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1999-08-31 14:18:07
Cook County Recorder 39.00



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PREPARED BY AND
WHEN RECORDED MAIL TO:
Stephen H. Malato
Hinshaw & Culbertson
222 North LaSalle Street, Suite 300
Chicago, Illinois 60601

LOAN NO. 3468

ADDRESS: 900 S. Chaddick Drive
Wheeling, Illinois 60090

TAX NO.: 03-14-200-019

Above Space for Recorder's Use Only

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS, made this 26th day of August, 1999, by and V-S Industries, Inc., a Delaware corporation, ("Assignor") in favor of General Electric Capital Assurance Company, a Delaware corporation ("Assignee");

RECITALS:

A. Assignor executed and delivered its Promissory Note ("Note") of even date herewith, payable to the order of Assignee, in the principal amount of \$2,000,000.00 ("Loan"), and, as security therefor, executed and delivered its Mortgage ("Mortgage") of even date herewith, in favor of Assignee, conveying certain land situated in the Village of Wheeling, Cook County, Illinois, legally described on Exhibit "A" attached hereto ("Land") and the improvements situated thereon ("Improvements") (Land and Improvements and referred to collectively as the "Property").

B. As additional security for the payment of Loan, interest and all other sums due and owing to Assignee pursuant to "Loan Documents" (as such term is defined in Mortgage) (collectively "Indebtedness"), and the performance of all of the terms, covenants, conditions and agreements contained in Loan Documents, Assignor agreed to assign to Assignee all of its right, title and interest in and to Future Leases (as hereinafter defined).

NOW, THEREFORE, in consideration of the disbursement of the proceeds of Loan by Assignee and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Assignor:

BOX 333-CTI

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1. Hereby grants a security interest in and sells, assigns, transfers and sets over unto Assignee one hundred percent (100%) of Assignor's right, title and interest in and to all Lease agreements, which may affect the Property, together with all rents, income or other sums payable by the provisions thereof ("Rents") and all future lease agreements which may be executed by Assignor, or its authorized agents, as landlord, with occupancy tenants of Property ("Future Tenants"), at any time hereafter ("Future Leases"), and all rents, income or other sums payable by the provisions of Future Leases ("Future Rents"), it being the intention of Assignor to make and establish an absolute transfer and assignment of Rents, Future Leases and Future Rents.

2. Agrees that this Assignment is made for the purpose of securing payment of Indebtedness and the performance and discharge of each and every obligation, covenant and agreement required pursuant to Loan Documents.

3. Represents, warrants and covenants that there are no present leases which affect the Property.

4. Shall observe and perform all of the obligations imposed upon Assignor, as landlord, pursuant to Future Leases and shall:

- (a) faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any Future Leases to be performed by the landlord thereunder to preserve the Future Leases in force free from any right of counterclaim, defense or set off;
- (b) enforce or secure the performance of each and every material obligation, covenant, condition and agreement of the Future Leases by the Future Tenants to be performed;
- (c) not borrow against, pledge or further assign any Rents or Future Rents;
- (d) not permit the prepayment of any Rents or Future Rents for more than one month in advance nor for more than the next accruing installment of rents, nor anticipate, discount, compromise, forgive or waive any such rents;
- (e) not waive, excuse, condone or in any manner release or discharge the Future Tenants of or from the obligations, covenants, conditions and agreements to be performed by any Future Tenants under the Future Leases;
- (f) not permit any Future Tenants to assign or sublet its interest in the Future Leases unless required to do so by the terms of Future Leases and then only if such assignment does not work to relieve such tenant of any liability for payment of and performance of its obligations under the Future Leases;

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- (g) not consent to a subordination of the interest of the Future Tenants to any party other than Assignee;
- (h) not amend or modify any Future Leases or alter the obligations of the parties thereunder, excepting in the ordinary and prudent course of business with due regard for the security afforded the Assignee by Future Leases;
- (i) not perform any acts and will not execute any instrument which would prevent Assignee from exercising its rights under this Assignment or any other Loan Documents;
- (j) not enter into, execute, modify, or extend any Future Leases providing a term (assuming that all renewal options, if any, are exercised) of more than five (5) years unless the leased premises is less than twenty-five percent (25%) of the net rentable area of the building improvements at the Property without the written consent of Assignee;
- (k) not surrender or terminate any Future Leases providing a term (assuming that all renewal options, if any, are exercised) of more than five (5) years nor shall Assignor surrender or terminate in any single twelve-month period more than twenty-five percent (25%) of the aggregate total net rentable area of the Property without the written consent of Assignee.
- (l) cause each Future Tenant occupying more than twenty-five percent (25%) of the net rentable area of the building located at the Property to execute an appropriate subordination or attornment agreement as required by the Assignee and each Future Leases at the election of the Mortgagee, will be either superior or subordinate to the lien of the Mortgage;
- (m) to the extent required by the Assignee, cause Future Tenants to execute an estoppel certificate and acknowledge receipt of a notice of the assignment of its lease, all satisfactory in form and content to the Assignee; and
- (n) at Assignee's request, execute and deliver all such further assurances and assignments as Assignee shall, from time to time, reasonably require with respect to Future Leases.

5. Agrees that this Assignment is absolute and is effective immediately, PROVIDED HOWEVER, that Assignor shall have the right, so long as no "Default" (as such term is defined in Mortgage) shall exist, to collect Rents and Future Rents, when due but not prior thereto, and retain, use and enjoy the same.

6. Agrees that at any time following a Default, Assignee may, at its option, either in person or through its agent or a receiver appointed by a court of competent jurisdiction, without

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notice and without, in any way, waiving such Default and without regard to the adequacy of the security for Indebtedness and with or without instituting any action or proceeding:

- (a) take possession of Property and hold, manage, lease and operate the same on such terms and for such periods of time as Assignee may deem proper;
- (b) with or without taking possession of Property, in its own name, institute suit or otherwise collect and receive Rents and Future Rents, including Rents and Future Rents past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof as Assignee may deem proper; and
- (c) apply Rents and Future Rents to the payment of: (i) all costs and expenses incurred in managing Property (including, but not limited to, the salaries, fees and wages of the managing agent thereof and other employees of Assignor); (ii) all expenses of operating and maintaining Property (including, but not limited to, all taxes, charges, claims, assessments, water rents, sewer rents and other liens and premiums for all insurance coverages which Assignee may deem necessary); (iii) all costs of alteration, renovation, repair or replacement of Property; (iv) all expenses incident to the taking and retaining of possession thereof; and (v) Indebtedness and all costs, expenses and reasonable attorneys' fees incurred by Assignee by reason hereof; and apply the same in such order of priority as Assignee, in its sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding.

7. Agrees that Assignee shall not be:

- (a) liable for any loss sustained by Assignor resulting from Assignee's failure to let Property following the occurrence of a Default or by reason of any other act or omission of Assignee in managing the same following a Default, other than any loss or damage which may be incurred by Assignor by reason of Assignee's negligence or acts and deeds following the exercise of Assignee's rights pursuant hereto or pursuant to the Future Leases; or
- (b) obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability of Assignor pursuant hereto or pursuant to the Future Leases and, with respect thereto, Assignor shall, and does hereby agree to indemnify Assignee for and hold Assignee harmless from any and all liability, loss or damage which may or might be incurred by reason thereof and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants, conditions and agreements required of Assignor pursuant hereto or pursuant to Future Leases, PROVIDED THAT such indemnification shall

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not include any liability, loss or damage which may be incurred by Assignee by reason of its negligence or acts and deeds following the exercise of Assignee's rights pursuant hereto or pursuant to the Future Leases.

If Assignee incurs any liability pursuant to this Assignment of Leases and Rents or pursuant to the Future Leases or in defense of any such claim or demand, the amount thereof including costs, expenses and reasonable attorneys' fees (but exclusive of any costs, expenses and attorneys' fees incurred by Assignee by reason of its acts and deeds following the exercise of Assignee's rights pursuant hereto or pursuant to the Future Leases) shall be secured by Mortgage and other Loan Documents and Assignor shall reimburse Assignee therefor, immediately upon demand and in the event of the failure of Assignor so to do, Assignee may, at its option, declare Indebtedness immediately due and payable.

8. Agrees that this Assignment shall not operate to place upon Assignee any responsibility, prior to the exercise of Assignee's rights pursuant hereto, for the control, care, management or repair of Property or for the performance of any of the terms, covenants, conditions and agreements required of Assignor, as landlord, pursuant to the Future Leases nor is the same intended to make Assignee, prior to the exercise of Assignee's rights pursuant hereto, responsible or liable for any:

- (a) waste committed on Property by Future Tenants or any other party;
- (b) dangerous or defective condition of Property; or
- (c) negligence in the management, upkeep, repair or control of Property resulting in loss, injury or death to Future Tenants, licensee, employee or stranger.

9. Agrees that any affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee, made in good faith, setting forth that any part of Indebtedness remains unpaid, shall be and constitute evidence of the validity, effectiveness and continuing force and effect of this Assignment (all persons being hereby authorized to rely thereon). Assignor hereby authorizes and directs the Future Tenants or other occupants of Property, upon receipt from Assignee of written notice to the effect that Assignee is then the holder of Loan Documents and that a Default exists pursuant thereunder or pursuant thereto, to pay Rents and Future Rents to Assignee until otherwise notified by Assignee, in writing, to the contrary.

10. Agrees that Assignee may take or release any security given for the payment of Indebtedness, release any party primarily or secondarily liable therefor and apply any other security, in its possession, to the satisfaction of Indebtedness, without prejudice to any of its rights pursuant hereto.

11. Agrees that the terms "Future Leases" shall include any permitted subleases and permitted assignments thereof and all extensions or renewals of the Future Leases and subleases thereof.

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12. Agrees that:

- (a) nothing contained herein and no act done or omitted to be done by Assignee pursuant to the powers and rights granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies pursuant to Loan Documents;
- (b) this Assignment is made without prejudice to any of the rights and remedies possessed by Assignee thereunder; and
- (c) the right of Assignee to collect Indebtedness and to enforce any security therefor in its possession may be exercised by Assignee either prior to, concurrently with or subsequent to any action taken by it pursuant hereto.

13. Agrees that any notice, consent or other communication to be given hereunder shall be in writing and shall be served either personally (by a same-day courier service) or by a nationally recognized "overnight" courier service (which shall be deemed received on the date of delivery thereof) or mailed by United States certified or registered mail, postage paid, return receipt requested (which shall be deemed received on the date of delivery thereof or on the date delivery is refused), to Assignee and Assignor as follows:

If to Assignee:

V-S Industries, Inc.
900 S. Chaddick Drive
Wheeling, Illinois 60090
Attention: John C. Schwietert

If to Assignor, in triplicate to:

General Electric Capital Assurance Company
c/o GE Financial Assurance Holdings, Inc.
Two Union Square, 601 Union Street, Suite 1400
Seattle, Washington 98101

14. Agrees that in the event of any conflict between the terms hereof and the terms of Mortgage, the terms of this Assignment shall prevail.

15. Agrees that this Assignment and all covenants and warranties herein contained shall inure to the benefit of Assignee, its successors, assigns, grantees and legal representatives and shall be binding upon Assignor and its successors, assigns, grantees and legal representatives.

16. Upon the payment in full of Indebtedness and provided Assignor has no continuing obligations pursuant to Loan Documents, this Assignment shall be null and void and an appropriate

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instrument of reconveyance or release shall be promptly made by Assignee to Assignor, at Assignor's expense.

17. Indebtedness is a non-recourse obligation of Assignor. It is expressly understood that nothing herein or in other Loan Documents contained shall be construed as establishing any personal liability on Assignor, its agents or employees, to pay Indebtedness or to perform any of the conditions herein contained, all such personal liability being expressly waived by Assignee; Assignee's only recourse against Assignor being against Property and other property given as security for the payment of Indebtedness, in the manner herein, in other Loan Documents and by law provided. NOTWITHSTANDING THE FOREGOING, nothing contained herein or in other Loan Documents shall be deemed to have released Assignor from the limited liability imposed upon Assignor pursuant to the terms of the Note or the "Indemnity" (as such term is defined in Note).

IN WITNESS WHEREOF, Assignor has executed this Assignment of Leases and Rents on the day and year first above written.

V-S Industries, Inc. a Delaware corporation

By: 

John C. Schwieter, President

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STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

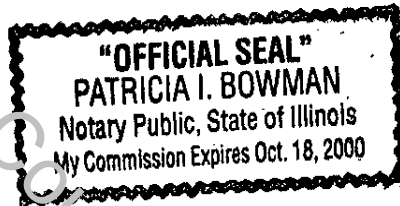
The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that John C. Schwietert, personally known to me to be the President of V-S Industries, Inc. a Delaware corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 26TH DAY OF AUGUST, 1999.

Patricia I. Bowman

Notary Public

My commission expires:



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EXHIBIT "A"

LEGAL DESCRIPTION

Property of Cook County Clerk's Office

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CHICAGO TITLE INSURANCE COMPANY
COMMITMENT FOR TITLE INSURANCE
SCHEDULE A (CONTINUED)

ORDER NO.: 1401 007823969 D2

5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

PARCEL 1: LOT 1 IN HARTFORD RESUBDIVISION OF LOTS 2 AND 3 IN FIRST AMERICAN RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 1, 2 AND 4 IN SOUTH WHEELING INDUSTRIAL PARK, A SUBDIVISION OF PART OF SECTION 14, TOWNSHIP 42 NORTH, RANGE 11, 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 GRANT FROM LA SALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 1, 1978 AND KNOWN AS TRUST NUMBER 54798 TO LA SALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 1, 1980 AND KNOWN AS TRUST NUMBER 102377 DATED MARCH 1, 1980 AND RECORDED JANUARY 14, 1981 AS DOCUMENT 25736349 FOR USE OF EXISTING RAILROAD SWITCH TRACK AND FACILITIES OVER AND UPON THAT PORTION OF THE FOLLOWING DESCRIBED REAL ESTATE DEPICTED ON EXHIBIT 'A' OF AFORESAID GRANT: LOT 1 IN FIRST AMERICAN RESUBDIVISION OF LOTS 1, 2 AND 4 IN SOUTH WHEELING INDUSTRIAL PARK, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 14, AND THAT PART OF THE SOUTH EAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, LYING EAST OF A STRIP OF LAND 210 FEET IN WIDTH LYING BETWEEN THE EASTERLY RIGHT OF WAY LINE OF THE WISCONSIN CENTRAL RAILROAD AND A LINE 210 FEET EASTERLY OF AND PARALLEL WITH, MEASURED AT RIGHT ANGLES TO, THE EASTERLY RIGHT OF WAY LINE OF SAID RAILROAD, ALL IN SECTION 14, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 3: EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM THE COMMONWEALTH EDISON COMPANY AND LA SALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 1, 1978 AND KNOWN AS TRUST NUMBER 54798 TO LA SALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 1, 1980 AND KNOWN AS TRUST NUMBER 102377 DATED MARCH 1, 1980 AND RECORDED JANUARY 14, 1981 AS DOCUMENT 25736350 FOR USE OF EXISTING RAILROAD SWITCH TRACK OVER AND UPON THE FOLLOWING DESCRIBED REAL ESTATE: PARCEL 295 OF GRANTOR'S DES PLAINES-WAUKEGAN R/W IN THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:: A STRIP OF LAND 30.00 FEET WIDE OF THE SOUTH EAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, WHOSE CENTER LINE IS DESCRIBED AS FOLLOWS:: COMMENCING AT THE INTERSECTION OF THE NORTHEASTERLY LINE OF THE COMMONWEALTH EDISON COMPANY 210 FEET RIGHT OF WAY AND THE SOUTH LINE OF SAID SOUTH EAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14; THENCE NORTHWESTERLY, ALONG SAID NORTHEASTERLY LINE 1202.62 FEET TO THE POINT OF BEGINNING OF SAID CENTER LINE; THENCE NORTHWESTERLY, ALONG A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 513.90 FEET, 324.30 FEET, TO A POINT ON THE SOUTHWESTERLY LINE OF SAID RIGHT OF WAY, SAID POINT BEING 1373.48 FEET NORTHERLY (AS MEASURED ALONG SAID SOUTHWESTERLY LINE) OF THE SOUTH LINE OF SAID SOUTH EAST 1/4 OF THE NORTHWEST 1/4, ALL IN COOK COUNTY, ILLINOIS

Exhibit A

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PIN: 03-14-200-019-0000