

ASSIGNMENT OF HARRIS LEASE

THIS ASSIGNMENT OF HARRIS LEASE (hereinafter referred to as the "Assignment"), is made and entered into as of this 18th day of February, 1986 by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee under Trust Agreement dated December 26, 1985, and known as Trust No. 66364, whose address is 33 North LaSalle Street, Chicago, Illinois (hereinafter referred to as "Assignor"), and FOCUS REAL ESTATE FINANCE CO., a Delaware corporation, having its principal office at Chicago, Illinois (hereinafter referred to as "Assignee");

W I T N E S S E T H:

WHEREAS, Assignor has, simultaneously with the execution of this Assignment, executed and delivered to Assignee, a Loan Agreement of even date herewith (hereinafter referred to as the "Loan Agreement") pursuant to which Assignee agreed to lend to Assignor the sum of TWO MILLION TWO HUNDRED THOUSAND DOLLARS (\$2,200,000.00) (hereinafter referred to as the "Loan"), as evidenced by a Promissory Note of even date herewith (hereinafter referred to as the "Note"), executed by Assignor and payable to the order of Assignee, in the principal amount of TWO MILLION TWO HUNDRED THOUSAND DOLLARS (\$2,200,000.00) and, as security therefor, executed and delivered to Assignee a Mortgage, Security Agreement and Financing Statement (Fee and Leasehold) of even date herewith (hereinafter referred to as the "Mortgage"), encumbering the land legally described on Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Land") and the improvements thereon (hereinafter referred to as the "Improvements") (the Land and Improvements are hereinafter collectively referred to as the "Property"); and

WHEREAS, Assignor is the tenant under that certain Lease dated September 12, 1966 (hereinafter referred to as the "Harris Lease") by and between Ethel Harris, as lessor, and National Bank of Austin as Trustee under Trust Agreement dated August 20, 1966 and known as Trust No. 4301, as lessee, and recorded February 7, 1967 as Document 20058472, as assigned to the Village of Rosemont, Illinois pursuant to that certain Assignment of Lease dated December 18, 1985 by and between National Bank of Austin, as Trustee as aforesaid, as assignor, and the Village of Rosemont, Illinois, as assignee, as further assigned to Assignor pursuant to that certain Assignment of Lease dated February \_\_, 1986, by and between the Village of Rosemont, Illinois, as assignor, and Assignor, as assignee, demising the Property described as Parcel 2 in Exhibit A attached hereto (hereinafter referred to as the "Premises"); and

WHEREAS, Assignee, as a condition precedent to making the Loan to Assignor has requested Assignor to assign all of its right, title and interest in and to the Harris Lease as additional security for the payment of the principal balance due under the Note and all accrued interest thereon, and all other sums due and owing to Assignee pursuant to the Note, Mortgage, this Assignment and the other Loan Documents (as defined in the Mortgage) (hereinafter collectively referred to as the "Indebtedness");

NOW, THEREFORE, in consideration of the disbursement of the proceeds of the Loan by Assignee and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor covenants and agrees as follows:

1. Security Interest. Assignor hereby grants a security interest in and sells, assigns, transfers, sets over and conveys unto Assignee all of Assignor's right, title and interest in, to and under the Harris Lease.

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2. Collateral Purposes. Assignor agrees that this Assignment is made for the purpose of securing the payment of Indebtedness and the performance and discharge of each and every obligation, covenant and agreement required of Assignor pursuant to the Note, the Mortgage and the other Loan Documents.

3. Representations and Warranties. Assignor hereby represents and warrants that:

a) Assignor has good title to the Harris Lease and good right and authority to assign it, free from any act or other instrument that might limit Assignor's right to make this Assignment or Assignee's rights hereunder, and no other person, firm or corporation has any right, title or interest therein;

b) The Harris Lease is valid and enforceable and has not been altered, modified or amended;

c) Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Harris Lease;

d) Assignor is not in default of any of the terms of the Harris Lease; and

e) Assignor has duly and punctually performed all the terms, covenants, conditions and warranties of the Harris Lease that were to be kept, observed and performed by it.

4. Covenants of Performance. Assignor covenants and agrees that it shall observe, perform and fulfill, duly and punctually, all of the obligations, terms, covenants and conditions imposed upon Assignor, as lessee, pursuant to the Lease and shall:

a) not waive, excuse, condone, abate, concede, discount, set off, compromise or in any manner release or discharge the lessor under the Harris Lease of any obligation, covenant, condition or warranty to be observed, performed or fulfilled by the lessor;

b) not execute any other assignment of Assignor's interest as lessee in the Harris Lease nor create or permit any lien, charge or encumbrance upon its interest therein, without the prior written consent of Assignee;

c) not cancel, terminate the Harris Lease, or accept a surrender thereof or permit any cancellation or termination, without the prior written consent of Assignee; and

d) not modify, amend or alter any provision of the Harris Lease, without the prior written consent of Assignee.

5. Enforcement of Rights and Remedies. Upon or at any time after default in the payment of any Indebtedness or in the performance or fulfillment of any obligation, term, covenant, condition or warranty contained herein, in the Note, Mortgage, other Loan Documents or in the Harris Lease, Assignee shall have, at its option and without further notice, the complete right, power and authority to exercise and enforce any or all of the following rights and remedies at any time:

a) To declare the Indebtedness immediately due and payable and, at its option, exercise all or any of the rights and remedies contained in this Assignment and in the Note, Mortgage and other Loan Documents; and

b) Without regard to the adequacy of the security or the solvency of Assignor, with or without any action or proceeding through any person, by agent, or by a receiver to be appointed by a court, and without regard to Assignor's pos-

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session, to enter upon, take possession of, manage, and operate the Premises or any part thereof; make, modify, enforce, cancel or accept surrender of the Harris Lease; clean, maintain, repair or remodel the Premises; and otherwise do any act or incur any costs or expenses that Assignee shall deem proper to protect the security hereof, as fully and to the same extent as Assignor could do if in possession.

Provided, however, that the acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking possession of said Premises by Assignee, be deemed or construed to constitute assignee a "Mortgagee in Possession," nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Harris Lease or to the Premises, to take any action hereunder, to expend any money, incur any expenses, or perform or discharge any obligation, duty, or liability under the Harris Lease. Furthermore, Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Premises.

Provided further, that the entry upon and taking possession of the Premises shall not cure or waive any default; waive, modify or affect any notice of default required under this Assignment or the Note, Mortgage or other Loan Documents; or invalidate any act done pursuant to such notice.

The rights, powers and remedies conferred on Assignee hereunder (a) shall be cumulative and concurrent with and not in lieu of any other rights, powers and remedies granted Assignee hereunder or under the Note, Mortgage or other Loan Documents; (b) may be pursued separately, successively or concurrently against Assignor or the Premises; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Assignor that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (d) are intended to be, and shall be, non-exclusive.

6. Rejection of Harris Lease. In the event the Assignor should be the subject of any proceeding under the Federal Bankruptcy Act or any other federal, state or local statute which provides for the possible termination or rejection of the Harris Lease assigned hereby, Assignor covenants and agrees that if the Harris Lease is so rejected, no settlement for damages shall be made without the prior written consent of the Assignee, and any check in payment of damages for rejection of the Harris Lease will be made payable to the 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 as Assignee may elect.

7. Default Deemed Default Under the Loan Documents. In the event any representation or warranty of Assignor made herein shall be found to be untrue, or Assignor shall default in the performance or fulfillment of any obligation, term, covenant, condition or warranty herein, the Assignee may, at its option, declare each such instance to be a default under the Note, Mortgage and other Loan Documents, thereby entitling Assignee to declare the Indebtedness immediately due and payable and to exercise any and all of the rights and remedies provided thereunder and herein, as well as by law. If Assignee incurs any liability pursuant hereto or pursuant to the Harris Lease, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, shall be secured by the Loan Documents and Assignor shall reimburse Assignee therefor, with interest at the Default Rate set forth in the Note, immediately upon demand. In the event of the failure of Assignor so to do, Assignee may, at its option, declare the Indebtedness immediately due and payable.

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8. Authority to Cure Default. Assignee shall have the right and option at any time or from time to time, in its sole discretion (but under no circumstances shall it be required or obligated), to take in its name or in the name of Assignor such action as Assignee may determine to be necessary to cure any default of Assignor under the Harris Lease, whether or not any applicable cure or grace period has expired. Assignor agrees to protect, defend, indemnify and hold Assignee harmless from and against any and all loss, cost, liability or expense (including, but not limited to, attorneys' fees and expenses) in connection with Assignee's exercise of its rights hereunder.

9. Subordination. Assignor hereby constitutes and appoints Assignee its true and lawful attorney, coupled with an interest, of Assignor, so that in the name, place and stead of Assignor, the Assignee may subordinate, at any time and from time to time, the Harris Lease or any part thereof to the lien of the Mortgage, any other mortgage or deed of trust encumbering the Premises. This appointment is to be irrevocable and continuing, and these rights, powers and privileges shall be exclusive in Assignee, its successors and assigns as long as any part of the Indebtedness shall remain unpaid.

10. Indemnification. Assignor hereby agrees to indemnify and hold Assignee harmless from any and all liability, loss, damage or expense that Assignee may incur under, or by reason or in defense of, any and all claims and demands whatsoever which may be asserted against Assignee arising out of the Harris Lease. Should Assignee incur any such liability, loss, damage or expense, the amount thereof, including, without limitation, attorneys' fees, with interest thereon at the Default Rate set forth in the Note, shall be payable by Assignor immediately without demand, and shall be secured as a lien hereby and by the Mortgage.

11. Additional Documentation. Assignor hereby covenants and agrees to make, execute, and deliver to Assignee upon demand and at any time any and all further or additional assignments, documents and other records and instruments that Assignee may deem to be necessary or advisable for carrying out the purposes and intent of, or otherwise to effectuate, this Assignment.

12. No Waiver. The failure of Assignee to avail itself of any of the terms, covenants, and conditions of this Assignment for any period of time or at any time shall not be construed or deemed to be a waiver of any such right, and nothing herein contained nor anything done or omitted to be done by Assignee pursuant hereto shall be deemed a waiver by Assignee of any of its rights and remedies hereunder or under the Note, Mortgage or other Loan Documents, or the laws of the state in which the said Premises are situated. The rights of Assignee to collect the Indebtedness, to enforce any other security therefor, or to enforce any other right or remedy hereunder may be exercised by Assignee either prior to, simultaneously with, or subsequent to, any other action taken hereunder and shall not be deemed an election of remedies.

13. Primary Security. This Assignment is primary in nature over the obligation evidenced and secured by the Note, Mortgage and other Loan Documents, and any other document given to secure and collateralize the Indebtedness. Assignor further agrees that Assignee may enforce this Assignment without first resorting to or exhausting any other security or collateral; however, nothing herein contained shall prevent Assignee from successively or concurrently suing on the Note, foreclosing the Mortgage, or exercising any other right under any other document collateralizing the Note.

14. Merger. (a) The fact that the Harris Lease may be held, directly or indirectly, by or for the account of any person or entity which shall have an interest in the fee estate of the Premises, (b) the operation of law, or (c) any other event, shall

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not merge the Harris Lease or the leasehold estate created thereby with the fee estate in the Premises as long as any of the Indebtedness shall remain unpaid, unless Assignee shall consent in writing to such merger.

15. Termination of Assignment. Upon payment in full of all of the Indebtedness and all sums payable hereunder, Assignee shall execute and deliver a release of this Assignment. No judgment or decree entered as to the Indebtedness shall operate to abrogate or lessen the effect of this Assignment until the Indebtedness has actually been paid. The affidavit, certificate, letter or statement or any officer of Assignee showing that any part of the Indebtedness has remained unpaid shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment. Any person, firm or corporation may, and is hereby authorized to, rely on such affidavit, certificate, letter or statement.

16. Notice. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given if mailed by first class United States mail, postage prepaid, certified or registered with return receipt requested or by delivering same in person to the intended address or by prepaid telegram, as follows:

If to Assignor: Gage Street Associates  
c/o Fifield Development Corp.  
100 South Wacker Drive  
Chicago, Illinois 60606  
Attention: Erik Moskowitz

With a copy to: Rudnick & Wolfe  
43rd Floor  
30 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Lee I. Miller, Esq.

If to Assignee: Focus Real Estate Finance Co.  
Suite 3000  
200 West Madison Street  
Chicago, Illinois 60606  
Attention: President and General Counsel

With a copy to: Coffield Ungaretti Harris & Slavin  
3500 Three First National Plaza  
Chicago, Illinois 60602  
Attention: Richard A. Ungaretti, Esq.

or at such other place as any party hereto may by notice in writing designate as a place for service of notice hereunder. Notice so mailed shall be effective upon the date of its deposit. Notice given in any other manner shall be effective only if and when received by addressee.

17. Successors. The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land and shall inure to the benefit of, and bind, all parties hereto and their respective heirs, successors and assigns, and all successors, transferees and assignees of Assignee and all subsequent holders of the Note and Mortgage.

18. Additional Rights and Remedies. In addition to, but not in lieu of, any other rights hereunder, Assignee shall have the right to institute suit and obtain a protective or mandatory injunction against Assignor to prevent a breach or default, or to enforce the observance, of the agreements, covenants, terms and conditions contained herein, as well as the right to ordinary and punitive damages occasioned by any breach or default by Assignor.

19. Severability. If any provision of this Assignment or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of

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this Assignment and the application of its provisions to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

20. Third Party Beneficiaries. It is expressly agreed by Assignor that this assignment shall not be construed or deemed made for the benefit of any third party or parties.

21. Entire Agreement. This document contains the entire agreement concerning the assignment of Harris Lease between the parties hereto. No variations, modifications or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by, or on behalf of, such party.

22. Construction. Whenever used herein and the context requires it, the singular shall include the plural, the plural the singular, and any gender shall include all genders. All obligations of each Assignor hereunder shall be joint and several.

23. Governing Law. The parties agree that the law of the State of Illinois shall govern the performance and enforcement of this Assignment.

24. Conflict in Terms. In the event of any contradiction or inconsistency between any of the terms and provisions contained in this Assignment and the terms and provisions contained in the Loan Agreement, the terms and provisions contained in the Loan Agreement shall control.

25. Trustee's Exculpation. This document is executed by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it by the aforesaid trust agreement (and said Trustee hereby represents that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein shall be construed as creating any liability on said Trustee personally to perform any covenants either express or implied herein contained (except the covenant relating to the authority of said Trustee to execute this Assignment) all such liability, if any, being expressly waived with respect to said Trustee.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee as aforesaid

By: [Signature]  
Name: V. M. Whelan  
Title: [Signature]

ATTEST: (SEAL)

By: [Signature]  
Name: S. H. Dixon  
Title: [Signature]

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STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

I, ROLY, PAPADOLAS, a Notary Public in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that J. MICHAEL WITELAN President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee, and Stephen Dixon Secretary of said bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as said        President and        Secretary, respectively, appeared before me in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said bank for uses and purposes therein set forth; and the said Secretary did also then and there acknowledge that       , as custodian of the corporate seal of said bank, did affix the corporate seal of said bank to said instrument as        own free and voluntary act and as the free and voluntary act of said bank, as trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this        day of 8, 1986

        
Notary Public

My commission expires:       

MY COMMISSION EXPIRES JANUARY 7, 1990

This instrument was prepared by and after recording should be mailed to:

Richard A. Ungaretti, Esq.  
Coffield Ungaretti Harris & Slavin  
3500 Three First National Plaza  
Chicago, Illinois 60602

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COOK COUNTY, ILLINOIS  
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EXHIBIT A

Legal Description

Parcel 1 (Fee Estate):

Lots 1, 2, 3, 4, 5, 6, 7, 8 and the South 29 feet of Lot 9 and also the North 9 feet of the South 38 feet of the West 123.50 feet of Lot 9 in O'Hare Area Industrial Development Subdivision Unit Number 1, being a Subdivision in the South West 1/4 of Section 3, Township 40 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2 (Leasehold Estate):

Leasehold Estate created by the instrument herein referred to as Lease executed by Ethel Harris, lessor, and National Bank of Austin, as Trustee under Trust Agreement dated August 20, 1966 and known as Trust No. 4301, as lessee, dated September 12, 1966 and recorded February 7, 1967 as Document 20058472, demising the land for a term of years beginning September 12, 1966, and ending September 12, 2016, to wit:

Lot 9 (except the South 29 feet and also except the North 9 feet of the South 38 feet of the West 123.5 feet thereof) in O'Hare Area Industrial Development Subdivision Unit Number 1, being a Subdivision in the South West 1/4 of Section 3, Township 40 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

Property Address: 5611 - 5665 Gage Avenue  
Rosemont, Illinois

P.I.N.: ~~1071~~ ~~1072~~ 12-03-310-001/002/002/004/005/006/007/008/010/011

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