



**This Document Prepared by  
and after Recording Return to:**

Schwartz Cooper Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
Attn: Joseph Q. McCoy, Esq.

Doc#: 0700840009 Fee: \$42.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/08/2007 09:10 AM Pg: 1 of 10

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## ASSIGNMENT OF RENTS AND LEASES

Parcel # 1526367  
30f5

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is made and delivered as of the 19<sup>th</sup> day of December, 2006, by SAMIR PATEL\* AND CHIRAG PATEL\* (together, the "Assignor"), to and for the benefit of FIFTH THIRD BANK (CHICAGO), a Michigan banking corporation, its successors and assigns ("Lender").

\* a single person

### RECITALS:

A. Lender has agreed to make a loan to Assignor in the original principal amount of Two Hundred Twenty Five Thousand and No/100 Dollars (\$225,000.00) (the "Loan"), as evidenced by that certain promissory note dated as of even date herewith (as the same may be amended, modified, replaced or restated from time to time, the "Note"), executed by the Assignor and made payable to the order of the Lender.

B. The Loan is secured by, among other things, that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of even date herewith from Assignor to and for the benefit of Lender (as amended, restated, modified or supplemented and in effect from time to time, the "Mortgage"), encumbering real property located in Cook County, Illinois, as described on Exhibit A attached hereto, together with the other collateral as described in the Mortgage (the real property and other collateral being collectively referred to as the "Property"). The Mortgage, the Note and all other documents or instruments now or hereafter given to evidence or secure the payment of the Loan or delivered to induce Lender to disburse the proceeds of the Loan, as each may be amended, restated, modified or supplemented and in effect from time to time, are collectively referred to herein as the "Loan Documents." The Mortgage, the Note and all other documents or instruments now or hereafter given to evidence or secure the payment of the Loan or delivered to induce Lender to disburse the proceeds of the Loan, as each may be amended, restated, modified or supplemented and in effect from time to time, are collectively referred to herein as the "Loan Documents." Capitalized terms used and not specifically defined herein shall bear the same meaning as in the Mortgage.

C. A condition precedent to Lender's making of the Loan to Borrower is the execution and delivery by Assignor of this Assignment.

**NOW, THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

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1. **Definitions.** All capitalized terms which are not defined herein shall have the meanings ascribed thereto in that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of even date herewith made by Assignor to and for the benefit of Lender (as amended, restated, modified or supplemented and in effect from time to time, the "Mortgage") given as security for the Loan.

2. **Grant of Security Interest.** Assignor hereby grants, transfers, sets over and assigns to Lender, all of the right, title and interest of Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts and other receivables arising out of or from the land legally described in Exhibit A attached hereto and made a part hereof and all buildings and other improvements located thereon (said land and improvements being hereinafter referred to collectively as the "Premises"), including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (collectively, "Leases"), now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is an absolute transfer and assignment of the foregoing interests to Lender given to secure:

(a) Payment by Assignor when due of (i) the indebtedness evidenced by the Mortgage Note and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to Lender by Assignor under or with respect to the Loan Documents (as defined in the Mortgage); and (iii) all costs and expenses paid or incurred by Lender in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees;

(b) Observance and performance by Assignor of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Assignor or any other obligor to or benefiting Lender which are evidenced or secured by or otherwise provided in the Mortgage Note, this Assignment or any of the other Loan Documents, together with all amendments and modifications thereof; and

(c) All obligations and liabilities of Assignor, Borrower or Guarantor to or benefiting Lender which are evidenced or secured by or otherwise provided in the Note, this Assignment, the Mortgage or any of the other Loan Documents.

3. **Representations and Warranties of Assignor.** Assignor represents and warrants to Lender that:

(a) this Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor is the lessor under all Leases;

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(c) there is no other existing assignment of Assignor's entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has either Assignor entered into any agreement to subordinate any of the Leases or such Assignor's right to receive any of the rents, issues, income or profits assigned hereunder;

(d) Assignor has not executed any instrument or performed any act which may prevent Lender from operating under any of the terms and provisions hereof or which would limit Lender in such operation; and

(e) there are no defaults by the landlord and, to Assignor's knowledge, there are no material defaults by tenants under any Leases.

4. **Covenants of Assignor.** Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Assignor shall not lease any portion of the Premises unless Assignor obtains Lender's prior written consent to all aspects of such Lease;

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. Assignor shall not (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents;

(e) Assignor shall not modify the terms and provisions of any Lease, nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease, without Lender's prior written consent; provided, however, that Assignor may cancel or terminate any Lease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Lease;

(f) Assignor shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely,

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a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Lease for the early termination or surrender thereof shall be paid jointly to Assignor and Lender;

(g) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;

(h) Assignor shall not waive or excuse the obligation to pay rent under any Lease;

(i) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Lender, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Lender may appear;

(j) Assignor shall give prompt notice to Lender of any notice of any default by the lessor under any Lease received from any tenant or guarantor thereunder;

(k) Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and shall immediately notify Lender of any material breach by the tenant or guarantor under any such Lease;

(l) Assignor shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(m) Assignor shall not execute hereafter any Lease unless there shall be included therein a provision providing that the tenant thereunder acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to Lender as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by Lender as security for tenant's performance under such Lease;

(n) If any tenant under any Lease is or becomes 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, Assignor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Lender, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Lender. Assignor hereby assigns any such payment to Lender and further covenants and agrees that upon the request of Lender, it will duly endorse to the order of Lender any such check, the proceeds of which shall be applied in accordance with the provisions of Paragraph 8 below; and

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(o) Not later than thirty (30) days after the end of each calendar quarter, Assignor shall deliver to Lender a certified rent roll for the Premises as of the last day of such period in a form reasonably satisfactory to Lender.

5. **Rights Prior to Default.** Unless or until an Event of Default (as defined in Paragraph 6) shall occur, Assignor shall have the right to collect, at the time (but in no event more than thirty days in advance) provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Upon the occurrence of an Event of Default, Assignor's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to Assignor. Lender shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

6. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Mortgage or (b) any other Event of Default, Default or default described in the Mortgage Note, the Mortgage or the other Loan Documents.

7. **Rights and Remedies Upon Default.** At any time upon or following the occurrence of any Event of Default, Lender, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Lender deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Lender, without proof of default hereunder, upon receipt from Lender of written notice to thereafter pay all such rents and other amounts to Lender and to comply with any notice or demand by Lender for observance or performance of any of the covenants, terms, conditions and agreements contained in the

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Leases to be observed or performed by the tenants thereunder, and Assignor shall facilitate in all reasonable ways Lender's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Lender; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Lender may deem necessary, and any amount so paid by Lender shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate and shall be secured by this Assignment.

8. **Application of Proceeds.** All sums collected and received by Lender out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default shall be applied in accordance with the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes) and, unless otherwise specified in such act, in such order as Lender shall elect in its sole and absolute discretion.

9. **Limitation of Lender's Liability.** Lender shall not be liable for any loss sustained by Assignor resulting from Lender's failure to let the Premises or from any other act or omission of Lender in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Lender shall not be obligated to observe, perform or discharge, nor does Lender hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify, defend (using counsel satisfactory to Lender) and hold Lender harmless from and against any and all liability, loss or damage which Lender may incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignor incurs as a result of Lender's gross negligence or willful misconduct. Should Lender incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Lender for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Lender responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Lender of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Lender a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions hereof or of the Mortgage.

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10. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Lender pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Lender of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Lender under the terms and provisions of such instruments, and Lender may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Lender may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

11. **Further Assurances.** Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Lender may designate) and shall do or cause to be done such further acts, as Lender may request, in order to permit Lender to perfect, protect, preserve and maintain the assignment made to Lender by this Assignment.

12. **Security Deposits.** Assignor acknowledges that Lender has not received for its own account any security deposited by any tenant pursuant to the terms of the Leases and that Lender assumes no responsibility or liability for any security so deposited.

13. **Severability.** If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Lender and Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

14. **Successors and Assigns.** This Assignment is binding upon Assignor and its legal representatives, successors and assigns, and the rights, powers and remedies of Lender under this Assignment shall inure to the benefit of Lender and its successors and assigns.

15. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Lender at the time of such amendment, modification or supplement.

16. **Duration.** This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Mortgage Note, together with all interest thereon, Borrower shall have paid the principal sum of the Note, together with all interest thereon, and Assignor and Borrower shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

17. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

18. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or

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mailed in the manner and to the addresses of Assignor and Lender, as the case may be, as specified in the Mortgage.

19. **Waiver of Trial by Jury.** ASSIGNOR AND LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. ASSIGNOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

*[Remainder of page intentionally left blank; signature page follows]*





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EXHIBIT A

## LEGAL DESCRIPTION

Legal Description: Unit "A" in The Arlington Heights Business Condominium as delineated on the Plat of Survey of the following described Real Estate (taken as a Tract): That part of Lot 2 described as follows: Beginning at the North West corner of said Lot 2 in the center of the Algonquin-Des Plaines Road, running thence South 62 Degrees 5 Minutes 30 Seconds East, a distance of 245.56 feet; thence South 0 Degrees West a distance of 279.62 feet; thence South 90 Degrees West, a distance of 217 feet to the West of said Lot 2; thence North 0 Degrees East, a distance of 394.56 feet to the point of beginning, in Friedrich Busse Jr.'s Division of Land in Section 23, Township 41 North, Range 11, East of the Third Principal Meridian, as recorded February 20, 1911, in the Office of the County Recorder of Cook County, Illinois, in Book 113 of Plats, Page 21, as Document Number 4709799, which Plat of Survey is attached as Exhibit "A" to the Declaration of Condominium made by American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated November 1, 1982, and known as Trust Number 56345, filed in the Office of the Registrar of Titles of Cook County, Illinois, on March 14, 1984 as Document Number LR 3359823, together with its undivided percentage interest in the common elements, in Cook County, Illinois.

Permanent Index #'s: 08-23-102; 011-1001 (Vol. 0050)

Property Address: 1229 East Algonquin Road, Unit A, Arlington Heights, Illinois 60005

Property of Cook County Clerk's Office