

UNOFFICIAL COPY

*This Document Prepared By And
When Recorded Return To:*

Richard C. Jones, Jr., Esq.
Tina M. Jacobs, Esq.
JONES & JACOBS
77 West Washington Street
Suite 2100
Chicago, Illinois 60602
(312) 419-0700



0722809013

Doc#: 0722809013 Fee: \$48.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 08/16/2007 08:48 AM Pg: 1 of 13

For Recorder's Use Only

ASSUMPTION AGREEMENT

dated as of August 7, 2007, among

**ALEX D. MOGLIA, as Chapter 11 Trustee of Gilmart, Ltd.,
as Seller,**

**THE LOUISE MAKUCH REVOCABLE TRUST
DATED JULY 23, 2004, as Purchaser,**

-and-

**COLE TAYLOR BANK, an Illinois banking corporation,
as Lender**

UNOFFICIAL COPY

ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT ("**Agreement**") is made effective as of August 7, 2007, by and among **ALEX D. MOGLIA**, not individually, but solely in his capacity as Chapter 11 Trustee of GILMART, LTD. ("**Seller**"), **THE LOUISE MAKUCH REVOCABLE TRUST dated July 23, 2004** ("**Purchaser**"), and **COLE TAYLOR BANK**, an Illinois banking corporation ("**Lender**").

WITNESSETH:

WHEREAS, on May 25, 2005, Lender made a loan ("**Loan No. 0098319-0001**") to GILMART, LTD., an Illinois corporation ("**Borrower**"), in the principal amount of \$670,000.00, evidenced by the Promissory Note dated May 25, 2005, and secured by the Mortgage and Assignment of Rents recorded on June 24, 2005, as Document Nos. 0517527019 and 0517527020, covering the real property commonly known as 5042 South Archer Avenue, Chicago, Illinois, and legally described on Exhibit A attached hereto (the "**5042 Property**"), and further secured by the Mortgage and Assignment of Rents recorded on June 25, 2005, as Document Nos. 0517527021 and 0517527022, covering the real property commonly known as 4657-59 West 51st Street, Chicago, Illinois, and legally described on Exhibit B attached hereto (the "**4657-59 Property**"); and

WHEREAS, on July 29, 2005, Lender made a loan ("**Loan No. 0098319-0002**") to Borrower in the principal amount of \$300,000.00, evidenced by the Promissory Note dated July 29, 2005, and secured by the Mortgage and Assignment of Rents recorded on August 2, 2005, as Document Nos. 0521408142 and 0521408143, covering the real property commonly known as 5050 South Archer Avenue, Chicago, Illinois, and legally described on Exhibit C attached hereto (the "**5050 Property**"); and

WHEREAS, the 5042 Property, the 4657-59 Property and the 5050 Property are hereinafter collectively referred to as the "**Property**"; and

WHEREAS, there remains a principal balance due and owing on Loan No. 0098319-0001 in the amount of \$643,595.12, plus accrued interest to August 6, 2007, in the amount of \$1,396.64, with per diem interest thereafter at the rate of \$116.20467 per day, together with accrued late fees, attorneys' fees and costs; and

WHEREAS, there remains a principal balance due and owing on Loan No. 0098319-002 in the amount of \$733,263.25, plus accrued interest to August 6, 2007, in the amount of \$627.82, with per diem interest thereafter at the rate of \$132.39475 per day, together with accrued late fees, attorneys' fees and costs; and

WHEREAS, Purchaser has agreed to assume all of the obligations of Borrower under the terms of the loan documents evidencing and securing Loan No. 0098319-001 and Loan No. 0098319-002 (jointly, the "**Loans**"); and

WHEREAS, all documents evidencing and securing the Loans are hereinafter collectively referred to as the "**Loan Documents**"; and

WHEREAS, Lender has agreed to consent to the assumption of the Loans, subject to the terms and provisions of this Agreement.

1. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Lender as of the date of this Agreement that:

UNOFFICIAL COPY

- (a) Purchaser has no knowledge that any of the representations made by Borrower in the Loan Documents are not true and correct;
- (b) All of the representations and warranties contained in the Loan Documents are hereby additionally made as of this date by Purchaser to Lender;
- (c) The party executing this Agreement on behalf of Purchaser has the authority to enter into this Agreement, and this Agreement is valid and binding on Purchaser.

Purchaser understands and intends that Lender will rely on the representations and warranties contained herein.

2. **Assumption by Purchaser.** Purchaser hereby assumes all liabilities and obligations of Seller under the Loan Documents.

3. **Extension of Terms of Loans.** The parties hereto acknowledge that the terms of the Loans shall be and are hereby extended to November 6, 2007 (the "**Maturity Date**"). In the event the Loans are not paid in full on or before the Maturity Date, the Loans shall become immediately due and payable, and Lender may exercise any and all rights and remedies under the terms of the Loan Documents.

4. **Priority; Modification.** This Agreement embodies and constitutes the entire understanding among the parties hereto with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. Except as expressly modified hereby, the Loan Documents are and shall remain in full force and effect. Purchaser hereby ratifies and approves the covenants and agreements made by Borrower to Lender contained in the Loan Documents and hereby agrees that, except to the extent modified hereby, all of such covenants and agreements remain in full force and effect and are binding and enforceable on Purchaser as if Purchaser executed the Loan Documents as an original party.

5. **No Impairment of Lien.** Nothing set forth herein shall affect the priority or extent of the lien of any of the Loan Documents, nor, except as expressly set forth herein, release or change the liability of any party who may now be, or after the date of this Agreement, become liable primarily or secondarily, under the Loan Documents.

6. **Costs.** Purchaser agrees to pay all fees and costs (including reasonable attorneys' fees) incurred by Lender in connection with Lender's consent to and approval of the assumption by Purchaser of the obligations and liabilities under the Loan Documents.

7. **Addresses.** Purchaser's address for notice hereunder and under the Loan Documents is:

THE LOUISE MAKUCH REVOCABLE TRUST
c/o Steven D. Gustafson
55 South Main Street, Suite 394
Naperville, Illinois 60540

UNOFFICIAL COPY

8. **Complete Release.** Seller and Purchaser, jointly and severally, unconditionally and irrevocably release and forever discharge Lender and its successors, assigns, agents, directors, officers, employees and attorneys (collectively, the “**Indemnitees**”) from all Claims (as defined below), and jointly and severally agree to indemnify Indemnitees and hold them harmless from any and all claims, losses, causes of action, costs and expenses of every kind or character in connection with the Claims. As used in this Agreement, the term “**Claims**” shall mean any and all possible claims, demands, actions, costs, expenses and liabilities whatsoever, known or unknown, at law or in equity, originating, in whole or in part, on or before the date of this Agreement, which Seller or Purchaser, or any of their officers, agents or employees may now or hereafter have against the Indemnitees, if any, and irrespective of whether any such Claims arise out of contract, tort, violation of laws or regulations, or otherwise, in connection with the Loan Documents, including, without limitation, any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable thereto and any loss, cost or damage, of any kind or character, arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of Indemnitees, including any requirement that the Loan Documents be modified as a condition to the transactions contemplated by this Agreement, any charging, collecting or contracting for prepayment premiums, transfer fees or assumption fees, any breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, violation of any federal or state securities or Blue Sky laws or regulations, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Loans or wrongfully attempting to foreclose on any collateral relating to the Loans, but in each case only to the extent permitted by applicable law. Seller and Purchaser agree that Lender has no fiduciary or similar obligations to Seller and Purchaser and that their relationship is strictly that of creditor and debtor. This release is accepted by Lender pursuant to this Agreement and shall not be construed as an admission of liability on its part. Seller and Purchaser hereby represent and warrant that they are the current legal and beneficial owners of all Claims, if any, released hereby and have not assigned or pledged, or contracted to assign or pledge, any such Claims to any other person.

9. **Miscellaneous.**

- (a) This Agreement shall be construed according to and governed by the laws of the State of Illinois without regard to its conflicts of law principles.
- (b) If any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable, in whole or in part, it will be deemed omitted to that extent and all other provisions of this Agreement will remain in full force and effect.
- (c) No change or modification of this Agreement shall be valid unless the same is in writing and signed by all parties hereto.
- (d) The captions contained in this Agreement are for convenience of reference only and shall in no event define, describe or limit the scope or intent of this Agreement or any of the provisions or terms hereof.
- (e) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- (f) This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be

UNOFFICIAL COPY

construed together and shall constitute one instrument, but in making proof hereof, it shall only be necessary to produce one such counterpart.

- (g) Capitalized terms used, but not otherwise defined herein, shall have the same meanings given to such terms in the Loan Documents.
- (h) THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER

ALEX D. MOGLIA, not individually, but solely as Chapter 11 Trustee of GILMART, LTD

LENDER:

COLE TAYLOR BANK, an Illinois banking corporation

By: J B Vinson
Name: J B Vinson
Its: SVP

PURCHASER:

THE LOUISE MAKUCH REVOCABLE TRUST DATED JULY 23, 2004

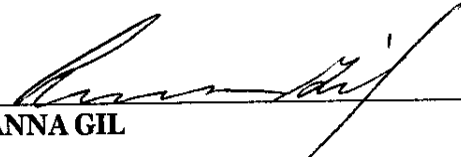
By: [Signature]
Name: Steve D. Gidycz
Its: Trustee

UNOFFICIAL COPY

REAFFIRMATION OF GUARANTY

ANNA GIL, as Guarantor of the Loans, hereby consents to the foregoing Assumption Agreement and reaffirms her personal Guaranty of each of the Loans.

DATED as of August 7, 2007.


ANNA GIL

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF Ill.)
) SS
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County and State, DO HEREBY CERTIFY that **ALEX D. MOGLIA**, not individually, but solely as Chapter 11 Trustee of GILMART, LTD., is the same person whose name is subscribed to the foregoing instrument as such Chapter 11 Trustee, appeared before me this day in person and acknowledged to me that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act as Trustee of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of August, 2007.



[Signature]
NOTARY PUBLIC

My commission expires:

2/10/10

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 said County and State, DO HEREBY CERTIFY that Steven D. Gustafson, not individually, but solely as Trustee of **THE LOUISE MAKUCH REVOCABLE TRUST dated July 23, 2004**, is the same person whose name is subscribed to the foregoing instrument as such Trustee, appeared before me this day in person and acknowledged to me that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act as Trustee of said Trust, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of August, 2007.

[Signature]
NOTARY PUBLIC

My commission expires:

2/12/10



Property of Cook County Clerk's Office

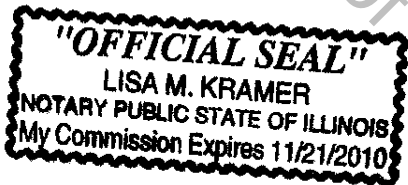
UNOFFICIAL COPY

STATE OF Illinois)
) SS
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County and State, DO HEREBY CERTIFY that JB Vinson, known to me to be the SVP of **COLE TAYLOR BANK**, an Illinois banking corporation, and the same person whose name is subscribed to the foregoing instrument as such SVP, appeared before me this day in person and acknowledged to me that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of August, 20007

Lisa M. Kramer
NOTARY PUBLIC



My commission expires:

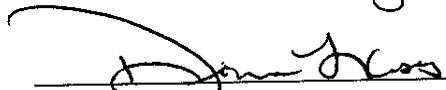
11/21/2010

UNOFFICIAL COPY

STATE OF Ill.)
) SS
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County and State, DO HEREBY CERTIFY that ANNA GIL is the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that she signed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of August, 2007.



NOTARY PUBLIC

My commission expires:

2/10/10



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION – THE 5042 PROPERTY

LOT 7 IN BLOCK 14 IN WILLIAM A. BOND AND COMPANY'S ARCHER HOME ADDITION, BEING A SUBDIVISION OF BLOCKS 1 TO 16 INCLUSIVE, IN WILLIAM A. BOND'S SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common address: 5042 South Archer Avenue
Chicago, Illinois 60632

Permanent Index No.: 19-10-229-018

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

LEGAL DESCRIPTION – THE 4657-4659 PROPERTY

LOTS 1 AND 2 IN BLOCK 3 IN HINKAMP AND COMPANY'S ARCHER AND CRAWFORD AVENUES SUBDIVISION OF THAT PART OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF ARCHER AVENUE, IN COOK COUNTY, ILLINOIS.

Common address: 4657-4659 West 51st Street
Chicago, Illinois 60632

Permanent Index Nos.: 19-10-234-009-0000
19-10-234-010-0000

UNOFFICIAL COPY

EXHIBIT C

LEGAL DESCRIPTION – THE 5050 PROPERTY

LOTS 7, 8, 9, 10, 11, 12 AND 13 IN BLOCK 14 IN WILLIAM A. BOND AND CO'S ARCHER HOME ADDITION, BEING A RESUBDIVISION OF BLOCKS 1 TO 16 INCLUSIVE IN WILLIAM A. BOND'S SUBDIVISION OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common address: 5050 South Archer Avenue
Chicago, Illinois 60632

Permanent Index Nos.: 19-10-229-015
19-10-229-016
19-10-229-017
19-10-229-018
19-20-229-025