

UNOFFICIAL COPY

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2002-03-22 13:52:24

Cook County Recorder 39.50

7-Eleven Location No. 32930  
6801 North Western Avenue  
Chicago, Illinois



COOK COUNTY  
RECORDER  
EUGENE "GENE" MOORE  
BRIDGEVIEW OFFICE

SPACE ABOVE THIS LINE FOR RECORDER'S USE

LOAN AGREEMENT, MORTGAGE, SECURITY  
AGREEMENT & GUARANTEE

This Loan Agreement, Mortgage, Security Agreement and Guarantee ("Loan Agreement") is entered into as of the \_\_\_\_ day of February, 2002, between 7-Eleven, Inc. ("7-Eleven"), Cole Taylor Bank, not individually, but as Trustee of Trust No. 99-8315, dated August 10, 1999 (the "Trust" or the "Trustee") and Urban Investment Trust Incorporated ("Urban").

WHEREAS, 7-Eleven and Trustee entered into a Freestanding Lease (the "Lease") and an Agreement for Sale of Personal Property, Fixtures, Equipment and Inventory (the "Personal Property Agreement");

WHEREAS, under the terms of the Personal Property Agreement, 7-Eleven is to pay to Trustee the sum of four hundred thousand dollars (\$400,000.00) but not until the occurrence of a Commencement Date of the Lease as that term is defined in the Lease;

WHEREAS, all of the contingencies and all of the Conditions Precedent as defined in the Lease have not been satisfied or waived and the Commencement Date has not occurred and may not occur;

WHEREAS, Urban represents and warrants that Urban is the sole owner of the beneficial interest in the Trust and is solely entitled to the profits earned by the Trust and therefore has an interest in the Lease, the Personal Property Agreement and this Agreement; and

WHEREAS, Urban and Trustee have requested that 7-Eleven advance the payment of the \$400,000.00 to be paid under the Personal Property Agreement to enable Urban to purchase the personal property and other items which are the subjects of the Personal Property Agreement and to purchase the real estate to be leased by Trustee to 7-Eleven (the "Premises") which is described on Exhibit A attached hereto and 7-Eleven is willing to loan that amount to Urban and Trustee, but only on the conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Trustee, Urban and 7-Eleven agree:

1. 7-Eleven will pay the sum of \$400,000.00 (the "Loan Amount") into an escrow at Chicago Title & Trust Company (the "Escrowee") under terms acceptable to 7-Eleven in its sole discretion. Provided the terms of the escrow are acceptable to 7-Eleven, 7-Eleven shall make the payment of the Loan Amount on February \_\_\_, 2002. The Loan Amount deposited shall only be released by the Escrowee to enable Urban and/or Trustee to complete the purchase of the Premises and the personal property, fixtures, equipment

and inventory to be conveyed to 7-Eleven under the Personal Property Agreement if and when the Commencement Date occurs. If Urban and/or Trustee does not complete the purchase of the Premises and the items to be conveyed to 7-Eleven under the Personal Property Agreement on or before February 28, 2002, then the Escrowee shall immediately thereafter return the full Loan Amount to 7-Eleven. All costs of the escrow shall be paid by Urban and/or Trustee.

2. Trustee and Urban agree that the Loan Amount to be advanced hereunder by 7-Eleven shall be secured by the Premises and this Loan Agreement shall be recorded as a mortgage against the Premises simultaneously with the release of the Loan Amount by the Escrowee. Urban and Trustee unconditionally guarantee to 7-Eleven that the mortgage of 7-Eleven created by this Loan Agreement shall be a lien prior to all other encumbrances against the Premises except for a first mortgage that may be granted by Urban and/or Trustee to purchase the Premises and the items to be conveyed to 7-Eleven. Urban and Trustee agree that 7-Eleven shall have a valid mortgage on the Premises until the full amount loaned hereunder is repaid to 7-Eleven if required hereunder and that in the event of any default hereunder by Urban and/or Trustee 7-Eleven may foreclose upon this mortgage pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et. seq.). 7-Eleven agrees that the mortgage provided herein shall be released of record upon the

satisfaction of the obligations of Urban and Trustee hereunder or the return of the full Loan Amount to 7-Eleven.

3. Urban and Trustee hereby grant to 7-Eleven, its successors and assigns, a continuing security interest in all of their right, title and interest in the following (hereinafter together called the "Personal Property Collateral") acquired by Urban and/or Trustee and located on the Premises: (a) all items to be conveyed to 7-Eleven under the Personal Property Agreement; (b) all furnishings, furniture, fixtures, machinery, equipment, appliances, systems, building materials and personal property of every kind and nature whatsoever, including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, motors, plumbing and heating fixtures and systems, signs, carpeting and other floor coverings, water heaters, mirrors, mantels, heating, ventilating and air conditioning apparatus and systems, refrigerating plants, refrigerators, computers and all hardware and software therefor, cooking apparatus and appurtenances, lawn care, window washing, and snow removal equipment, window screens, awnings and storm sashes, which are or shall be attached to the Premises, or which are or shall be located in, on or about the Premises, or which are used or intended to be used in or in connection with the construction, fixturing, equipping, furnishing, use, operation, or enjoyment of the Premises, (c) all warehouse receipts or other documents of title relating to any of the

foregoing, (d) all permits and licenses and (e) all additions, improvements, betterments, renewals and replacements of any of the foregoing. To secure 7-Eleven's interest in the Personal Property Collateral, Urban and Trustee shall each execute a Uniform Commercial Code Financing Statement in the form attached hereto as Exhibit B upon and as a condition of the release of the Loan Amount.

4. 7-Eleven shall continue to have the full amount of time allowed in the Lease and in the Personal Property Agreement to satisfy each and every one of the contingencies and Conditions Precedent in those documents and Urban and Trustee agree that the advance of the Loan Amount shall not be deemed or construed to be a waiver of any of the contingencies or Conditions Precedent in those documents and 7-Eleven shall continue to have all of its rights thereunder to terminate the Lease and the Personal Property Agreement and Urban and the Trustee hereby waive all arguments and claims to the contrary for themselves and their representatives.
5. In the event every contingency and Condition Precedent is not satisfied or waived by 7-Eleven within the time allowed in the Personal Property Agreement and the Lease, and the Commencement Date of the Lease does not occur within the time allowed, then Trustee and Urban shall be jointly and severally liable to 7-Eleven for the full Loan Amount which shall be repaid to 7-Eleven upon ten (10) days notice from 7-Eleven.

6. In the event 7-Eleven is required to incur any cost or expense, including any attorney's fees in enforcing any of its rights under this Loan Agreement, then Urban and/or Trustee shall pay 7-Eleven all such costs and expenses including 7-Eleven's attorney's fees.
7. In consideration of the benefits and profits expected to be received by Urban from the Lease and the Personal Property Agreement, Urban unconditionally guarantees to 7-Eleven all of the obligations of Urban and the Trustee set forth herein. Urban further represents and warrants that it is the sole owner of or has an interest in other real properties leased to 7-Eleven or is the sole owner of or has an interest in other entities that are landlords under leases to 7-Eleven of other real properties and that in the event of any default by Trustee and/or Urban under this Loan Agreement, 7-Eleven may off-set all payments due under all such leases until all amounts due hereunder are recovered by 7-Eleven.
8. Upon the occurrence of the Commencement Date of the Lease, Trustee and Urban shall acknowledge the receipt of the amount due under the Personal Property Agreement provided it has previously received the Loan Amount under the terms hereof and this Loan Agreement shall then be canceled and 7-Eleven's obligations under the Personal Property Agreement shall be satisfied.

9. This Loan Agreement may be amended only by a written agreement signed by all parties to this Loan Agreement. The waiver of any provision of this Loan Agreement shall not be effective or relied upon unless in writing and signed by all parties, shall not be deemed to be or constitute a waiver of any other provision, nor shall any such waiver constitute a continuing waiver. The parties further agree that there can and shall be no waiver of the requirement that all waivers must be in writing.
10. This Loan Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, beneficiaries, legal representatives, successors and assigns.
11. This Loan Agreement has been negotiated at arms length and each party has been represented by legal counsel or has had the opportunity to be represented by legal counsel. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Loan Agreement against the party drafting it is not applicable and is waived. The provisions of this Loan Agreement shall be interpreted in a reasonable manner to effect the intent of the parties and the purpose of this Loan Agreement.
12. The parties hereto hereby waive the right to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Loan Agreement. This waiver is knowingly, intentionally, and voluntarily made by each party, and each party acknowledges that no person acting on behalf

of another party to this Loan Agreement has made any representation of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. Each party further acknowledges that it has been represented (or has had the opportunity to be represented) in the signing of this Loan Agreement and in the making of this waiver by independent legal counsel, selected of their own free will, and that it has had the opportunity to discuss this waiver with counsel.

13. The parties hereto submit to personal jurisdiction in the State of Illinois for the enforcement of the provisions of this Loan Agreement and irrevocably waive any and all rights to object to such jurisdiction for the purposes of litigation to enforce any provision of this Loan Agreement. Each party hereto hereby consents to the jurisdiction of and agrees that any action, suit or proceeding to enforce this Loan Agreement shall be brought only in a state or federal court in the City of Chicago in the State of Illinois. Each party hereto hereby waives any claim that any such action, suit or proceeding brought in such a court has been brought in an improper venue or an inconvenient forum. This Loan Agreement shall be governed by and construed under the laws of the State of Illinois. If any provision of this Loan Agreement is invalid or contravenes Illinois law, such provision shall be deemed not to be a part of this Loan Agreement and shall not affect the validity or enforceability of the remaining provisions.



# UNOFFICIAL COPY

Property of Cook County Clerk's Office

Urban Investment Trust, Inc.

By: \_\_\_\_\_  
Its: V. PRESIDENT  
Attest: \_\_\_\_\_

Subscribed and Sworn to before me this  
19<sup>th</sup> day of February, 2002.

*Barbara Laurinaitis*  
**OFFICIAL SEAL**  
BARBARA LAURINAITIS  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 06/12/06

Cole Taylor Bank not individually, but as  
Trustee of Trust No. 99-8315, dated  
August 10, 1999

BY: WESTERN PRATT LLC, ITS BENEFICIARY  
BY: MANAGER 7 CORP., ITS MANAGER

By: \_\_\_\_\_  
Its: PRESIDENT  
Attest: \_\_\_\_\_

Subscribed and Sworn to before me this  
19<sup>th</sup> day of February, 2002.

*Barbara Laurinaitis*  
**OFFICIAL SEAL**  
BARBARA LAURINAITIS  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 06/12/06

7-Eleven, Inc.

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Attest: \_\_\_\_\_

Subscribed and Sworn to before me this  
22<sup>nd</sup> day of February, 2002.

*Janet L. Buchheit*  
Notary Public  
**OFFICIAL SEAL**  
JANET L. BUCHHEIT  
MY COMMISSION EXPIRES  
August 4, 2004

SEE PERSONAL GUARANTEE OF JOHN D. TERZAKIS ATTACHED HERETO

This instrument prepared by and return to:

Michael J. Wall, ROTHSCHILD, BARRY & MYERS, 55 West Monroe Street, Suite  
3900, Chicago, Illinois, 60603

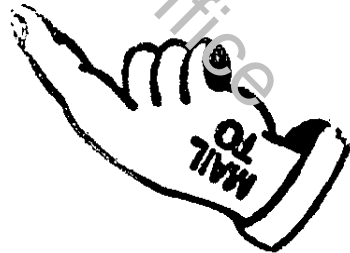


EXHIBIT A – LEGAL DESCRIPTION

THE WEST 139 FEET OF THE SOUTH HALF OF LOT 28 (EXCEPT PART TAKEN FOR STREET) IN SMITH'S ADDITION TO ROGERS PARK, A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 31, TOWNSHP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO KNOWN AS:

THAT PART OF LOT 28 IN SMITH'S ADDITION TO ROGERS PARK, A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 31, TOWN SHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 28; THENCE EAST ALONG THE SOUTH LINE OF SAID LOT, 17.0 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING EAST ALONG SAID SOUTH LINE 122.00 FEET; THENCE NORTH, PARALLEL WITH THE WEST LINE OF SAID LOT 28 187.80 FEET, THENCE WEST, PARALLEL WITH THE SOUTH LINE OF SAID LOT 128, 122.00 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT 28, 187.80 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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