

UNOFFICIAL COPY



PIN: 02-15-200-032 ✓
Address: 205 West Northwest Highway
Palatine, Illinois 60067 ✓

Doc#: 1300413010 Fee: \$52.25
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/04/2013 09:08 AM Pg: 1 of 7

Please return to:

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (hereinafter referred to as this "Assignment") made and entered into this 5th day of December, 2012, by and between **Marnitz & Associates, LLC Defined Benefit Pension Plan**, whose mailing address is **1900 West Loop South, Suite 500, Houston, Texas 77027** (hereinafter called "Borrower"), and **Bank of Houston**, having a mailing address of **750 Bering Drive, Suite 100, Houston, Texas 77057**, (hereinafter called "Lender").

WITNESSETH:

That for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower, hereinafter set forth, Borrower does hereby grant, transfer and assign to Lender and the successors and assigns of Lender all of the right, title and interest of Borrower in, to and under any lease agreements, including the lease by and between Onofrio Guttilla as "Landlord" and Household Bank, f.s.b., now known as BMO Harris Bank National Association as "Tenant" and dated May 4, 1990, as amended by the Amendment to Lease dated November 5, 1990 and the Amendment to Lease dated August 30, 2008, relating to the property described on Exhibit "A" attached hereto and made a part hereof (the "Property"), including any and all extensions, renewals and modifications thereof and guarantees of the performance or obligations of any "Tenant" thereunder now or hereafter entered into, together with any other leases on the Property now or hereafter entered into (hereinafter referred to as the "Leases"), TOGETHER WITH all of the interest of Borrower in and to all rents, issues and profits from the Leases and from the Property.

This Assignment is made for the purpose of securing the following described indebtedness (hereinafter sometimes referred to collectively as the "Indebtedness");

- (a) the debt evidenced by that certain Promissory Note (hereinafter referred to as the "Note" and to which Note reference is made hereby made for all purposes) dated of even date herewith, executed by Borrower, payable to the order of Lender and in

24
F 7
S 2
MY
SC
E 2
INT

UNOFFICIAL COPY

the original principal amount of **Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00)**, with the final payment being due as provided in the Note, together with any and all renewals and/or extensions of the indebtedness evidenced by the Note (the Note and any other document executed in connection therewith being hereinafter sometimes collectively referred to as the "Loan Documents");;

- (b) any and all advances made by Lender to protect or preserve the security created by this Assignment, or to protect or preserve the Property or for taxes or insurance premiums against the Property; and
- (c) the performance and discharge of each obligation, covenant and agreement of Borrower contained herein, in the Note or in the Loan Documents.

Borrower and Lender agree that (i) an extension or extensions may be made at the time of payment of all or any part of the indebtedness evidenced by the Note or of any other indebtedness secured by this Assignment; (ii) the terms of the Note and this Assignment may be modified; and (iii) additional security may be given by Borrower; all without altering or affecting the security created by this Assignment in favor of any junior encumbrancer, grantee, purchaser or other person, or any person acquiring or holding an interest in the Lease of the Property or any portion thereof and without altering or releasing the obligation of Borrower or any guarantors under the Note or this Assignment.

Should the indebtedness secured by this Assignment be paid in full, then this Assignment shall be cancelled and surrendered as hereinafter provided.

Borrower and Lender hereby further covenant and agree as follows, in addition to and not in substitution for or derogation of any other covenants contained in any other instruments concerning the indebtedness secured hereby:

ARTICLE 1

1.01 Warranties of Borrower. Borrower hereby warrants unto Lender that:

- (a) Borrower has made no assignment other than this Assignment of any of the rights of Borrower under the Lease;
- (b) Borrower has neither done any act nor omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Agreement;
- (c) Borrower has not accepted payment of rental under the Lease for more than one (1) month in advance of the due date thereof;
- (d) So far as is known to Borrower, there is no default by any "Tenant" under the terms of the Lease;

UNOFFICIAL COPY

(e) Borrower is not prohibited under any agreement with any other person or any judgment or decree from (i) the execution and delivery of either this Assignment of Lease; (ii) the performance of each and every covenant of Borrower under either this Assignment or the Lease; or (iii) the meeting of each and every condition contained in this Assignment;

(f) no action has been brought or, so far as is known to Borrower, is threatened, which in anywise would interfere with the right of Borrower to execute this Assignment and perform all of Borrower's obligations contained in this Assignment and in the Lease; and

(g) the Lease is in full force and effect and has not been modified or amended unless as expressly set forth herein.

1.02 Covenants of Borrower. Borrower hereby covenants with Lender that:

(a) Borrower will (i) fulfill, perform and observe each and every condition and covenant of Borrower contained in the Lease; (ii) give prompt notice to Lender of any claim of default under the Lease either given by the "Tenant" under the Lease to Borrower or given by Borrower to the "Tenant" under the Lease, together with a complete copy of any such claim; (iii) at no cost or expense to Lender, enforce, short of termination, the performance and observance of each and every covenant and condition of the Lease to be performed or observed by the "Tenant" thereunder; and (iv) appear in and defend any action growing out of, or in any matter connected with, the Lease or the obligations or liabilities of Borrower as the "Landlord" thereunder or of the "Tenant" or any guarantor thereunder;

(b) Borrower will not, without the prior written consent of Lender, either (i) modify any material term of the Lease; (ii) terminate the term or accept the surrender of the Lease; (iii) waive, or release the "Tenant" from, the performance or observance by the "Tenant" of any material obligation or condition of the Lease; (iv) permit the prepayment of any rents under the Lease for more than one (1) month prior to the accrual thereof; or (v) give any consent to any assignment or sublease by the "Tenant" under the Lease except for Concessionaire Lease by tenant or Borrower as landlord;

(c) Borrower shall take no action which shall cause or permit the estate of the "Tenant" under the Lease to merge with the reversionary interest of Borrower in the Property or any portion thereof; and

(d) Lender shall not be obligated to preform or discharge any obligation of Borrower under the Lease, and Borrower agrees to, and does hereby indemnify and hold Lender harmless against any and all liability, loss or damage which Lender may incur under any of the Leases or under or by reason of this Assignment, and

UNOFFICIAL COPY

from all claims and demands whatsoever which may be asserted against Lender by reason of an act of Lender under this Assignment.

1.03 Covenants of Lender. By acceptance of delivery of this Assignment, Lender covenants with Borrower that so long as there shall exist no Event of Default, as defined, in Paragraph 2.01 hereinbelow, on the part of Borrower, Borrower shall have the right to collect, but not more than one (1) month prior to accrual, all rents, issues and profits from the Property (including, but not by way of limitation, all rent payments under any of the Leases) and to retain, use and enjoy the same.

ARTICLE II

2.01 Event of Default. The term "Event of Default", wherever used in this Assignment, shall mean any one or more of the following events:

- (a) the occurrence of any "default" or "event of default" as defined in the Note or the Loan Agreement of even date therewith or any other Loan Document.
- (b) the failure by Borrower to duly observe any covenant, condition or agreement of this Assignment, or the breach of any warranty by Borrower contained in this Assignment.

2.02 Remedies. Upon the occurrence of any Event of Default, in addition to any and all other rights and remedies available to Lender under the Note and not in substitution therefor or in derogation thereof, and without any notice to Borrower and Borrower, Lender may (i) proceed to enter upon, take possession of and operate the Property, including the collection of rent without becoming a mortgagee in possession; (ii) proceed to perform any and all obligations of Borrower under the Leases and exercise any and all rights of Borrower therein contained as fully as Borrower itself could, all without regard to the adequacy of security for the indebtedness hereby secured and with or without the bringing of any legal action or the causing of any receiver to be appointed by any court or other judicial authority; (iii) notify Tenant to make payments of rent to Lender; (iv) make, enforce, modify and accept the surrender of the Lease or evict the "Tenant" under the Lease; (v) fix or modify rent; (vi) apply for appointment of a receiver of the rents and profits of the premises without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the property or the solvency of any party liable for the indebtedness; and (vii) do all of the acts which Lender may deem necessary or proper to protect the security created by this Assignment. If an Event of Default shall have occurred and be continuing, Borrower does hereby specifically authorize Lender, in the name of Borrower or in the name of Lender, to sue for or otherwise collect and receive all rents, issues and profits from the Property, including those past due and unpaid, and apply such as required or permitted by the Note or applicable law. Entry upon and taking possession of the Property and the application thereof, as aforesaid, shall not operate to waive any default or prohibit the taking of any action by Lender under the Note, this Assignment or other related loan documents or at law or in equity to enforce payment of the indebtedness secured hereby or to realize on any other security.

UNOFFICIAL COPY

ARTICLE III

3.01 Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in the Assignment to Borrower or Lender such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Borrower or Lender.

3.02 Terminology. All personal pronouns used in this Assignment whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Assignment itself.

3.03 Severability. If any provision of this Assignment or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.04 Applicable Law. This Assignment shall be interpreted, construed and enforced according to the laws of the state in which the Property is situated.

3.05 Reassignment. Lender shall have the right to reassign its interests hereunder without consent of Borrower.

IN WITNESS WHEREOF, Borrower and Borrower have executed this Assignment under seal, as of the day and year first above written.

UNOFFICIAL COPY

"BORROWER"

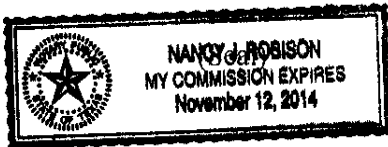
Marnitz & Associates, LLC Defined Benefit Pension Plan

By: *Brad Marnitz*
Brad Marnitz, Trustee

STATE OF TEXAS

COUNTY OF HARRIS

Signed and sworn to before me on December 5, 2012, by **Brad Marnitz as Trustee of Marnitz & Associates, LLC Defined Benefit Pension Plan** on behalf of whom this instrument was executed.



Nancy J. Robison
Notary Public, State of Texas

UNOFFICIAL COPY

Exhibit A - Legal Description

LOT 3 IN RIO'S SUBDIVISION OF LOTS 2, 3 AND 4 IN NORTH-SMITH SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO PLAT THEREOF RECORDED AUGUST 1, 1991 AS DOCUMENT NO. 91388830 AND RIO'S RESUBDIVISION RECORDED NOVEMBER 22, 1995 AS DOCUMENT NO. 95812652;

(EXCEPT THAT PART AS CONVEYED TO THE ILLINOIS DEPARTMENT OF TRANSPORTATION BY DEED RECORDED MARCH 23, 2001 AS DOCUMENT NUMBER 0010231440, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTH 00 DEGREES 05 MINUTES 33 SECONDS EAST, BEING AN ASSUMED BEARING ON THE EAST LINE OF SAID LOT 3, SAID LINE ALSO BEING THE WEST RIGHT-OF-WAY LINE OF SMITH STREET (SMITH ROAD), A DISTANCE OF 1.34 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF NORTHWEST HIGHWAY (U.S. ROUTE 14) ACCORDING TO THE PLAT RECORDED MAY 27, 1931 AS DOCUMENT NUMBER 10910666; THENCE CONTINUING SOUTH 00 DEGREES 05 MINUTES 33 SECONDS EAST, ON THE EAST LINE OF SAID LOT 3, A DISTANCE OF 26.89 FEET; THENCE NORTH 34 DEGREES 12 MINUTES 56 SECONDS WEST, A DISTANCE OF 42.70 FEET TO THE INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID NORTHWEST HIGHWAY; THENCE NORTH 19 DEGREES 14 MINUTES 27 SECONDS EAST, A DISTANCE OF 1.21 FEET TO THE NORTHERLY LINE OF SAID LOT 3; THENCE SOUTH 70 DEGREES 45 MINUTES 33 SECONDS EAST, ON THE NORTHERLY LINE OF SAID LOT 3, A DISTANCE OF 24.96 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS, SAID PARCEL CONTAINS 353 SQUARE FEET OR 0.008 ACRE, MORE OR LESS, OF WHICH 31 SQUARE FEET OR 0.001 ACRE, MORE OR LESS, HAS BEEN PREVIOUSLY DEDICATED)

IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office