

UNOFFICIAL COPY

Return to:
Mr. Leslie J. Gomora, Sr. V.P.
GARY-WHEATON BANK OF BATAVIA
10 E. Wilson St.
Batavia, IL 60510
(708) 879-5200

Prepared by:
Bill Durfenderger
DUKRENBARGER & WECHESTER, P.C.
Attorneys at Law
34 N. Island Ave., Suite F
Batavia, IL 60510
(708) 404-0950

1.1 Present Assignment. Notwithstanding that this Assignment constitutes a present assignment of leases and rents, Assignor may collect the Rents and manage the Mortgaged Property in the same manner as if this Assignment had not been given, but only if and so long as an Event of Default (defined hereafter) has not occurred. If an Event of Default occurs, the right of Assignor to collect the Rents and to manage the Mortgaged Property shall thereupon automatically terminate and such right together with the other rights, powers and authorizations contained herein shall belong exclusively to Lender.

1.2 Power Coupled with Interest. This Assignment of Leases and Rents confers upon Lender a power coupled with an interest and cannot be revoked by Assignor.

COVENANTS AND WARRANTIES

(a) All oral and written leases with, or other agreements for use or occupancy made by, any person or entity, and any and all amendments, extensions, renewals, modifications and replacements thereof, pertaining to all or any part of the Mortgaged Property, whether such leases or other agreements have been heretofore or are hereafter made including those specific leases, if any, listed in Exhibit B attached hereto (the "Leases");

(b) The rents which are due or payable pursuant to any of the Leases and any other payments in addition to rent due or payable thereunder, including, without limitation, security deposits and any monies, awards, damages or other payments made or due under the Leases (the "Rents");

(c) All rights, powers, privileges, options and other benefits of Assignor under the Leases (collectively, the "Rights"); (the Leases, Rents and Rights being sometimes collectively referred to as the "Collateral") and Assignor authorized Lender;

(d) To manage the Mortgaged Property and take possession of the books and records relating thereto;

(e) To prosecute or defend any suits in connection with the Mortgaged Property or to take any other action in connection with the Leases in the name of Lender, Mortgagor or any such beneficiary;

(f) To make such repairs to the Mortgaged Property as Lender may deem advisable; and

(g) To do any and all other things with respect to the Mortgaged Property and the Collateral which an absolute owner or landlord has the right to do.

To secure the payment of the indebtedness evidenced by the Note and payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Assignment, the Mortgage, the Note, the Loan Commitment and any other mortgages, security agreements, assignments of leases and rents, guarantees, letters of credit and any other documents and instruments, Assignor, extensions, replacements, modifications and amendments now or hereafter executed by Mortgagor, Beneficiary (if any) of Mortgage or any other party to secure or guarantee the payment of indebtedness under the Note (the Note, the Loan Commitment, this Assignment, the Mortgage, and all such other documents and instruments, including any and all amendments, extensions, renewals, modifications and replacements, being sometimes referred to collectively as the "Loan Instruments" and individually as a "Loan Instrument") (all indebtedness secured hereby being hereafter sometimes referred to as "Borrower's Liabilities"), Mortgagor and any Beneficiary of Mortgage executing this Assignment (Mortgagor and all such Beneficiaries being collectively referred to herein as "Assignors") hereby assign to Lender, all of their respective right, title and interest in:

GRANTING CLAUSES

(a) the payment of the indebtedness evidenced by the Note and payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Assignment, the Mortgage, the Note, the Loan Commitment and any other mortgages, security agreements, assignments of leases and rents, guarantees, letters of credit and any other documents and instruments, Assignor, extensions, replacements, modifications and amendments now or hereafter executed by Mortgagor, Beneficiary (if any) of Mortgage or any other party to secure or guarantee the payment of indebtedness under the Note (the Note, the Loan Commitment, this Assignment, the Mortgage, and all such other documents and instruments, including any and all amendments, extensions, renewals, modifications and replacements, being sometimes referred to collectively as the "Loan Instruments" and individually as a "Loan Instrument") (all indebtedness secured hereby being hereafter sometimes referred to as "Borrower's Liabilities"), Mortgagor and any Beneficiary of Mortgage executing this Assignment (Mortgagor and all such Beneficiaries being collectively referred to herein as "Assignors") hereby assign to Lender, all of their respective right, title and interest in:

RECITALS

THIS ASSIGNMENT OF LEASES AND RENTS IS MADE IN CONNECTION WITH LENDER'S IRREVOCABLE LETTER OF CREDIT NUMBER 3017535034 IN THE AMOUNT OF \$187,190.00 DATED FEBRUARY 20, 1992.

(1) West Suburban Bank, as trustee under trust agreement dated June 8, 1988 and known as trust number 8166 (as to Parcel 1 only)
(2) Gary-Wheaton Bank, as trustee under trust agreement dated November 26, 1991 and known as trust number 8559 (as to Parcel 2 only)

Beneficiary (ies) (if any) of Mortgage: Per trust agreements

Original Principal Amount of the Note: \$187,190.00

ASSIGNMENT OF LEASES AND RENTS

Date: March 13, 1992

This space reserved for recorder's use only.

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3.5 Invalid Provisions to Affect No Other. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Assignment or in any other loan instrument shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other loan instrument shall be in no way affected, prejudiced or disturbed thereby.

3.6 Notices. The headings of the articles, sections, paragraphs and subdivisions of this Assignment are for convenience only, and are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

3.7 Notices. All notices, reports, requests, demands or other instruments required or contemplated to be given or furnished under this Assignment or to Assignor or Lender shall be directed to the place stated in the Note as the place of payment and to Assignor at the address set forth on page 1 of the Note. Any such notices, requests, reports, demands or other instruments shall be (i) personally delivered to the address referred to above, in which case they shall be deemed delivered on the date of delivery to said address or (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three business days after deposit in the U. S. mail, postage prepaid. Either party may change the address to which any such notice, report, demand or other instrument is to be delivered by furnishing written notice of such change to the other party in compliance with the foregoing provisions.

3.8 No Mergers. Notwithstanding the conveyance or transfer of title to any or all of the Mortgaged Property to any Lessee under any of the Leases, the Lessee's leasehold estate under such lease shall not merge into the fee estate and the Lessee shall remain obligated under such lease as assigned by this Assignment.

3.9 Successors and Assigns. This Assignment shall inure to the benefit of Lender and be binding upon Assignor, the heirs, legal representatives, successors and assigns of Assignor and all persons and entities (including owners and lessees) which may hereafter have any interest in the Mortgaged Property.

MISCELLANEOUS

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2.7 Authorization to Lessor. Each present and future Lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Lender upon written demand from Lender stating that an Event of Default has occurred without inquiry as to whether any such default has occurred or whether Lender is rightfully entitled to such rent, following receipt of any such demand, no Lessee shall be given credit for any rent paid other than to Lender thereafter until Lender instructs such Lessee otherwise in writing.

2.8 Reimbursement. Assignor shall reimburse Lender for and indemnify Lender against all expenses, losses, damages and liabilities which Lender may incur by reason of this Assignment or the exercise of any of the rights granted hereunder. Any and all amounts due to Lender under this Paragraph 2.8 shall be immediately due and payable, shall be added to Borrower's Liabilities, shall bear interest after disbursement by Lender at the default rate (as defined in the Note) and shall be secured by this Assignment and the other loan instruments.

2.9 Limitations of Lender's Obligations. Lender's obligations as to any Rents actually collected shall be discharged by application of such Rents to any of the purposes specified in Paragraph 2.6 hereof. Lender shall not be liable for uncollected Rents or for failure to collect Rents or for any claim for damages or set-offs arising out of Lender's management of the Mortgaged Property. Lender shall not be liable to any Lessee for the return of any security deposit made under any Lease unless Lender shall have received such security deposit from the Lessor or such Lessee. Lender shall not be liable for the exercise of any right granted herein to perform any obligation of the Lessor under any of the Leases, nor shall Lender be responsible for any act committed by the Lessor, or any breach or failure to perform by the Lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making Lender a mortgagee in possession of the Mortgaged Property or any part thereof.

2.10 Application of Rents. Lender may apply the Rents, in such order as Lender may determine, to the payment of Borrower's Liabilities for such cost and manner as Lender may elect, and all expenses for the expenses, care and management of the Mortgaged Property.

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

(a) Assignor shall (i) fail to pay when due any indebtedness evidenced by the Note; or (ii) fail to keep, perform or observe any other covenant, condition or agreement on the part of the Assignor in this Assignment, and such failure shall continue for thirty (30) days.

(b) If a default shall occur under any of the loan instruments and the same is not cured within the applicable cure period, if any, provided in such loan instrument.

(c) Exercise of Lender's Rights. Lender may exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Lender.

2.12 Mature Remedies. No delay or omission on the part of Lender in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to Lender under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the other loan instruments.

2.13 Application of Rents. Lender may apply the Rents, in such order as Lender may determine, to the payment of Borrower's Liabilities for such cost and manner as Lender may elect, and all expenses for the expenses, care and management of the Mortgaged Property.

DEFAULTS AND REMEDIES

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1.5 Lender to be Creditor of Lessees. Lender shall be deemed to be the creditor of each Lessee under the Leases in any assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, receivership or probate proceedings affecting such Lessee.

1.6 Additional Covenants. Assignor covenants that (i) it will not modify, change, alter, supplement, amend, cancel or terminate any of the Leases without prior written Lender's consent; (ii) it will not consent to any assignment or subletting of the Lessee's interest under any of the Leases without prior written Lender's consent; (iii) it will not accept rent more than thirty (30) days in advance under any of the Leases; and (iv) it will not assert any claim or take any action against any Lessee under any of the Leases, or otherwise seek recovery, damages or other relief against any such Lessee, which would have the effect of relieving such Lessee from any obligation or liability or which would affect, impair or discharge any right of Lender.

1.7 Lender to be Creditor of Lessees. Lender shall be deemed to be the creditor of each Lessee under the Leases in any assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, receivership or probate proceedings affecting such Lessee.

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P.L.N.: 07-16-101-016

Locality known as: 607 E. Golf Road, Schaumburg, Illinois 60173

Parcel 2:
LOT 2 IN PORTILLO'S SUBDIVISION OF THE NORTH 650 FEET OF THE WEST 500 FEET OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4, LYING SOUTH OF STATE ROUTE 58 (GOLF ROAD) IN SECTION 14, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 31, 1989 AS DOCUMENT 02516453, IN COOK COUNTY, ILLINOIS.

P.L.N.: 16-31-108-022 (Lot 41); 16-31-108-023 (Lot 40); 16-31-108-024 (Lot 39); 16-31-108-025 (Lot 38); 16-31-108-026 (Lot 37); and 16-31-108-027 (Lot 36).

Locality known as: 3253 S. Harlem Avenue, Berwyn, Illinois 60402

Parcel 1:
LOTS 36, 37, 38, 39, 40 AND 41 IN BLOCK 44 IN ANDREWS AND PIPERS THIRD ADDITION TO BERWYN, A SUBDIVISION IN SECTION 31, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

OFFICIAL SEAL
Elizabeth M. Fry
Notary Public, State of Illinois
My Commission Expires 6/30/95

EXHIBIT A TO
ASSIGNMENT OF LEASES AND RENTS DATED MARCH 13, 1992
MORTGAGOR: GARY-WHEATON BANK, TRUSTEE, AND
WEST SUBURBAN BANK, TRUSTEE
LENDER: GARY-WHEATON BANK OF BATAVIA

The foregoing instrument was acknowledged before me this 13 day of March, 1992, by
Patricia L. Fleischer
Trust Officer
(title), and Carrie Ann Moczalski
(name), (title) of West Suburban Bank, an Illinois corporation, on behalf of the corporation.
Notary Public

OFFICIAL SEAL
IAN SNOW
Notary Public, State of Illinois
My Commission Expires 4/3/94

The foregoing instrument was acknowledged before me this _____ day of _____, 19____, by
(name), (title) and _____
(name), (title) of Gary-Wheaton Bank, National Association, a national banking association, on behalf of the association.

STATE OF ILLINOIS)
) ss.)
COUNTY OF DUBUQUE)

Attest: _____
Trust Officer
By: _____
Trust Officer
West Suburban Bank,
as trustee as aforesaid (as to Parcel 1 only)
Attest: _____
Trust Officer
By: _____
Trust Officer
Gary-Wheaton Bank,
as trustee as aforesaid (as to Parcel 2 only)

forth above.
IN WITNESS WHEREOF, Mortgagee and Beneficiary have executed this Assignment as of the date first set
such trustee has attached its customary executory clause and such clause is incorporated herein.
3.10 Executory Clause. If this Assignment is executed by the trustee under an Illinois land trust,
executing this Assignment shall be joint and several.
3.9 Joint and Several Liability. The liability hereunder of Mortgagee and any and all Beneficiaries
hereby shall, in no event, exceed five times the aggregate face amount of the Note.
3.8 Future Advances. This Assignment is given to secure not only existing indebtedness, but also such
future advances, whether such advances are obligatory or are to be made at the option of lender, or otherwise, as are made by
lender under the Note, to the same extent as if such future advances were made on the date of the execution of this Assignment.
The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured
3.7 Governing Law. This Assignment shall be construed, interpreted, enforced and governed by and in
accordance with the laws of the State of Illinois.

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