
, as Grantor
(Borrower)

-to-

, as Beneficiary
(Lender)

ASSIGNMENT OF LEASES AND RENTS

Dated: As of May __, 2000

Address: _____,
California

County: Monterey

After recording, please return to:

Tax Account No.: _____

File No.:

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this “**Assignment**”) is entered into as of the ____ day of May, 2000 by _____, a California limited partnership, having an address at _____, California (“**Assignor**”), in favor of _____, an Illinois corporation, having an office at _____, Chicago, Illinois 60610 (“**Assignee**”).

RECITALS

A. Simultaneously herewith, (i) Assignor and Assignee are executing and exchanging a Loan Agreement (as the same may hereafter be consolidated, extended, modified, amended and/or restated, the “**Loan Agreement**”) pursuant to which Assignee is making a \$9,100,000 loan to Assignor pursuant to the terms thereof, (ii) Assignor is executing and delivering to Assignee a Deed of Trust Note (as the same may hereafter be consolidated, extended, modified, amended and/or restated, the “**Note**”) in the principal amount of \$9,100,000 and (iii) Assignor is executing and delivering to Assignee a Deed of Trust and Security Agreement (as the same may hereafter be consolidated, extended, modified, amended and/or restated, the “**Mortgage**”) encumbering the land commonly known as _____, California and more particularly described on Schedule A annexed hereto and made a part hereof and the building and other improvements located thereon (the “**Premises**”) and securing the Note.

B. In consideration of Assignee making the loan evidenced by the Note, and as additional security for the Note, Assignee has required Assignor to, and Assignor has agreed to, execute and deliver to Assignee this Assignment.

C. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Loan Agreement.

D. NOW THEREFORE, in consideration of the promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

SECTION 1. Assignment. Assignor hereby transfers, assigns and sets over to Assignee:

(a) Assignor's entire right, title and interest as lessor or otherwise with respect to all leases, licenses, concessions, subleases and other agreements for possession, use or occupancy by any person or entity, and all of its other rights (statutory or otherwise) with respect to the use, occupancy or possession by any person or entity, now or hereafter affecting the Premises or any portion thereof, together with any amendments, supplements, modifications, renewals, extensions or expansions thereof (collectively, the “**Leases**”);

(b) all guaranties which may exist from time to time of the obligations of the lessees, licensees, concessionaires or other occupants under the Leases (collectively, the “**Lessees**”); and

(c) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due, or to which Assignor may now or shall hereafter (whether upon the expiration of any applicable period of redemption, or otherwise) be or become entitled, or may demand or claim, arising or issuing from or out of the Leases, or any guaranty thereof, or from or out of the Premises, or any part thereof, including, but not limited to: minimum rents, additional rents, escalation rents, percentage rents, index rents, security deposits (subject to the rights of Lessees thereto and any applicable Legal Requirements), license, lease, sublease and concession fees and rentals, revenues from the rental of rooms, guest suites, conference and banquet rooms, food and beverage facilities, telephone services, laundry, vending, television and parking, tax and insurance contributions and deposits, payments in respect of and/or proceeds from the sale of electricity, gas, chilled and heated water and other utilities and services, common area charges, deficiency rents, damages and/or liquidated damages following default, premiums or other amounts payable upon or in connection with the exercise of a termination or cancellation privilege provided for in any Lease or in connection with any other cancellation or termination of a Lease otherwise agreed to by Assignor or otherwise occurring (without, however, limiting Assignor's obligation to obtain Assignee's consent to such cancellation or termination as provided herein or in the Mortgage or the Loan Agreement), together with any and all rights and claims of any kind which Assignor now has or may hereafter have against any Lessee under any Lease or any subtenants or occupants of the Premises (all of the foregoing being collectively hereinafter referred to as “**Rents**”). Without limiting the foregoing, Rents shall also include all sums paid in connection with obtaining the landlord's consent to any action taken with respect to any Lease, including any assignment or subletting or any modification of a Lease, all amounts paid pursuant to promissory notes given by tenants in connection with loans made by landlord or its Affiliates and all claims and sums paid as damages or otherwise with respect to a rejection of a Lease in bankruptcy or for use and occupancy in a bankruptcy case.

IT IS THE INTENTION OF ASSIGNOR AND ASSIGNEE THAT THE FOREGOING ASSIGNMENT ESTABLISH A PRESENT AND ABSOLUTE TRANSFER AND ASSIGNMENT TO ASSIGNEE OF ALL LEASES AND RENTS (AND ALL GUARANTIES THEREOF).

SECTION 2. Rights of Assignee. Subject to the terms hereof, the Mortgage and the other Loan Documents, the Assignor does hereby empower the Assignee, its agents or attorneys, to collect, sue for, settle, compromise and give acquittances for all of the Rents and other amounts that may become due under or with respect to the Leases (or guaranties thereof) and to avail itself of and to pursue all remedies for the enforcement of the Leases (or guaranties thereof) and Assignor's rights in and under the Leases (or guaranties thereof) as the Assignor might have pursued, but for this Assignment.

SECTION 3. Representations, Warranties and Covenants. The Assignor represents, warrants and covenants that Assignor has not heretofore assigned or pledged the Leases or the Rents or any interest therein, except to Assignee, and that, except as may be expressly permitted under the Loan Agreement, 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 the Assignor directly or indirectly, including by assuming any Lessee's obligations with respect to other premises.

SECTION 4. Covenants. The Assignor further 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 expressly permitted otherwise in the Mortgage or in the Loan Agreement, not to terminate, modify or amend any Lease or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof (except in accordance with the terms thereof) without the written consent of the Assignee;

(c) not to collect any of the Rents arising or accruing under any Lease more than one month in advance of the time when the same become due under the terms thereof (except for security deposits held in accordance with the terms of the Leases and applicable law);

(d) that no Lease shall contain any options to purchase or other rights with respect to the ownership of the Premises;

(e) not to execute any other assignments of the Leases or any interest therein, or of any of the Rents or any interest therein, except to Assignee to further secure the indebtedness and other obligations under the Loan Documents;

(f) except as may otherwise be permitted in the Loan Agreement, to perform all of Assignor's material covenants and agreements as lessor or otherwise under the Leases and not to suffer or permit to occur any release of liability of the Lessees thereunder, or any rights of the Lessees thereunder to withhold payment of rent or other amounts;

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

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

(i) except as may otherwise be permitted in the Loan Agreement, not to alter, modify or change the terms of any guaranties of any of any Major Lease, or cancel or terminate such guaranties, without the prior written consent of the Assignee;

(j) except as may otherwise be permitted in the Loan Agreement, not to consent to any assignments of the Leases, or any subletting thereunder, except in accordance with their terms, without the prior written consent of the Assignee;

(k) except as may otherwise be permitted in the Loan Agreement, release any Lessee from any liability under its Lease or any guarantor from its liability under any guaranty of a Lease, without, in any such case, the prior written consent of Assignee; or

(l) without the prior written consent of Assignee, not 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.

SECTION 5. Assignment as Security. This Assignment is given as security for the payment of the outstanding principal balance of, and interest under, the Note and of all other sums and Obligations secured by the Mortgage. The security of this Assignment is, and shall be, primary and on a parity with the Mortgage, and not secondary. All amounts actually collected hereunder by Assignee, after deducting the expenses of collection and amounts applied by Assignee to the expenses of operation of the Premises (to the extent so elected by Assignee), may be applied on account of the principal, interest or other amounts due on the Note or any other indebtedness secured by the Mortgage, in such order as Assignee may elect.

SECTION 6. Appointment as Agent and Attorney in Fact. Assignor hereby irrevocably appoints Assignee and its successors and assigns, as its agent and attorney in fact, to execute all instruments of assignment or further assurance in favor of the grantee or grantees in any deed or deeds delivered in connection with any foreclosure of the Mortgage, as may be necessary or desirable for the purpose of vesting in such grantee or grantees all right, title and interest of Assignor in the Leases and the Rents (and any guaranties thereof), and, upon issuance of any such deed or deeds, the Leases and the Rents (and any guaranties thereof) shall, by virtue of this instrument and such deed or deeds, become the absolute property of such grantee or grantees. Without limiting in any manner the effectiveness of this Assignment, Assignor agrees to execute and deliver to Assignee and/or such grantee or grantees any instrument or instruments as Assignee or such grantee or grantees may request confirming such absolute assignment of all of its right, title and interest in and to the Leases and the Rents (and any guaranties thereof). Nothing contained herein shall prevent Assignee from terminating any subordinate lease through any such foreclosure.

SECTION 7. No Liability; Indemnification. In the exercise of the powers herein granted the 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 the Leases, or under or by reason of this Assignment. Assignor shall, and does hereby agree to, indemnify Assignee for, and to hold it harmless of and from, any and all liability, loss or damage which it may or might 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 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 the Leases (except by reason of the active gross negligence or willful misconduct of Assignee). Should the Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be secured hereby and by the Mortgage, and the Assignor shall reimburse the Assignee immediately upon demand together with interest thereon from the date such amount is incurred at the Default Rate.

SECTION 8. Conditional Limitation. It is expressly understood and agreed, anything herein contained to the contrary notwithstanding, but without limiting the present and absolute nature of the assignment hereunder, that the Assignee shall not exercise (except to the extent otherwise provided in any of the Loan Documents) any of the rights or powers herein conferred upon it with respect to the Leases and the collection of the Rents, until an Event of Default shall occur, and Assignee hereby agrees that Assignor shall have, and Assignee hereby grants to Assignor, until the occurrence of an Event of Default, a license to collect the Rents and to exercise the other rights assigned to Assignee hereunder (in each instance, subject, however to the further conditions and limitations hereof or contained in the Mortgage, Loan Agreement or other Loan Documents with respect thereto), provided, however, that all Rents shall be collected and applied in accordance with applicable provisions of the Loan Agreement. Upon the occurrence of an Event of Default, such license shall, to the fullest extent permitted by law, be automatically revoked, cease and terminate without any further action and without the necessity of the appointment of a receiver and whether or not Assignee has taken possession of the Premises. Upon the occurrence of any such Event of Default, the Assignee shall be entitled to deliver notice to the Lessees under the Leases (or the guarantors thereof) directing them to pay Assignee (or its agent) all Rents and other amounts then due under or with respect to the Leases (or the guaranties thereof) and thereafter accruing, and this Assignment shall constitute a direction to and full authority to the Lessees under the Leases (and such guarantors) to pay all such amounts to the Assignee (or its agents) without proof of the default relied upon. The Lessees (and such guarantors) are hereby irrevocably authorized to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by the Assignee (or its agents) for the payment to the Assignee (or its agents) of any rental or other sums which may be or thereafter become due under the Leases (or the guaranties thereof), or for the performance of any of Lessees' undertakings under the Leases (or such guarantor's undertakings under the guaranties thereof) and shall have no right or duty to inquire as to whether any default or Event of Default has actually occurred or is then existing.

SECTION 9. Assignee Not a Trustee or Mortgagee in Possession. The acceptance by Assignee of the assignment provided herein, together with all of the rights, powers, privileges and authority created herein or in the Mortgage, shall not, prior to entry upon and taking possession of the Premises by Assignee, be deemed or construed to constitute Assignee as a trustee or "mortgagee-in-possession", nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases, the Rents or the Premises, or to take any action hereunder, or to expend any money or incur any expenses, or perform or discharge any obligation or responsibility for any security deposits delivered to

Assignor by any Lessee (and not further transferred to Assignee), nor shall Assignee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Premises except to the extent arising out of the active gross negligence or willful misconduct of Assignee.

SECTION 10. Rents Held In Trust. Any Rents received by Assignor or its agents in violation of, or after termination of, its license to collect Rents hereunder shall be held by Assignor in trust for Assignee and shall not be commingled with other funds of Assignor. Assignor shall within one (1) Business Day after its receipt thereof deliver all such Rents received by it to Assignee (or as Assignee may direct) in accordance with the terms of the Loan Agreement.

SECTION 11. Assignment Supplementary to Mortgage. This Assignment is intended to be supplementary to, and not in substitution for, or in derogation of, any assignment of rents contained in the Mortgage or in any other Loan Document.

SECTION 12. Binding Effect; Interpretation. This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. The words "Assignor" and "Assignee", wherever used herein, shall include the persons named herein and designated as such and their respective successors and permitted assigns. All words and phrases shall be taken to include the singular or plural and masculine, feminine or neuter gender, as may fit the case. Nothing in this Section 12 is intended to modify or otherwise affect any provision hereof or of the Loan Agreement, the Cash Management Agreement or Mortgage prohibiting or limiting the right of Assignor to make any assignment of its rights in and to the Leases and the Rents.

SECTION 13. Governing Law. The place of negotiation, execution and delivery of this Assignment is the State of New York. This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of New York, except that the provisions of the laws of the State of California shall be applicable to the creation, perfection and enforcement of the lien created hereby. It is the intent of the parties hereto that the provisions of Section 5-1401 of the General Obligations Law of the State of New York apply to this Assignment.

SECTION 14. Remedies Cumulative. No remedy herein, or in any of the other Loan Documents, conferred upon or reserved to Assignee is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative, and shall be in addition to every other remedy given hereunder and under the other Loan Documents, or now or hereafter existing at law or in equity. No delay or omission of Assignee in exercising any right or power granted hereunder shall impair any such right or power, or shall be construed to be a waiver of any default, or any acquiescence therein.

SECTION 15. Termination of Agreement. If Assignor shall indefeasibly fully pay to Assignee all principal outstanding under the Note, all interest accrued thereon, any Exit Fee, all prepayment premiums, if any, with respect thereto, and all other sums owing under any of the other Loan Documents (provided, however, that with respect to any payment made prior to the maturity date of the Note, such prepayment is permitted under the Note), then, upon request of

Assignor, Assignee shall terminate this Assignment and the lien hereof by proper instrument(s). Assignor shall pay all fees in connection with the preparation, recordation and filing of such instruments.

SECTION 16. Notice. All notices, consents, approvals and requests required or permitted hereunder shall be given to the parties hereto at their respective addresses set forth above in accordance with the Notice provision of the Loan Agreement.

SECTION 17. Exculpation. The provisions of Section 6.20 of the Loan Agreement are incorporated herein by reference.

SECTION 18. Waivers, Extensions, Modifications and Amendments. Assignor recognizes that, in general, borrowers, guarantors or assignors who experience difficulties in honoring their loan obligations, in an effort to inhibit or impede lenders from exercising the rights and remedies available to lenders pursuant to mortgages, notes, loan agreements or other instruments evidencing or affecting loan transactions, frequently present in court the argument, often without merit, that some loan officer or administrator of the lender made an oral modification or made some statement which could be interpreted as an extension or modification or amendment to one or more debt instruments and that the borrower relied to its detriment upon the "oral modification of the loan document". For that reason, and in order to protect Assignee from these allegations in connection with the transaction contemplated by this Assignment, Assignor acknowledges that this Assignment can be extended, modified or amended only in writing executed by Assignee, and that none of the rights or benefits of Assignee can be waived permanently except in a written document executed by Assignee.

SECTION 19. No Waiver. Assignee's rights, powers, privileges and remedies under or in connection with this Assignment are cumulative and not exclusive and shall not be waived, precluded or limited by any failure or delay in the exercise thereof or by the parties exercise thereof or by any course of dealing between Assignor and Assignee. No notice to or demand on Assignor in any case shall entitle Assignor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of Assignee to any other or further action in any circumstances without notice or demand.

SECTION 20. Descriptive Headings, etc. The descriptive headings used in this Assignment are for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof.

SECTION 21. Terminology. All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and the plural shall include the singular. Titles of Sections in this Assignment are for convenience only, and neither limit nor amplify the provisions of this Assignment, and all references in this Assignment to Sections, Subsections, paragraphs, clauses or subclauses shall refer to the corresponding Section, Subsection, paragraph, clause or subclause of this Assignment, unless specific reference is made to the articles, sections or other subdivisions of another document or instrument.

SECTION 22. Waiver of Jury Trial. ASSIGNOR AND BY ACCEPTANCE HEREOF ASSIGNEE, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHTS ANY SUCH PERSON MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS ASSIGNMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ASSIGNOR OR ASSIGNEE RELATING TO THE LOAN AND/OR THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS ASSIGNMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ASSIGNEE ACCEPTING THIS ASSIGNMENT.

SECTION 23. Severability. In the event that any of the covenants, agreements, terms or provisions contained herein shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms and provisions contained herein shall be in no way affected, prejudiced or disturbed thereby.

SECTION 24. Further Assurances. At any time, and from time to time, upon Assignee's request, Assignor shall make, execute and deliver, or cause to be made, executed and delivered, to Assignee and, where appropriate, shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled, at such time and in such offices and places as shall be deemed desirable by Assignee as Assignee may consider necessary or desirable in order to effectuate, or to continue and preserve the obligations of Assignor under this Assignment, such documents and/or instruments as Assignee may request. Upon any failure by Assignor to do so, Assignee may make, execute, record, file, re-record or refile any and all such documents and/or instruments for and in the name of Assignor, and Assignor hereby irrevocably appoints (which appointment is coupled with an interest with full power of substitution) Assignee the agent and attorney-in-fact of Assignor to do so; and Assignor shall reimburse Assignee, on demand, for all costs and expenses (including attorneys' fees and expenses) incurred by Assignee in connection therewith.

SECTION 25. Amendment. Subject to the terms of Section 18 hereof, neither this Assignment nor any provision hereof may be changed, waived, discharged, modified or terminated orally, but only by an instrument in writing signed by the party against whom enforcement is sought. Nothing contained in this Assignment shall be construed to amend, modify, alter, change or supersede the terms and provisions of the Loan Agreement or any of the other Loan Documents.

SECTION 26. Jurisdiction, Venue, Service of Process. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS ASSIGNMENT SHALL BE BROUGHT, AT ASSIGNEE'S OPTION, IN THE COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK. ASSIGNOR HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. ASSIGNOR IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES

THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THEM AT THEIR RESPECTIVE ADDRESSES AS SET FORTH ABOVE. ASSIGNOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS ASSIGNMENT BROUGHT IN THE COURTS REFERRED TO ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF ASSIGNEE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ASSIGNOR IN ANY OTHER JURISDICTION.

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IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment or has caused the same to be executed and delivered by its duly authorized representative as of the date first above written.

ASSIGNOR:

_____, a California limited
partnership

By: _____
Name:
General Partner

By: _____
Name:
General Partner:

SCHEDULE A

Description of Land