

# UNOFFICIAL COPY

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## ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT, dated as of September 19, 1994 by and between WESTBROOK CORPORATE CENTER V ASSOCIATES L.P., an Illinois limited partnership ("Beneficiary"), and LASALLE NATIONAL TRUST, N.A., not personally but as successor trustee to LaSalle National Bank u/t/a dated February 9, 1990 and known as Trust No. 115265 ("Trustee") (Beneficiary and Trustee are sometimes collectively referred to herein as "Assignor"), and CPC ADVISORS NO. 1, L.L.C., an Illinois limited liability company ("Assignee").

WHEREAS, Assignor and Assignee are parties to that certain Loan Agreement of even date herewith (the "Loan Agreement"), between Assignor and Assignee, pursuant to which Assignee has agreed to make a loan to Assignor in the aggregate principal amount of up to \$27,500,000 (the "Loan") on the terms and conditions set forth in the Loan Agreement and for the purposes set forth therein; and

WHEREAS, as evidence of the indebtedness incurred under the Loan, Assignor has executed and delivered to Assignee a promissory note of even date herewith, payable to Assignee, in the original principal amount of \$27,500,000 (the "Note"), the payment of which is secured by a first mortgage of even date herewith (the "Mortgage") from Trustee covering the real estate described therein as well as other security; and

WHEREAS, the execution and delivery of this Assignment is a condition precedent to the performance by Assignee of its obligations under the Loan Agreement;

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, Assignor agrees as follows:

1. All terms used herein shall have the definitions set forth in the Loan Agreement, unless such terms are otherwise defined herein.

DEPT-01 RECORDING \$41.00  
T40011 TRAN 3839 09/20/94 15:20:00  
4328 RV \*\*94-821084  
COOK COUNTY RECORDER

2. Assignor hereby grants, transfers and assigns to Assignee all of its interest in any and all leases demising and leasing all or portions of the premises legally described on Exhibit A attached hereto and made a part hereof ("Premises"), whether currently in effect or to be executed by Assignor after the date hereof, together with any and all extensions, modifications, amendments and renewals thereof (the "Leases") together with all rents payable by the lessees under the Leases (the "Lessees") and all benefits and advantages to be derived therefrom to hold and receive them unto Assignee, and together with all rights against guarantors, if any, of the obligations of the Lessees under the Leases.

This Assignment is given for the purpose of assuring (i) the payment of all sums now or at any time hereafter due Assignee under the Note and/or the other Loan Documents, and (ii) the performance and discharge of the obligations, covenants, conditions, and agreements of Assignor contained herein and in the Loan Documents. This Assignment is and shall be primary and on a parity with the real estate conveyed by the Mortgage and not secondary. All amounts collected hereunder, after deducting the expenses of operation of

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Please return to: Jim Shaw  
Ticor Title Insurance  
203 N. LaSalle, Suite 1400  
Chicago, IL 60601  
Re: 104-32563-14

BOX 15  
NTS

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the Premises and after deducting the expenses of collection, shall be applied on account of the indebtedness secured by the Loan Documents, or in such other manner as may be provided for in the Loan Documents. Nothing herein contained shall be construed as constituting Assignee a trustee or mortgagee in possession.

3. Assignor does hereby empower Assignee, its agents or attorneys, to collect, sue for, settle, compromise and give acquittances for all of the rents that may become due under the Leases and avail itself of and pursue all remedies for the enforcement of the Leases and Assignor's rights in and under the Leases as Assignor might have pursued but for this Assignment.

4. Trustee represents and Beneficiary represents and warrants that as of the date hereof, the Leases are in full force and effect; that Assignor has not heretofore assigned or pledged the same or any interest therein, and, to the knowledge of Beneficiary, no default exists on the part of any of the Lessees, or Assignor, as Lessor, in the performance on the part of either, of the terms, covenants, provisions or agreements in the Leases contained; and Assignor knows of no condition which with the giving of notice or the passage of time or both would constitute a default on the part of any of the Lessees or Assignor; that no rent has been paid by any Lessee for more than one installment in advance, and that the payment of none of the rents to accrue under the Leases has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Assignor; that no security deposit has been made by any Lessee under the Leases except as shown on Exhibit B.

5. Assignor agrees:

(a) that the Leases shall remain in full force and effect irrespective of any merger of the interest of the Lessor and Lessee thereunder;

(b) except as may be permitted pursuant to the terms of the Loan Agreement, not to terminate (except in instances where the tenant to a Lease has materially defaulted), modify or amend any of the Leases or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof without the written consent of Assignor; and that any attempted termination, modification or amendment of any of the Leases without such written consent shall be null and void;

(c) not to collect any of the rent, income and profits arising or accruing under any of the Leases in advance of the time when the same become due under the terms thereof, except as permitted by the Loan Agreement;

(d) not to discount any future accruing rents;

(e) not to execute any other assignments of any of the Leases or any interest therein or any of the rents thereunder;

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(f) to perform all of Assignor's covenants and agreements as lessor under the Leases and not to suffer or permit to occur any release of liability of any of the Lessees, or any right of the Lessees to withhold payment of rent; and to promptly provide Assignee with copies of any notices of default sent or received by Assignor;

(g) if so requested by Assignee, to enforce the Leases and all remedies available to Assignor against the Lessees, in case of default under any of the Leases by any of the Lessees;

(h) that none of the rights or remedies of the Assignee under the Mortgage shall be delayed or in any way prejudiced by this Assignment;

(i) that notwithstanding any variation of the terms of the Mortgage or any extension of time for payment thereunder or any release of any portion of the Premises, the Leases and benefits hereby assigned shall continue as additional security in accordance with the terms hereof until the indebtedness secured hereby is repaid in full;

(j) not to alter, modify or change the terms of any guarantees of any of the Leases or cancel or terminate such guarantees without the prior written consent of Assignee;

(k) not to consent to any assignments of any of the Leases, or any subletting thereunder without the prior written consent of Assignee unless either (i) Assignor would be authorized at the time of the assignment or sublease under the terms of the Loan Agreement to enter into a lease with such proposed assignee or sublessee without Assignee's consent on the terms and conditions contained in the applicable lease, or (ii) the existing tenant is not released from any obligation under such Lease; and

(l) not to request, consent to, agree to or accept a subordination of any of the Leases to any mortgage or other encumbrance now or hereafter affecting the Premises.

6. Upon issuance of a deed or deeds pursuant to foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor. Assignor hereby irrevocably appoints Assignee and its successors and assigns, as its agent and attorney in fact, to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose.

7. In the exercise of the powers herein granted to Assignee, no liability shall be asserted or enforced against Assignee, all such liability being hereby expressly waived and released by Assignor. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under any of the Leases, or under or by reason of this

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Assignment, and, except for any liability, loss or damage caused solely as a result of the gross negligence or wilful misconduct of Assignee, Assignor shall and does hereby agree to indemnify, defend and hold Assignee, and its officers, directors, employees and agents, free and harmless of and from any and all liability, loss or damage which Assignee may incur under any of the Leases or under or by reason of this Assignment 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 agreements contained in any of the Leases. Should Assignee incur any such liability, expense, cost, loss or damage (1) under any of the Leases (for which it is to be indemnified as aforesaid), or (2) by reason of the exercise of Assignee's rights under this Assignment, or (3) in the defense of any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees and expenses, shall be secured hereby and by all of the Loan Documents (whether or not such amount, when aggregated with other sums secured by the Loan Documents, exceeds the face amount of the Note) and shall (a) be due and payable immediately upon demand by Assignee, and (b) bear interest at the Default Rate set forth in the Note.

8. The occurrence of any of the following shall constitute an Event of Default hereunder:

(a) a default by Assignor in the observance or performance of any obligation, covenant, condition or agreement hereof, which default is not cured within fifteen (15) days after written notice thereof to Assignor, provided, however, that if such default is reasonably susceptible of cure, but cannot be cured within such fifteen (15) day period, then so long as Assignor promptly commences cure and thereafter diligently pursues such cure to completion, the cure period shall be extended for an additional thirty (30) days, within which Assignor may complete such cure;

(b) any representation or warranty made by Assignor herein which is not true and correct in any material respect as of the date hereof; and

(c) a default by Assignor under any of the Loan Documents, which default is not cured within any applicable grace period.

9. Although it is the intention of the parties that this instrument shall be an absolute, unconditional and presently effective assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Assignee shall not exercise any of the rights or powers herein conferred upon it until the occurrence of an Event of Default, but upon the occurrence of an Event of Default, Assignee shall be entitled to all rents and other amounts then due under the Leases and thereafter accruing without the institution of legal proceedings of any kind whatsoever, and this Assignment shall constitute a direction to and full authority to the Lessees to pay all such amounts to Assignee upon notice to the Lessees from Assignee. Each of the Lessees, upon written notice from Assignee, shall be and is hereby authorized by Assignor to pay to Assignee any rental or other sums which may be or thereafter become due under the Leases, or any of them, and to perform each of such Lessee's undertakings under the Leases without any obligation to determine whether or

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not such an Event of Default has in fact occurred. The requirement for notice to the Lessees is intended solely for the benefit of such Lessees and not Assignor or any person claiming through or under Assignor and all payments made to Assignor by the Lessees after an Event of Default, whether before or after notice to the Lessees that an Event of Default has occurred, shall be held in trust by Assignor for the benefit of Assignee.

10. Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification, or amendment of any of the Leases prohibited by the terms of this Assignment and any amounts received by Assignor as rents, income, issues, or profits from the Premises from and after the occurrence of an Event of Default, shall be held by Assignor as Trustee for Assignee and all such amounts shall be accounted for to Assignee and shall not be commingled with other funds of Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Assignee as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith; by way of example and not of limitation, such notice may be given by an instrument recorded with the Recorder of Deeds of the county in which the Premises are located stating that Assignor has received or will receive such amounts in trust for Assignee.

11. In the event any Lessee should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of any of the Leases, Assignor covenants and agrees that if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such lease will be made payable to both Assignor and 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 monthly debt service on the indebtedness secured by this Assignment.

12. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents to secure said indebtedness contained in the Mortgage or in any other document. Any provision in the Loan Agreement that pertains to this Assignment shall be deemed to be incorporated herein as if such provision were fully set forth in this Assignment. In the event of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail. A provision in this Assignment shall not be deemed to be inconsistent with the Loan Agreement by reason of the fact that no provision in the Loan Agreement covers such provision in this Assignment.

13. This Assignment shall be assignable by Assignee to any assignee of Assignee under the Loan Agreement and all representations, warranties, covenants, powers and rights herein contained shall be binding upon, and shall inure to the benefit of, Assignor and Assignee and their respective legal representatives, successors and assigns, including, in the case of Assignee, all holders, from time to time, of the Note.

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14. All notices, demands, requests and other communications which are required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given when delivered or mailed in the manner set forth in the Loan Agreement.

15. This Assignment is made for collateral purposes only and the duties and obligations of Assignor under this Assignment shall terminate and be released when all sums due Assignee under the Loan Documents are paid in full.

16. This Assignment shall be governed by and construed under the internal laws of the State of Illinois. To the greatest extent permitted by law, Assignor hereby waives any and all rights to require marshalling of assets by Assignee.

17. It is expressly intended, understood and agreed that this Assignment, and the other Loan Documents, are made and entered into for the sole protection and benefit of Assignor and Assignee, and their respective successors and assigns; that no other person shall have any right at any time to action hereon or rights to the proceeds of the Loan; that the Loan proceeds do not constitute a trust fund for the benefit of any third party; that no third party shall under any circumstances be entitled to any equitable lien on any undisbursed Loan proceeds at any time.

18. The relationship between Assignor and Assignee is solely that of a lender and borrower, and nothing contained herein or in any of the Loan Documents shall in any manner be construed as making the parties hereto partners, joint venturers or any other relationship other than lender and borrower.

19. Assignor and Assignee intend and believe that each provision in this Assignment comports with all applicable local, state or federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Assignment is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision or public policy, and if such court should declare such portion, provision or provisions of this Assignment to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Assignor and Assignee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein and that the rights, obligations and interests of Assignor and Assignee under the remainder of this Assignment shall continue in full force and effect.

20. The provisions of Section 11.17 of the Loan Agreement are hereby incorporated herein by reference.

21. This instrument is executed by Trustee, not personally but solely as successor trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed hereunder (whether or not the same are expressed in the terms of covenants,

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promises or agreements) by Trustee are undertaken by it solely as Trustee, as aforesaid, and not individually and no personal liability shall be asserted to be enforceable against Trustee by reason of any of the terms, provisions, stipulations, covenants and conditions contained in this instrument.

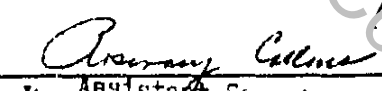
IN WITNESS WHEREOF, LASALLE NATIONAL TRUST, N.A., not personally but as successor trustee, as aforesaid, has caused these presents to be executed by its ~~SR. VICE PRESIDENT~~ and attested by its ~~Assistant Secretary~~ and its corporate seal to be hereunto affixed, and Beneficiary has executed this Assignment as of the first date set forth above.

TRUSTEE (AS ASSIGNOR):

LASALLE NATIONAL TRUST, N.A., not personally but as successor trustee to LaSalle National Bank u/t/a dated February 9, 1990, and known as Trust No. 115265

By:   
Its: SR. VICE PRESIDENT

Attest:

By:   
Its: Assistant Secretary

BENEFICIARY (AS ASSIGNOR):

WESTBROOK CORPORATE CENTER V  
ASSOCIATES L.P., an Illinois limited partnership

By: Podolsky Family Limited Partnership, an Illinois limited partnership, its sole general partner

By: Milton Podolsky Revocable Trust u/t/a dated May 26, 1978, as amended and restated, its sole general partner.

By:   
Milton Podolsky, Trustee

This instrument was prepared by and should be returned to:

Steven R. Davidson  
Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
Chicago, Illinois 60606



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## EXHIBIT A - LEGAL DESCRIPTION

### PARCEL 1:

Parcel 5 of Lot 1 in Westbrook Corporate Center P.U.D., being a subdivision of part of the Northeast 1/4 of Section 30, Township 39 North, Range 12 East of the Third Principal Meridian, according to the plat of survey describing said Parcel 5 attached as Exhibit C to the Instrument recorded July 27, 1990 as Document No. 90-362,816, in Cook County, Illinois.

### ALSO DESCRIBED IS:

That part of Lot 1 in Westbrook Corporate Center P.U.D., being a Subdivision of part of the Northeast 1/2 of Section 30, Township 39 North, Range 12, East of the Third Principal Meridian, described as follows:

Commencing at the Southeast corner of said Lot 1; thence North 89 Degrees 50 Minutes 55 Seconds West along the South line of said Lot 1, 741.276 feet to the place of beginning of the tract of land to be described herein; thence continuing North 89 Degrees 50 Minutes 55 Seconds West along the South line of said Lot 1, 702.479 feet to the Southwest corner of said Lot 1; thence North 00 Degrees 14 Minutes 30 Seconds West along the West line of said Lot 1, 457.575 feet; thence South 89 degrees 55 Minutes 02 Seconds East, 149.61 feet; thence North 00 Degrees 04 Minutes 58 Seconds East, 115.0 feet; thence South 89 Degrees 55 Minutes 02 seconds East, 319.37 feet; thence South 29 Degrees 55 Minutes 02 Seconds East 54.212 feet; thence South 89 Degrees 55 Minutes 02 Seconds East, 208.97 feet; thence South 00 Degrees 04 Minutes 58 Seconds West 520.56 feet to the place of beginning in Cook County, Illinois.

### PARCEL 2:

Easements for the benefit of Parcel 1 as defined in Sections 2.2, 2.3, 2.4, 2.5 and 2.6 of the Westbrook Corporate Center Declaration of Easements, Covenants and Restrictions recorded April 13, 1988 as Document No. 88-153,449 for the use of the "Roadways" (defined therein) and walkways; for the installation, use, operation, maintenance, repair, replacement and enlargement of the "Facilities" (defined therein); to abut and connect "Buildings" to "Link Structures" (defined therein); to construct and maintain a passageway opening into said "Link Structures"; for the installation and maintenance of signage along Wolf Road; for temporary construction use; for the ownership, operation and maintenance of "Improvements" (defined therein) which may encroach upon the servient premises and for entry upon portions of the servient premises adjacent to said structures for inspecting, maintaining, repairing, removing or reconstructing said structures, all such easements affecting parts of the following described premises, and being more fully described in said Section 2.2, 2.3, 2.4, 2.5 and 2.6 of said Declaration, to wit:

That part of Lot 1 in Westbrook Corporate Center P.U.D., being a subdivision of part of the Northeast 1/4 of Section 30, Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois, excepting therefrom those parts falling within Parcel 1 herein.

Permanent Index Number: 15-30-200-046

Volume: 174

90-362,816

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EXHIBIT 5

## SCHEDULE OF SECURITY DEPOSITS

<u>Tenant</u>	<u>Amount</u>
Builders Association	\$ 8,678.75
Cap Gemini America, Inc.	15,823.50
Darwill Press, Inc.	2,153.00
Electrical Contractors	6,950.45
Hoegh Lines Lines Agencies	2,898.00
P&O Containers, Inc.	8,405.83
Krusinski Construction	<u>8,510.25</u>
GRAND TOTAL:	<u>\$53,419.78</u>

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STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

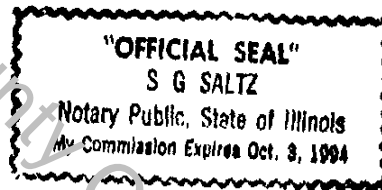
I, S.G. Saltz, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Milton Podolsky, trustee of the Milton Podolsky Revocable Trust u/t/a dated May 26, 1978, as amended and restated, a \_\_\_\_\_ trust, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such trustee, appeared before me this day in person and acknowledged that he signed and delivered said instrument as such trustee of such trust, as his own free and voluntary act, as the free and voluntary act of the trust, as the free and voluntary act of the Podolsky Family Limited Partnership, an Illinois limited partnership, and as the Westbrook Corporate Center V Associates LP, an Illinois limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 19th day of Sept, 1994

S.G. Saltz  
Notary Public

My Commission Expires:

\_\_\_\_\_



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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

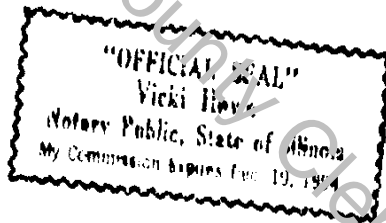
I, VICKI HOWE, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that JOSEPH W. LANG, the SR. VICE PRESIDENT of LaSalle National Trust, N.A. ("Trustee"), not personally but as successor trustee as aforesaid, and Rosomary Collins, the ASSISTANT SECRETARY said Trustee, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such SR. VICE PRESIDENT and ASSISTANT SECRETARY respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as such officers of said Trustee, as their own free and voluntary act and as the free and voluntary act of the Trustee, as trustee as aforesaid, for the uses and purposes therein set forth, and the said Assistant Secretary then and there acknowledged that       , as custodian of the corporate seal of said Trustee, did affix the corporate seal of said Trustee to said instrument of his own free and voluntary act, and as the free and voluntary act of said Trustee, as trustee aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 19th day of Sept., 1994.

Vicki Howe  
Notary Public

My Commission Expires:

12/19/94



Clerk's Office

94822083