

# UNOFFICIAL COPY

## ASSIGNMENT OF LEASES AND RENTS

94602833

### 94321053

Date: March 3, 1994

Mortgagor: Dennis R. Howland and David T. Howland

94321053

Original Principal Amount of the Note: \$100,000.00

### 94602833

SEPT-01 RECORDING \$31.00  
140011 TRAM 1125 04/11/94 09:29:00  
140011 \*--94-321053  
COOK COUNTY RECORDER

### RECITALS

ROYAL AMERICAN BANK ("Lender"), having an office at 1604 Colonial Parkway, Inverness, Illinois 60067, has issued a loan commitment (the "Loan Commitment") pursuant to which Lender has agreed, subject to the terms and conditions thereof, to make a loan to Mortgagor in the Original Principal Amount of the Note (the "Loan"). The Loan is evidenced by that certain note of even date herewith executed by Mortgagor in favor of Lender, in the Original Principal Amount of the Note (the "Note"). The payment of the Note is secured by: (a) this Assignment; (b) a Mortgage (the "Mortgage") executed by Mortgagor pertaining to property defined therein as the "Mortgaged Property" of which the parcel of land legally described in Exhibit A attached hereto and all improvements thereon and appurtenances thereto form a part; and (c) the other Loan Instruments (hereinafter defined).

A. T. G. F.  
BOX 370

### GRANTING CLAUSES

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, guaranties, letters of credit and any other documents and instruments and any and all renewals, extensions, replacements and amendments now or hereafter executed by Mortgagor, 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, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "Loan Instruments" and individually as a "Loan Instrument") (all indebtedness secured hereby being hereinafter sometimes referred to as "Borrower's Liabilities"), Mortgagor, (Mortgagor referred to herein as "Assignor"), hereby assign to Lender, all of their respective right, title and interest in:



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(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 A 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 authorizes Lender:

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

ORDER NO. 1033462 283

DEPT-11 RECORD-1 \$31.00  
146666 TRAM 1934 07/12/94 10:25:00  
41024 1 L.C. \*--94-602833  
COOK COUNTY RECORDER

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3/10/94

- (ii) To prosecute or defend any suits in connection with the Mortgaged Property or enforce or take any other action in connection with the Leases in the name of Lender and Mortgagor;
- (iii) To make such repairs to the Mortgaged Property as Lender may deem advisable; and
- (iv) 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.

I

COVENANTS AND WARRANTIES

- 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.
- 1.3 **Warranties.** Assignor represents, covenants and warrants as follows: (i) Assignor is the sole owner of the lessor's entire interest in the Leases and the other Collateral and has full right to assign the Collateral; (ii) there has been no previous assignment and, without Lender's prior written consent, Assignor will permit no future assignment (as collateral or otherwise) of the lessor's right, title or interest in any of the Leases or other Collateral; (iii) the Leases are valid and enforceable in accordance with their terms; (iv) none of the Leases listed in Exhibit B has been altered or amended except as shown on said exhibit; (v) the lessees are not in default under the Leases and have no defenses, set-offs or counterclaims against the lessor under the Leases; (vi) no rent reserved in the Leases has been assigned; and (vii) no rent for any period subsequent to the date hereof has been collected more than thirty (30) days in advance of the date due.
- 1.4 **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.
- 1.5 **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.

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## DEFAULTS AND REMEDIES

- 2.1 **Event of Default.** The term "Event of Default," wherever used in this Assignment, shall mean any one or more of the following events:
- (a) If 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.
- 2.2 **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.
- 2.3 **Nature of 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.
- 2.4 **Application of Rents.** Lender may apply the Rents, in such order as Lender may determine, to the payment of Borrower's Liabilities in such order and manner as Lender may elect, and all expenses for the expenses, care and management of the Mortgaged Property.
- 2.5 **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 2.4 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 obligated 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.
- 2.6 **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 2.6 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.
- 2.7 **Authorization to Lessees.** 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.

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## MISCELLANEOUS

- 3.1 **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 Mortgage Property.
- 3.2 **No Merger.** 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.
- 3.3 **Notices.** All notices, reports, requests, demands or other instruments required or contemplated to be given or furnished under this Assignment to Assignor or Lender shall be directed to Lender at the place stated in the Note as the place of payment and to Assignor at the following address 564 Cumnock Road, Inverness, Illinois 60067. 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.
- 3.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Assignment are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.
- 3.5 **Invalid Provisions to Affect No Others.** 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 **Changes.** The terms and provisions hereof may be released, changed, waived, discharged or terminated only by an instrument in writing signed by Assignor and Lender. Any agreement hereafter made by Assignor and Lender relating to this Assignment shall be superior to the rights of the holder of any intervening lien or encumbrance.
- 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.
- 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 hereby shall, in no event, exceed five times the aggregate face amount of the Note.

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3.9 Joint and Several Liability. The liability hereunder of Mortgagor executing this Assignment shall be joint and several.

MORTGAGOR: Dennis R. Howland and David T. Howland

By: *Dennis R. Howland*  
Dennis R. Howland

*David T. Howland*  
David T. Howland

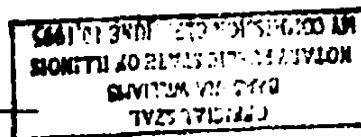
STATE OF ILLINOIS )  
COUNTY OF Cook ) ss.

I, the undersigned, a Notary Public in and for said county and state, DO HEREBY CERTIFY that Dennis R. Howland & David T. Howland, personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 3rd day of March, 1994.

My Commission Expires: 6-10-95

*Barbara Williams*  
Notary Public



PREPARED BY AND RETURN TO:

Royal American Bank  
Attn: ~~Barbara Williams~~ SADY BELVEDERE  
1604 Colonial Parkway  
Inverness, Illinois 60067

Cook County Clerk's Office

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## EXHIBIT A

### Legal Description

LOT 29 IN WEST MEADOWS, BEING A SUBDIVISION OF PART OF SECTION 17, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

### Common Address

564 Cumnock Road, Inverness, Illinois 60067

### Permanent Index Number

02-17-106-006

Property of Cook County Clerk's Office

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