

# UNOFFICIAL COPY

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## ASSIGNMENT OF RENTS AND LEASES

96-083913

THIS ASSIGNMENT OF RENTS AND LEASES (the "Assignment") is made as of the 22nd day of November, 1996, by COLE TAYLOR BANK, as successor Trustee to HARRIS TRUST and SAVINGS BANK, not personally but solely as Trustee under Trust Agreement dated September 23, 1977 and known as Trust Number 37947 with offices at 850 West Jackson Boulevard, Chicago Illinois 60607 ("Borrower") to PROVIDENT MUTUAL LIFE INSURANCE COMPANY, a Pennsylvania corporation, with offices at The Provident Mutual Building, 1600 Market Street, PO Box 7378, Philadelphia, PA.

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COOK COUNTY RECORDER

## BACKGROUND

A. Borrower is indebted to Lender in the principal sum of SEVEN HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 (\$775,000.00) DOLLARS (the "Loan"), with interest thereon, pursuant to a certain Mortgage Note of even date herewith (the "Note") made payable to the order of Lender. The Note is secured by a Mortgage and Security Agreement (the "Mortgage") of even date herewith from Borrower to Lender encumbering certain real property described in Exhibit "A" attached hereto and hereby made a part hereof (the "Mortgaged Premises"). The Note, Mortgage and other documents are hereinafter sometimes collectively referred to as the "Loan Documents". Capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Loan Documents.

DEPT-10 PENALTY \$38.00

B. As a condition of making the Loan to Borrower, Lender has required Borrower to execute and deliver this Assignment.

## TERMS AND CONDITIONS

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In consideration of the Loan, and intending to be legally bound, Borrower and Lender hereby agree:

1. Assignment. In consideration of the Loan and Lender's undertakings pursuant thereto, and in order to secure the payment of all sums due to Lender or any other sums required to be paid to parties other than Lender pursuant to the Note and the Mortgage, and the timely performance of all of the terms, covenants, representations, warranties and conditions contained in the Loan Documents, Borrower hereby presently and unconditionally grants, conveys, transfers and assigns to Lender, its successors and assigns, all of Borrower's rights, title, interest and privilege in, under, and to the following:

1.1. All leases, subleases, licenses and agreements to let or use, whether oral or written, now or hereafter in existence with respect to the Mortgaged Premises or any part thereof (collectively, the "Leases"); and

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1.2. All rents (whether denoted as minimum rent, percentage rent, additional rent or otherwise), issues, income, profits, revenues, proceeds, deposits (whether security or otherwise), termination fees, buy-out fees and any other fees made or to be made by any tenant in lieu of rent, any award made hereafter to Borrower in any court proceeding involving any of the tenants under any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and all other rights and benefits due or to become due under the Leases (collectively, the "Rents").

## 2. Performance by Borrower.

2.1. Notwithstanding this Assignment, Borrower shall remain fully and solely liable for all obligations and covenants undertaken by it pursuant to any Lease or imposed upon Borrower as landlord. Lender may elect, in its sole discretion, to assume any and all such obligations of Borrower under any Lease by written notice to the tenant under such Lease with a copy to Borrower; provided, however, that Borrower shall remain liable for such obligations notwithstanding such election by Lender.

2.2. Notwithstanding any legal presumption to the contrary, Lender shall not be obligated by reason of acceptance of this Assignment to perform any obligation or covenant of Borrower under the Leases. This Assignment shall not place responsibility for the collection of Rents, or for the control, care, management, upkeep, operation or repair of all or any part of the Mortgaged Premises upon Lender, or make Lender liable or responsible for any negligence in the collection of Rents, or in the control, care, management, upkeep, operation or repair of all or any part of the Mortgaged Premises resulting in loss or injury or death to any tenant, licensee, employee or other person or for any loss of or damage to the property of any of the foregoing.

2.3. Borrower hereby agrees to defend, indemnify and hold harmless Lender from any and all claims, liability, loss or damage, costs and expenses (including attorneys' fees) which Lender may incur under 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 Lender by reason of any alleged obligation or undertaking on Lender's part to perform or discharge any of the terms of any Lease except for actions arising solely by reason of Lender's gross negligence.

2.4. Borrower agrees that it will (1) faithfully observe, discharge and perform all of the obligations and agreements imposed upon Borrower under the Leases; (2) give to Lender prompt notice of the receipt of any notice received by Borrower of a default under any Lease by Borrower or any tenant, together with a copy of such default notice; (3) enforce the performance or observance of every covenant and condition to be performed or observed by any tenant under any Lease; (4) not terminate any Lease or accept a surrender thereof unless required to do so by the terms of such Lease; (5) at Borrower's expense appear in and defend any action growing out of or in any manner connected with any Lease or the obligations or liabilities of Borrower or the landlord or any tenant or guarantor thereunder; and (6) deliver to Lender, upon

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written demand, a statement specifying the Rents derived or received from the Leases for the period specified in such demand, the disbursements made by Borrower for such period and the names of all tenants of the Mortgaged Premises, together with true and correct copies of all Leases that have not been delivered to Lender previously for which Rent is so accounted. Borrower shall not do any of the following without the prior written consent of Lender: (a) consent to any modification, alteration, cancellation, extension or assignment of any of the Leases; (b) reduce, waive or defer payment of the Rent under any of the Leases; (c) collect or accept payment of any of the Rents arising or accruing under any Lease more than one month in advance of the time when the same shall become due under the terms of such Lease; or (d) waive or release any tenant from any obligation or condition under any of the Leases.

2.5. This Assignment shall take effect immediately. Lender hereby grants to Borrower a revocable license to collect Rents due to Borrower under the Leases and to retain, use and enjoy the same; provided, however, that such license shall, at Lender's option, terminate with or without notice to Borrower immediately upon or, at Lender's option, at any time after the occurrence of an Event of Default hereunder after applicable notice and grace periods, if any. Any Rents or any such other amounts collected by Borrower after the delivery of a notice by Lender to the effect that Lender is exercising its option hereunder shall be deemed Lender's property pursuant to this Assignment, shall be paid to Lender on demand, and Borrower shall be obligated to account for such funds to Lender whether or not Lender gives the notice to any tenants provided for in Section 5 hereof.

3. Warranties. Borrower represents and warrants as follows:

3.1. The Leases shall be subordinate in estate, lien, operation and effect to this Assignment, the Note, the Mortgage and all of the other Loan Documents.

3.2. Borrower has title to and full right to assign the Leases and the Rents thereunder; and no other assignment of any interest in any of the Rents or Leases has been made (except to Lender).

3.3. There are no leases or agreements to lease all or any part of the Mortgaged Premises now in effect except those identified in the rent roll certified to Lender as of the date hereof. All Leases are in full force and effect.

3.4. There is no existing default by Borrower or tenant under the provisions of any of the Leases. No event has occurred which due to the passage of time, the giving or failure to give notice, or both, would constitute a default under any of the Leases.

4. Events of Default. The occurrence of any one or more of the following events shall constitute an event of default (an "Event of Default") hereunder:

4.1. a breach, default or violation of any of the terms, covenants, conditions, representations or provisions contained herein;

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4.2. a breach, default or violation by Borrower under the terms of the Leases; or

4.3. a breach, default or violation of any of the terms, conditions, covenants, representations or provisions contained in any of the Loan Documents, which breach, default or violation is not cured within any applicable, cure period, if any, provided in the Loan Documents.

5. Remedies. Upon the occurrence of an Event of Default, after applicable notice and grace periods, if any, the license granted to the Borrower under Section 2.5 shall terminate without notice to Borrower and in addition to all other remedies available to Lender, Lender shall be entitled to exercise any one or more of the following rights, powers and remedies, without regard to the adequacy of the security for the sums secured hereby and with or without bringing any action or proceeding:

5.1. Enter and take possession of the Mortgaged Premises.

5.2. Collect, in Lender's name or in the name of Borrower or in the name of Lender and Borrower, the Rents accrued but unpaid and in arrears as of the date of such Event of Default, as well as the Rents which thereafter become due and payable. Borrower hereby authorizes Lender to give written notice of this Assignment at any time before or after an Event of Default to each tenant of all or any part of the Mortgaged Premises. Borrower hereby authorizes and directs all tenants to pay Rent directly to Lender upon receipt from Lender of a statement that an Event of Default has occurred accompanied by a demand for such payment, without any further proof of Borrower's default. Borrower agrees (1) that the tenants shall have the right to rely upon any such statement and demand by Lender, (2) that the tenants shall pay the Rents to Lender without any obligation or right to inquire as to whether such default actually exists and notwithstanding any notice from or claim by Borrower to the contrary, (3) that Borrower shall have no right or claim against the tenants for such Rent payments so made, and (4) that until the receipt of written instructions by Lender to the contrary, all tenants shall pay the Rents to Lender. Upon delivery of such notice, enforcement of each tenant's covenants and the exercise of Borrower's rights and remedies under the Leases shall be under the direction and control of Lender, which may exercise such rights and remedies in Lender's name as assignee hereunder, and Borrower shall facilitate in all reasonable ways Lender's collection of the Rents and cooperate as Lender shall request, and Borrower shall, upon the request of Lender, execute and deliver a written notice to each tenant under the Leases directing such tenants to pay the Rents to Lender. Lender shall incur no liability to Borrower on account of a failure or an alleged failure to collect rent or other sums due under the Leases or to enforce tenant's covenants or Borrower's rights and remedies thereunder.

5.3. Take over and assume the management, operation and maintenance of the Mortgaged Premises and perform in Lender's name or in the name of Borrower or in the name of Lender and Borrower, all acts necessary and proper, and expend such sums out of the income of the Mortgaged Premises as may be necessary in connection therewith, including the

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right to enter into and enforce new Leases, to enforce or cancel existing Leases, to alter or amend the terms of existing Leases, to renew existing Leases or to make concessions to the parties thereto.

5.4. Endorse, as Borrower's attorney-in-fact, Borrower's name on all checks, drafts and similar forms of payment received in payment of the Rents. The aforesaid power of attorney, being for security, shall be deemed coupled with an interest and shall be irrevocable.

5.5. Exercise any and all rights and remedies available to a secured party under the Uniform Commercial Code and any and all other rights and remedies now or hereafter available at law or in equity.

## 6. Application of Rents.

6.1. Any amounts received or collected by Lender, its successors or assigns, by virtue of this Assignment shall be applied for the following purposes, but not necessarily in the order named, the priority and application of such funds being within the sole discretion of Lender:

6.1.1. To the payment of all necessary expenses for the operation, protection and preservation of the Mortgaged Premises, and the usual and customary fees for management services and reasonable attorneys' fees incurred by Lender in obtaining advice in connection with any default which gave rise to the implementation of this Assignment;

6.1.2. To the payment of taxes and assessments levied and assessed against the Mortgaged Premises described herein as said taxes and assessments become due and payable;

6.1.3. To the payment of premiums due and payable on any insurance policy relating to the Mortgaged Premises; and

6.1.4. To the payment of installments of late charges, interest or interest and principal and any other sums due and payable hereunder and under the Note and the other Loan Documents.

## 7. No Waiver.

7.1. The acceptance of this Assignment, the entering upon and taking possession of the Mortgaged Premises, and the collection of Rents under the Leases assigned hereby shall not constitute a waiver of any rights of Lender under the terms of the Loan

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Documents. All rights and remedies of Lender hereunder and under the Loan Documents are cumulative and concurrent and may be exercised singly, successively or concurrently, at the sole discretion of Lender.

7.2. The receipt by Lender of any Rents pursuant to this Assignment before or after the institution of foreclosure or sale proceedings under the Mortgage shall not cure such default or affect such proceedings or any sale pursuant thereto.

8. List of Leases. Borrower shall, upon the request of Lender, furnish a complete list, as of the date of such request, of all Leases and provide such further reasonable detail as may be requested by Lender. Further, as requested by Lender, Borrower shall deliver to Lender executed or certified copies of all Leases, and all correspondence and memoranda relating thereto. Such requests may be made at any reasonable time. Monthly requests, or more frequent requests, if made after an Event of Default under this Assignment, shall be deemed to be reasonable.

9. Further Assignments. Borrower shall immediately, upon request of Lender, execute, acknowledge and deliver specific separate assignments of any Leases.

10. Termination of Assignment. The repayment in full of the Note and the full performance of the obligations under the Loan Documents shall render this Assignment automatically void with respect to the Mortgaged Premises.

11. Construction. When the context so requires, the singular shall include the plural and conversely and use of any gender shall include all genders.

12. Notices. All notices and other communications required under this Assignment shall be given in the manner specified in the Mortgage.

13. Exclusive Jurisdiction. Borrower hereby consents to the exclusive jurisdiction of the Courts of the State of Illinois, and the United States District Court for the district in which the Mortgaged Premises are located in any and all actions or proceedings arising hereunder or pursuant hereto, and irrevocably agrees to service of process by registered or certified mail, return receipt requested, to its address set forth herein or such other address as Borrower may direct by notice to Lender. Borrower irrevocably as an independent covenant waives a jury trial and the right hereto in any action or proceeding between Borrower and Lender whether hereunder or otherwise.

14. Headings. The headings preceding the text of the paragraphs of this Assignment are inserted only for convenience of reference and shall not constitute a part of this Assignment, nor shall they in any way affect its meaning, construction or effect.

15. Governing Law. This Assignment shall be governed by and construed in accordance with Illinois law.

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16. Binding Obligation. This Assignment shall be binding upon Borrower's successors in title or interest and Borrower's heirs, executors, administrators, successors and assigns and each of such persons shall be deemed to have made the representations and warranties set forth herein. This Assignment shall inure to the benefit of Lender and its successors and assigns, including any assignee of the Loan Documents or participant in the Loan.

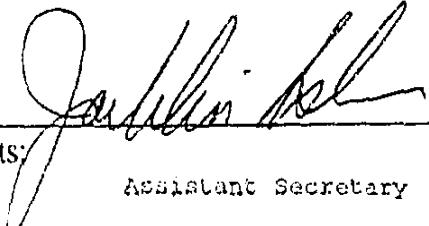
17. Modification. This Assignment may not be modified except by a written agreement executed by the parties hereto.

18. Trustee Exculpation. This Assignment is executed by COLE TAYLOR BANK, as successor Trustee to HARRIS TRUST and SAVINGS BANK, not personally but solely as Trustee under Trust Agreement dated September 23, 1977 and known as Trust No. 37947 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 by COLE TAYLOR BANK are undertaken by it solely as Trustee, as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against COLE TAYLOR BANK by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this Assignment.

IN WITNESS WHEREOF, Borrower has caused this Assignment to be duly executed the day and year first above mentioned.

Attest:

COLE TAYLOR BANK, as successor Trustee to HARRIS TRUST and SAVINGS BANK, not personally but solely as Trustee under Trust Agreement dated September 23, 1977 and known as Trust Number 37947

By:   
Its: \_\_\_\_\_  
Assistant Secretary

By:   
Its: \_\_\_\_\_  
Vice-President

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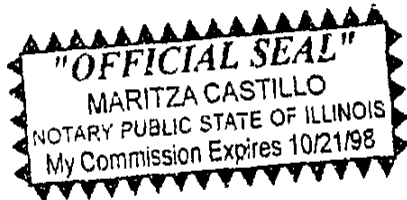
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, MARITZA CASTILLO, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that EMETH E. PIEKUT, as VICE President and JACKLIN ISHA, as SECRET Secretary of COLE TAYLOR BANK, as successor Trustee to HARRIS TRUST and SAVINGS BANK, a national banking association, as Trustee under Trust Agreement dated September 23, 1977 and known as Trust No. 37947, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE President and SECRET Secretary of said Bank, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth; and said SECRET Secretary did then and there acknowledge that he, as custodian of the corporate seal of said Bank did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25th day of NOVEMBER, 1996.

Maritza Castillo  
Notary Public



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## JOINDER

The undersigned, being the owner of One Hundred (100%) percent of the beneficial interest in, and being the sole beneficiary of, the Trust which is the Borrower under the foregoing Assignment of Rents and Leases, hereby consents to and joins in the foregoing Assignment of Rents and Leases, intending hereby to bind any interest it and its heirs, executors, administrators, successors or assigns may have in the Mortgaged Premises described in the foregoing Assignment of Rents and Leases, or any leases or other agreements relating thereto, as fully and with the same effect as if the undersigned was named as the Borrower in said Assignment of Rents and Leases. Nothing herein contained shall be deemed to render the undersigned personally liable upon any obligation provided in the foregoing Assignment of Rents and Leases or under any of the other loan documents evidencing or securing the loan evidenced by the Note; provided, however, that the foregoing shall not be deemed to restrict the imposition of personal liability against any party in any document entered into in connection with this transaction.

DATED: November 22, 1996

TERRACE PARTNERS, an Illinois general partnership


By: 

Jerome P. Seiden, General Partner

By: 

Matthew A. Spagat, General Partner

GUARANTY NATL  
30 N. LaSalle  
#3910  
CHGO, IL  
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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Anita B Dordek, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that JEROME P. SEIDEN, General Partner of TERRACE PARTNERS, an Illinois general partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such General Partner of TERRACE PARTNERS, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22 day of November, 1996.

Anita B Dordek  
Notary Public  
"OFFICIAL SEAL"  
Anita B. Dordek  
Notary Public, State of Illinois  
My Commission Expires 7/24/2000

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Anita B. Dordek, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that MATTHEW A. SPAGAT, General Partner of TERRACE PARTNERS, an Illinois general partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such General Partner of TERRACE PARTNERS, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22 day of November, 1996.

Anita B Dordek  
Notary Public  
"OFFICIAL SEAL"  
Anita B. Dordek  
Notary Public, State of Illinois  
My Commission Expires 7/24/2000

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## Exhibit "A"

### Description of the Mortgaged Premises

#### PARCEL 1:

THE EAST 198.51 FEET (AS MEASURED ON THE NORTH LINE THEREOF) OF THE NORTH 324.94 FEET (EXCEPT THE WEST 32.82 FEET OF THE SOUTH 123.53 FEET THEREOF) OF LOT 1 IN LAKE AVENUE SUBDIVISION OF THE SOUTH 15.0 ACRES (EXCEPT THE EAST 2.0 CHAINS ON THE SOUTH 660 FEET AND EXCEPT THE SOUTH 420.0 FEET OF THE WEST 465.0 FEET) OF THE EAST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DEED FROM MERCANTILE NATIONAL BANK OF CHICAGO, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 9, 1960 AND KNOWN AS TRUST NO. 1203TH TO MAUREEN A. BONAQUA, DATED APRIL 26, 1977 AND RECORDED APRIL 29, 1977 AS DOCUMENT 23907176 THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS

BEGINNING AT A POINT ON THE NORTH LINE OF WEST LAKE AVENUE 33.09 FEET WEST OF THE SOUTHEAST CORNER OF LOT 2, THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID LOT 1 A DISTANCE OF 733.50 FEET THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 1 A DISTANCE OF 427.87 FEET TO THE CENTER OF A CIRCLE WITH A RADIUS OF 60 FEET, IN LAKE AVENUE SUBDIVISION OF THE SOUTH 15 ACRES (EXCEPT THE EAST 2 CHAINS OF THE SOUTH 660 FEET AND EXCEPT THE SOUTH 420 FEET OF THE WEST 465 FEET) OF THE EAST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS ALL AS SHOWN ON PLAT OF EASEMENT RECORDED AS DOCUMENT 22876283 (EXCEPT THE PORTION OF SAID EASEMENT FALLING WITHIN PARCEL 1 AS PARCEL 1 IS CONVEYED BY DOCUMENT 23907176) IN COOK COUNTY, ILLINOIS.

Address: 1965-1983 North Lake Terrace  
Glenview, Illinois 60025

P.I.N.: 04-28-200-054

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