative. The rights granted Assignee under this Assignment or any other Security Document or allowed it by law or in equity shall be cumulative and may be exercised at any time and from time to time. No failure on the part of Assignee to exercise, and no delay in exercising, any right shall be construed or deemed to be a waiver thereof, nor shall any single or partial exercise by Assignee of any right preclude any other or future exercise thereof or the exercise of any other right.

12. Assignee Not Responsible for Assignor's Obligations. Nothing contained herein shall operate or be construed to obligate Assignee to perform any of the terms, covenants and conditions contained in any Lease or otherwise to impose any obligation upon Assignee with respect to any Lease, including but not limited to any obligation arising out of any covenant of quiet enjoyment therein contained, in the event the tenant under any such Lease shall have been joined as a party defendant in any action to

UNOFFICIAL COPY

foreclose and the estate of such tenant shall have been thereby terminated. Prior to actual entry into and taking possession of the Property by Assignee, this Assignment shall not operate to place upon Assignee any responsibility for the operation, control, care, management or repair of the Property or any portion thereof, and the execution of this Assignment by Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Assignor, prior to such actual entry and taking of possession.

13. Termination of Assignment. A full and complete release of the Mortgage shall operate as a full and complete release of all of Assignee's rights and interest hereunder. Upon the recordation of such release and reconveyance, this Assignment shall thereafter be void and of no further effect.

14. Notice. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be given pursuant to Section 7.4 of the Loan Agreement.

15. Governing Law. The provisions of this Assignment regarding the creation, perfection, and enforcement of the liens and security interests granted herein shall be governed by and construed under the laws of the State of Indiana. All other provisions of this Assignment shall be governed by the laws of the State of California, without regard to conflict of laws principles. Venue for purposes of this Assignment will be in any court servicing the county where the Property is located, and Assignor agrees to be subject to the personal jurisdiction of the State of California, including any state or federal court sitting therein and all court rules thereof.

16. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument with the same effect as if all parties had signed the same signature page. Any signature page of this Assignment may be detached from any counterpart of this Assignment and reattached to any other counterpart of this Assignment identical in form hereto but having attached to it one or more additional signature pages.

17. Severability. If any term of this Assignment, or the application thereof to any person or circumstance, 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.

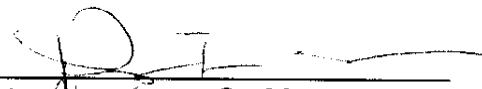
18. Amendments. This Assignment may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any such amendment, modification, change or waiver is sought.

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed as of the date first written above.

ASSIGNOR


CFT DEVELOPMENTS, LLC,
a California limited liability company

By: 
Peggy Cheung, Co-Manager

By: _____
_____, Co-Manager

ASSIGNEE

UNITED OVERSEAS BANK LIMITED, a
Singapore Bank acting through its Los Angeles
Agency

By: 
Hoong Chen
Its: First Vice President and General
Manager

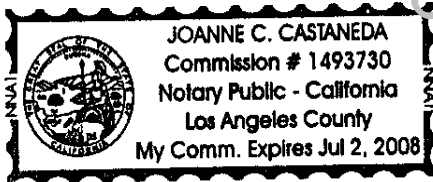
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On October 5, 2005, before me, Joanne C. Castaneda,
Notary Public, personally appeared Peggy Cherng personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

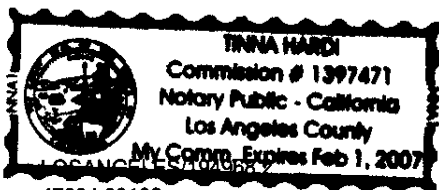


Joanne C. Castaneda
Notary's Signature

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

On the November 2, 2005, before me, TINNA HARDI,
Notary Public, personally appeared HOONG CHEN personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



47634.00109

[Signature]
Notary's Signature

UNOFFICIAL COPY

EXHIBIT A Description Of Legal Property

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF ILLINOIS, COUNTY OF COOK, DESCRIBED AS FOLLOWS:

That Part of the North Three-Quarters of Lot 11 in School Trustees Subdivision of Section 16, Township 38 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois, bounded and described as follows:

Beginning at a point, said point being 50.00 feet West of the East line of Lot 11 and 257.08 feet South of the North line of Lot 11; thence South along a line which is parallel to and 50.00 feet West of the East line of Lot 11, bearing South 0 degrees 00'00" West, a distance of 135.00 feet to a point; thence West along a line parallel with the South line of the North Three-Quarters of Lot 11, bearing North 89 degrees 45'58" West, a distance of 200.00 feet to a point; thence North along a line parallel to the East line of Lot 11, bearing North 0 degrees 00'00" East, a distance of 135.00 feet to a point; thence East along a line parallel with the South line of the North Three-Quarters of Lot 11, bearing South 89 degrees 45'58" East, a distance of 200.00 feet to the point of beginning.

PIN: 18-16-301-009

C/R/A: 185 Countryside PLAZA
Countryside, IL