

# UNOFFICIAL COPY

## 8 9 4 8 4 8 0 0 89484800 ASSIGNMENT OF RENTS AND LEASES

This Assignment of Rents and Leases (this "Assignment") is made on October 6<sup>th</sup>, 1989, by AMERICAN NATIONAL BANK AND TRUST COMPANY, not individually, but solely as Trustee of Trust Agreement dated August 7, 1989 and known as Trust No. 109183-08 ("Trustee") and S&B PARTNERS, an Illinois general partnership, sole beneficiary of the Trust Agreement ("Beneficiary") (Trustee and Beneficiary are collectively "Borrower").

Background. Borrower has executed an Installment Note ("Note") of even date herewith, payable to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, an Illinois banking corporation ("Lender") in the principal amount of Three Million Seventy-Five Thousand Dollars (\$3,075,000), which sum was loaned to Borrower by Lender to finance the acquisition and development of the Premises, and the construction of improvements thereon (the "Loan").

A. To secure the payment of the Note, the Borrower has executed a Mortgage of even date herewith (the "Mortgage") in favor of Lender concerning certain real estate commonly known as 2003 Lunt, Elk Grove Village, Illinois, and legally described in Exhibit "A" attached hereto (the "Premises").

B. Trustee has entered into a lease of the Premises with ROLLEX CORPORATION, an Illinois corporation (the "Lease").

C. Borrower and Lender have entered into a Construction Loan Agreement of even date herewith ("Construction Loan Agreement") requiring the execution and delivery of this Assignment to further secure payment of the Note.

NOW, THEREFORE, for and in consideration of the Loan, the contemporaneous execution of the Construction Loan Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Borrower, Borrower does hereby sell, assign, and transfer unto Lender, all of Borrower's interest in the Lease and all the rents, issues, deposits, and profits now due and which may hereafter become due under or by virtue of the Lease and any other lease, whether written or verbal, or any letting of, or of any agreement for the use, sale, or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Lender under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of the Lease and all other of said leases, contracts to sell, escrow agreements and agreements pertaining thereto (said contracts, escrow agreements and agreements shall hereinafter collectively be referred to as "Agreements" and any individual contract, escrow agreement, or agreement shall hereinafter be referred to as "Agreement"), and all the avails thereof, to Lender.

Beneficiary represents, warrants and agrees and Trustee represents and agrees that:

A. no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the Premises has been or will be waived,

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released, reduced, or discounted, or otherwise discharged or compromised by Borrower;

B. Borrower will not sell, assign, transfer, pledge, encumber or grant a security in the Lease or any of the Agreements, without the prior written consent of Lender;

C. Borrower shall not permit the Lease or any Agreement to become subordinate to any lien other than the lien of the Mortgage, nor terminate, modify or amend the terms of the Lease or any Agreement, without the prior written consent of Lender;

D. Borrower shall perform all of its covenants and agreements pursuant to the Lease and all of the Agreements; and

E. Borrower shall not assign any of the rents, profits, or deposits relating to the Premises without the prior written consent of Lender.

Nothing herein contained shall be deemed or construed as constituting Lender as a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted to Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

The Borrower further agrees to assign and transfer to Lender all future leases and Agreements upon all or any part of the Premises and to execute and deliver, immediately upon the request of Lender, all such further assurances and assignments in the Premises as Lender shall from time to time require.

Borrower does hereby irrevocably appoint Lender as its true and lawful attorney in its name and stead (with or without taking possession of the premises), to rent, lease, let, or sell all or any portion of the Premises to any party or parties at such price and upon such terms, in its discretion as it may reasonably determine, and to collect all of said avails, rents, issues, deposits, and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the said leases and Agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession of the Premises pursuant to the provisions contained herein.

Although it is the intention of the parties that this Assignment shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Lender shall not exercise any of the rights and powers conferred upon it hereby until and unless a default shall occur in the payment of interest or principal due under the Note or in the performance or observance of any of the conditions or agreements contained in any of the other "Loan Documents" (as such term is defined in the Construction Loan Agreement) and nothing herein contained shall be deemed to affect or impair any rights which Lender may have under the Note, Mortgage and other Loan Documents.

In any case in which under the provisions of the Mortgage, Lender has a right to institute foreclosure proceedings, whether before or after the entire principal sum secured thereby is declared to be immediately due and payable or, whether before or after institution of legal proceedings to foreclose the lien thereof, or before or after sale thereunder, immediately upon demand of Lender, the Borrower agrees to surrender to Lender and Lender shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys, and Lender in its sole discretion may enter upon and take and maintain possession of any or any part of the Premises, together with all the documents, books, records, papers, and accounts of the Borrower or the then owner of the Premises relating thereto, and may exclude the Borrower, its agents or servants, wholly therefrom and may, as attorney in fact or agent of Borrower, or in its own name as Lender and under the powers herein granted, hold, operate, manage, and control the Premises and conduct the business, if any, thereof either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of security of the avails, rents, issues, deposits, and profits of the premises, including actions for the recovery of rent, actions in forcible detainer, and actions in distress of rent, hereby granting full power and authority to exercise each and every of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to Borrower, and with full power to cancel or terminate any Agreement for any cause or on any ground which would entitle Borrower to cancel the same, to elect to disaffirm any Agreement made subsequent to the Mortgage or subordinated to the lien thereof, to make all the necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the premises that may seem judicious, in its discretion, insure and reinsure the same for all risks incidental to Lender's possession, operation, and management thereof and to receive all such avails, rents, issues, deposits, and profits.

Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty, or liability under the Lease or any of the Agreements, and Borrower shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss, or damage which it may incur under any leases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or conditions contained in the Lease or any of the Agreements. If Lender does incur any such liability, loss, or damage arising therefrom, under the Leases or any of the Agreements, or under or by reason of the assignment thereof, or in the defense of any claims or demands arising therefrom, the Borrower agrees to reimburse Lender for the amount thereof, including costs, expenses, and reasonable attorneys and paralegals' fees, immediately upon demand.

The Lender, in the exercise of the rights and powers conferred upon it by this Assignment, shall have full power to use and apply the avails, rents, issues, deposits, and profits of the Premises to the payment of or on account of the following, in such order as Lender may, in its discretion, determine:

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A. operating expenses of Premises, including cost of management, sale, and leasing thereof (which shall include reasonable compensation to Lender and its agent or agents, if management be delegated to an agent or agents, and it shall also include lease or sale commissions and other compensation and expenses of seeking and procuring tenants or purchasers and entering into leases or sales), establish claim for damages, if any, and premiums on insurance hereinabove authorized;

B. taxes and special assessments now due or which may hereafter become due in connection with the Premises;

C. any and all repairs, decorating, renewals, replacements, alterations, additions, or betterments and improvements of the Premises, including the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing the Premises in such condition as will, in the judgment of Lender, make it readily rentable or salable; and

D. any indebtedness secured by the Mortgage or any deficiency which may result from any foreclosure sale.

Borrower does further specifically authorize and instruct each and every present and future lessee or purchaser of the whole or any part of the Premises to pay all unpaid rental or deposits agreed upon in any Agreement to Lender upon receipt of demand from Lender to so pay the same.

It is understood and agreed that the provisions set forth in this Assignment shall be deemed as a special remedy given to Lender, and shall not be deemed exclusive of any of the remedies granted in the Mortgage or other Loan Document, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted.

Whenever the words "Borrower", "Trustee" or "Beneficiary" are mentioned herein, the same shall be deemed to include and shall be binding upon the successors and assigns of Borrower, and any party or parties holding title to the Premises by, through, or under the Borrower. All of the rights, powers, privileges, and immunities herein granted and assigned to Lender shall also inure to the benefit of its successors and assigns, including all holders, from time to time, of the Note. In the event of any conflict between the terms and conditions of this Assignment, and the terms and conditions of the Mortgage, the terms and conditions of this Assignment will apply.

It is expressly understood that no judgment which may be entered on any debt secured or intended to be secured by the Mortgage or other Loan Documents shall operate to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness secured by the Mortgage and other Loan Documents, in whatever form such indebtedness may be and until such indebtedness shall have been paid in full and all bills incurred by virtue of the authority contained herein have been fully paid out of the rents, issues, deposits, and profits of the Premises or by the Borrower, or until such time as this Assignment may be voluntarily released. This Assignment shall also remain in full force and effect during the pendency of any foreclosure

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proceedings, both before and after sale, until the issuance of a deed pursuant to a judgment of foreclosure, unless the indebtedness secured by the Mortgage and other Loan Documents is fully satisfied before the expiration of any period of redemption.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee on behalf of Borrower, while in form purporting to be the warranties, indemnities, representations, covenants and undertakings of the Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose of or with the intention of binding the Trustee personally, but are made and intended for the purpose of binding only the Premises described herein, and this instrument is executed and delivered by the Trustee not in its own right, but solely in the exercise of the powers confirmed upon it as Trustee; and that no personal liability or personal responsibility is assumed by nor shall it at any time be asserted or enforceable against the Trustee on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, this Assignment of Rents and Leases was executed by Borrower as of the day and year first set forth above.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not individually, but solely as Trustee of Trust Agreement dated August 7, 1939 and known as Trust No. 109183-08

By: [Signature]

Title: VICE PRESIDENT

Attest: [Signature]  
S&B PARTNERS, an Illinois General Partnership

By: [Signature]  
BRUCE STEVENS, Partner

By: [Signature]  
JAMES BRITTINGHAM, Partner

Being all the partners of S&B Partners

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STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) SS.

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that BRUCE STEVENS and JAMES BRITTINGHAM, personally known to me to be the partners of S&B PARTNERS, and personally known to me to be same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person executed the foregoing instrument and severally acknowledged that as such partners of S&B PARTNERS as their free and voluntary act, and as the free and voluntary act of said partnership, for the uses and purposes therein set forth.

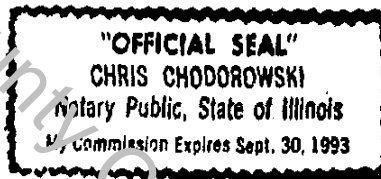
Given under my hand & official seal this 6<sup>th</sup> day of October, 1989.

My commission expires: Sept. 30, 1993

DEPT-01 RECORDING \$18.00  
T#2222 TRAN 3232 10/12/89 15:57:00  
#2147 # -89-484800  
COOK COUNTY RECORDER

**89-484800**

Chris Chodorowski  
NOTARY PUBLIC



~~I hereby certify that the within instrument is a true copy of the original in my possession and that the undersigned trustee to execute the document described therein, and that said original instrument has been signed by the person or persons so empowered to do so under the terms and provisions of the subject trust agreement.~~

~~AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,  
as Trustee under Trust No. \_\_\_\_\_~~

~~BY: \_\_\_\_\_  
Authorized Officer~~

~~DATE: \_\_\_\_\_~~

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STATE OF ILLINOIS } SS.  
COUNTY OF \_\_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ by Carol M. Braum and Anita M. Lutkus

Carol M. Braum and Anita M. Lutkus are respectively Assistant Secretary and Vice President of American National Bank and Trust Company of Chicago, a national banking association, as trustee, as aforesaid, on behalf of said banking association.

Chris Chodorowski  
Notary Public

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Property of Cook County Clerk's Office

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EXHIBIT "A"

Lot 1 in Rollex Corporation Resubdivision, being a subdivision of Section 35, Township 41 North, Range 11, East of the Third Principal Meridian in Cook County, Illinois, filed in the Office of the Registrar of Titles on June 8, 1989 as Document No. 3800560.

Property of Cook County Clerk's Office



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CONSENT OF ROLLEX CORPORATION

Rollex Corporation hereby acknowledges receipt of the foregoing Assignment of Rents and Leases as of the date first set forth above, and consents to and accepts the same. UNTIL SUCH ASSIGNMENT OF RENTS AND LEASES IS TERMINATED BY LENDER, ROLLEX CORPORATION COVENANTS AND AGREES THAT IT WILL NOT, IN THE EVENT THAT THE "PLANT" IS NOT "SUBSTANTIALLY COMPLETED" (AS SUCH TERMS ARE DEFINED IN THE LEASE) ON OR BEFORE JUNE 30, 1989, OR AS OF ANY DATE THEREAFTER TERMINATE THE LEASE WITHOUT THE PRIOR WRITTEN CONSENT OF LENDER, OR SEEK TO ASSERT SUCH FAILURE AS A DEFENSE TO ANY OF LENDER'S RIGHTS OR REMEDIES PURSUANT TO THE UNDERSIGNED'S GUARANTY OF CONSTRUCTION OF EVEN DATE HERewith.

ROLLEX CORPORATION

By: B. J. [Signature]

Title: PRESIDENT

Property of Cook County Clerk's Office

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