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Eugene "Gene" Moore Fee: \$94.00
Cook County Recorder of Deeds
Date: 09/09/2003 08:04 AM Pg: 1 of 14

THIS DOCUMENT PREPARED BY AND AFTER RECORDING RETURN TO:

Ernest D. Simon, Esq.
Sachnoff & Weaver, Ltd.
30 South Wacker Drive
Suite 2900
Chicago, Illinois 60606

ADDRESS OF PROPERTY:

1617-21 N. Clybourn
Chicago, Illinois 60614

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is dated for reference purposes only as of September 3, 2003, made by North and Clybourn, L.L.C. ("Borrower") in favor of Bank One NA ("Lender").

RECITALS

A. Loan. Borrower is the owner of the land described on Exhibit A attached hereto, together with all improvements thereon (the "Premises"). Lender has agreed to lend to Borrower a maximum amount equal to Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) (the "Loan") pursuant to the terms and conditions set forth in that certain Construction Loan Agreement dated even date herewith (the "Loan Agreement").

B. Note. Borrower executed and delivered to Lender a promissory note in the maximum principal amount of Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) (said note, as it may be amended, modified, extended, supplemented, restated or replaced is referred to herein as the "Note").

C. Loan Documents. To evidence and secure the obligations and liabilities of Borrower to Lender in connection with the Loan, Borrower has executed and delivered to Lender the Note, the Loan Agreement and a Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (the "Mortgage"). Borrower has also executed various other security agreements, assignments, certificates and indemnities relating to the obligations evidenced by the Note. The Note, the Loan Agreement, the Mortgage, this Assignment, together with all such agreements, documents and instruments given to evidence or secure the indebtedness evidenced by the Note and/or the Loan Agreement and all other written matter and all amendments, modifications, supplements, extensions and restatements thereof and thereto, and all agreements, documents or instruments delivered in substitution therefor or in lieu thereof, whether heretofore, now or hereafter executed by or on behalf of Borrower, any party who or which has guaranteed all or any portion of the indebtedness evidenced by the Note and/or the Loan Agreement, or any other person or entity, delivered to Lender or any participant with

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respect to the Loan are collectively referred to herein as the "**Loan Documents**". Borrower, any person who has guaranteed all or any portion of the Loan, or any other party who is a party to any one or more of the Loan Documents are referred to collectively as the "**Loan Parties**" and individually as a "**Loan Party**."

D. The Secured Obligations. As used in this Assignment, the term "**Secured Obligations**" means and includes all of the following: (i) the principal of and interest on the Note and/or the Loan Agreement; (ii) all indebtedness of any kind arising under, and all amounts of any kind which at any time become due or owing to Lender under or with respect to the Loan Agreement, the Mortgage or any of the other Loan Documents; (iii) all of the covenants, obligations and agreements of Borrower or any other Loan Party in, under or pursuant to the Note, the Loan Agreement, the Mortgage, and/or any of the other Loan Documents; (iv) all advances, costs or expenses paid or incurred by Lender to protect any or all of the Collateral (hereinafter defined), perform any obligation of Borrower or any other Loan Party hereunder or under any other Loan Document, or collect any amount owing to Lender which is secured hereby; (v) any and all other liabilities, obligations and indebtedness, howsoever created, arising or evidenced, direct or indirect, absolute or contingent, recourse or nonrecourse, now or hereafter existing or due or to become due, owing by Borrower to Lender; (vi) interest on all of the foregoing; and (vii) all costs of enforcement and collection of the Mortgage and the other Loan Documents and the Secured Obligations.

NOW THEREFORE, FOR VALUE RECEIVED, Borrower hereby grants, transfers and assigns to Lender:

1. all of Borrower's right, title and interest in and to (but none of its obligations under) all leases and agreements for the leasing, lettings, use or occupancy of the Premises now, heretofore or hereafter entered into, and all renewals and extension thereof ("**Lease**" or "**Leases**" as the case may be);
2. all guarantees of the obligations of any tenant under a lease ("**Guarantees**");
3. immediate and continuing right to receive and collect the rents, income, profits and issues arising out of, payable from or collected from the Premises including all monies owed the Borrower as landlord under a Lease for services, materials, leasehold improvements or otherwise furnished or installed pursuant to any Lease (collectively the "**Rental Income**");
4. all payments derived therefrom including but not limited to claims for the recovery of damages done to the Premises or for the abatement of any nuisance existing thereon, claims for damages resulting from default under any Lease whether resulting from acts of insolvency or acts of bankruptcy or otherwise, and lump sum payments for the cancellation of any Leases or the waiver of any obligation or term thereof prior to the expiration date ("**Payments**");

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5. all rights and remedies the Borrower may have against any tenant under any Lease ("**Remedies**");
6. all proceeds payable by reason of the exercise by a tenant of any option to purchase the Premises or any first refusal rights of any tenant contained in any Lease ("**Option Proceeds**");
7. all rights in and to any proceeds of insurance payable to Borrower and damages or awards resulting from an authority exercising the rights of eminent domain with respect to the Premises ("**Awards**");
8. any award or damages payable to the Borrower pursuant to any bankruptcy, insolvency or reorganization proceeding affecting any tenant ("**Bankruptcy Payments**");
9. any payments made to Borrower in lieu of rent ("**Payments in lieu**"); and
10. all security deposits paid by any tenant under a Lease ("**Security Deposits**");

all the foregoing set forth in subsections (1) through (10) above being collectively referred to herein as the "**Rents**".

This Assignment is given for the purpose of securing the Secured Obligations.

AND BORROWER FURTHER REPRESENTS, WARRANTS, COVENANTS AND AGREES:

ARTICLE

1.

PERFORMANCE OF LEASES

1.1 Performance of Leases. The Borrower shall:

- (a) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any and all Leases of the Premises to be performed by the landlord thereunder;
- (b) Enforce or secure the performance of each and every material obligation, covenant, condition and agreement of said Leases by the tenants thereunder to be performed;
- (c) Not borrow against, pledge or further assign the Leases and/or any Rents due under said Leases;
- (d) Not permit the prepayment of any Rents for more than thirty (30) days in advance nor for more than the next accruing installment of Rents, nor anticipate, discount, compromise, forgive or waive any Rents;

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(e) Except as good commercial practice shall require, not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by any tenants to be performed under the Leases;

(f) Except as good commercial practice shall require, not permit any tenant to assign, sublet or mortgage, or grant any security interest in its interest in its Lease unless required to do so by the terms of the Lease and then only if such assignment does not work to relieve the tenant of any liability for payment of or performance of its obligations under the Lease;

(g) Except as good commercial practice shall require, not terminate any Lease or accept a surrender thereof or a discharge of the tenant unless required to do so by the terms of its Lease or unless the Borrower and the same tenant shall have executed a new Lease effective upon such termination for the same term of years at a rental not less than as provided in the terminated Lease and on terms no less favorable to the landlord than as in the terminated Lease;

(h) Not consent to a subordination of the interest of any tenant to any party other than Lender and then only if specifically consented to by Lender; and

(i) Except as good commercial practice shall require, not amend or modify any Lease or alter the obligations of the parties thereunder.

ARTICLE

2.

PROTECTION OF SECURITY

The Lender shall have the right at Borrower's sole cost and expense to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of the landlord thereunder, and Borrower agrees to pay all costs and expenses of Lender, including attorney's fees in a reasonable sum, in any such action or proceeding in which Lender in their sole discretion may appear.

ARTICLE

3.

REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties. Borrower represents and warrants:

(a) that it is now the absolute owner of said Rents and Leases with full right and title to assign the same, subject to Lender's lien and other Permitted Exceptions set forth in the Loan Agreement;

(b) that there are no outstanding assignments or pledges of any Rents or Leases, subject to Lender's lien and other Permitted Exceptions as provided in the Loan Agreement;

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(c) that there are no existing monetary defaults except as otherwise disclosed in writing to Lender and, to the best of Borrower's knowledge, no existing non-monetary defaults under the provisions of any Lease on the part of any party to such Lease;

(d) that all obligations on the part of the landlord under any Lease which could or should have been performed as of the date hereof have been fully performed;

(e) that no Rents have been collected for more than thirty (30) days in advance of their due date or waived, anticipated, discounted, compromised or released, except as disclosed to Lender;

(f) that to Borrower's knowledge no tenant has any defenses, setoffs, or counterclaims against Borrower;

(g) Borrower has not executed any instrument that would prevent Lender from enjoying the benefits of this Assignment;

(h) that no part of the Premises is used as a homestead or agricultural property;

(i) that no tenant under any Lease has a right, exercisable as of the date hereof, to terminate its obligations under the terms of its Lease as a result of a failure of a condition precedent or default by Landlord; and

(j) that Landlord has no reason to believe that it will not be able to fully, completely and timely perform all of its obligations under the Leases or that any condition precedent to a tenant's obligations under the Leases will fail to occur, giving any tenant the right to terminate its Lease.

ARTICLE

4.

PRESENT ASSIGNMENT

This Assignment shall constitute a perfected, absolute and present assignment, provided the Borrower shall have the right to collect, but not prior to accrual, all of the Rents, and to retain, use and enjoy the same unless and until an Event of Default shall occur hereunder. The right of Borrower to collect the Rents shall constitute a revocable license in favor of Borrower, revocable by Lender in accordance with this Assignment upon an Event of Default.

ARTICLE

5.

EVENTS OF DEFAULT

5.1 Events of Default. It shall be an Event of Default under this Assignment upon the happening of any of the following:

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(a) failure to pay any payments when due under the Note, within five (5) days of the due date thereof; or

(b) failure to pay when due any other payment required to be made under the Mortgage or any other Loan Document within five (5) days after notice thereof; or

(c) failure by Borrower to promptly perform any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower under this Assignment within ten (10) days after written notice thereof; provided that: (i) if such default, in the reasonable discretion of Lender, creates a hazardous condition or materially, adversely and imminently affects the value of the Premises or the ability of Borrower to perform its obligations hereunder, such default shall be cured immediately, and (iii) subject to the provisions of subsection (i) above, to the extent that such default is of such a character which reasonably requires more than ten (10) days to cure, Borrower shall have such reasonable additional time to cure the default, if Borrower has commenced to cure the same within said ten (10) day period and is diligently and continuously pursuing such cure, which default shall in all circumstances be corrected within forty (40) days after delivery of the above required written notice.

(d) an Event of Default or Default (as defined therein) shall occur under the Loan Agreement, the Mortgage or any other Loan Document which is not cured within the time period provided therefor, if any; or

(e) any representation or warranty made by Borrower herein, in the Mortgage or in any other Loan Document shall be false, breached or dishonored in any material respect.

ARTICLE

6.

REMEDIES

6.1 Remedies. Upon the occurrence of an Event of Default, Lender, without regard to waste, adequacy of the security or solvency of the Borrower, may revoke the license granted Borrower hereunder to collect the Rents, and may, at their option, without notice, either:

(a) In person or by agent, with or without taking possession of or entering the Premises, with or without bringing any action or proceeding, give, or require the Borrower to give, notice to any or all tenants under the Leases authorizing and directing the tenants to pay all Rents directly to Lender; collect all of the Rents; enforce the payment thereof and exercise all of the rights of the Borrower under any Lease and all of the rights of Lender hereunder; do all of the things permitted a receiver by statute or by this Assignment; and may enter upon, take possession of, manage and operate the Premises, or any part thereof; may cancel, enforce or modify the Leases, and fix or modify rents, and do any acts which Lender deems proper to protect the security hereof; or

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(b) Apply for appointment of a receiver, for which receivership Borrower hereby consents to, who shall have all the rights permitted by law and all rights permitted to Lender in this Assignment and who shall collect the Rents, manage the Premises so as to prevent waste; execute leases within or beyond the period of receivership; perform the terms of this Assignment and apply the Rents as hereinafter provided.

6.2 Application of Rents. Any Rents whether collected by Lender or by a receiver shall be applied in the following order:

- (a) to payment of all reasonable fees of any receiver appointed;
- (b) to the repayment when due of all tenant security deposits with interest thereon;
- (c) to payment when due of prior or current real estate taxes and special assessments payable with respect to the Premises or, if the Mortgage so requires, to the periodic escrow for payment of the taxes and special assessments then due;
- (d) to payment when due of premiums for insurance required by the Mortgage or, if the Mortgage so requires, to the periodic escrow for the payment of premiums then due;
- (e) to payment of all expenses incurred for normal maintenance of the Premises; and
- (f) to Lender and in the event that a foreclosure sale of the Mortgage shall have occurred:
 - (i) if Lender is the purchaser at the foreclosure sale, the Rents shall be paid to Lender to be applied to the extent of any deficiency remaining after the sale, the balance to be retained by Lender, and if the Premises be redeemed by the Borrower or any other party entitled to redeem, to be applied as a credit against the redemption price, provided that, if the Premises not be redeemed, any remaining excess Rents are to be paid to Lender and deposited with Lender, as set forth in the Mortgage for application as provided therein, whether or not a deficiency exists; or
 - (ii) if Lender is not the purchaser at the foreclosure sale, the Rents shall be paid to reduce the deficiency remaining after the sale, and the balance, if any, to the purchaser provided if the Premises are redeemed by the Borrower or other party entitled to redeem, the Rents collected after foreclosure sale shall be applied as a credit against the redemption price with the remainder to be paid to Borrower. If the Premises are not redeemed by Borrower, any remaining excess Rents shall be paid to the purchaser.

The exercise of Lender's rights hereunder, the appointment of a receiver, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event or Default or waive, modify or affect notice of default under the Mortgage or invalidate any act done pursuant

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to said notice, nor in any way operate to prevent Lender from pursuing any remedy which now or hereafter it may have under the terms and conditions of the Mortgage or the other Loan Documents or any other instruments securing the same. The rights and powers of Lender hereunder shall remain in full force and effect both prior to and after any foreclosure of the Mortgage and any sale pursuant thereto and until expiration of the period of redemption for said sale. The purchaser at any foreclosure sale, including Lender, shall have the right at any time and without limitation, to advance money to any receiver appointed of the Premises to pay any part or all of the items which the receiver would otherwise be authorized to pay if cash were available from the Premises and the sum so advanced, with interest at the Default Rate, shall be a part of the sum required to be paid to redeem from any foreclosure sale.

6.3 Full Remedies. It is the intention of the parties that this Assignment shall confer upon Lender the fullest rights, remedies and benefits available under applicable law.

ARTICLE VII

7.

GENERAL COVENANTS

7.1 No Liability Imposed on Lender. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases nor shall this Assignment operate to place responsibility for the control, care, management or repair of the Premises upon Lender nor for the carrying out of any of the terms and conditions of said Leases; nor shall it operate to make Lender responsible or liable for any waste committed on the Premises, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger nor liable for laches or failure to collect any Rents.

7.2 Indemnification. The Borrower shall and does hereby agree to indemnify and to hold harmless Lender from and against any and all liability, loss or damage which it may or might incur under the Leases or under of 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 said Leases excepting the gross negligence or intentional wrongful acts of Lender. Should Lender incur any such liability, or in the defense of any such claims or demands or a judgment be entered against Lender, the amount thereof, including costs, expenses, and reasonable attorney's fees, shall bear interest thereon at the Default Rate, as defined in the Note, shall be secured hereby, shall be added to the Secured Obligations and Borrower shall reimburse Lender for the same immediately upon demand, and upon the failure of Borrower so to do Lender may declare all Secured Obligations immediately due and payable.

7.3 Tenant to Recognize Lender. Each tenant under any Lease is hereby irrevocably authorized and directed to recognize the claims of Lender or any receiver appointed, without investigating the reason for any action taken or the validity or the amount of indebtedness owing

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to Lender, or the existence of any default under the Note, the Mortgage or Event of Default hereunder, or the application of the proceeds to be made by Lender or such receiver. Borrower hereby irrevocably directs and authorizes the tenants to pay to Lender or such receiver all sums due under the Leases and consents and directs that said sums shall be paid to any such receiver in accordance with the terms of its receivership or to Lender without the necessity for a judicial determination that a default or an Event of Default has occurred hereunder or under any other Loan Document or that Lender is entitled to exercise its rights hereunder, and to the extent such sums are paid to Lender or such receiver, the Borrower agrees that the tenant shall have no further liability to Borrower for the same. The sole signature of Lender or such receiver shall be sufficient for the exercise of any rights under this Agreement and the sole receipt by Lender or such receiver for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Premises. Checks for all or any part of the Rents collected under this Assignment shall upon notice from Lender be drawn to the exclusive order of Lender or such receiver.

7.4 Security Deposits. The Borrower shall deposit all security deposits delivered by tenants to Borrower in an account at Lender, separated from its general funds, and if such deposits are required by law to be refunded to the respective tenants with interest thereon, such account shall be an interest bearing account. Upon an Event of Default, Borrower shall on demand transfer to Lender any security deposits held by Borrower under the terms of the Leases to be held as additional collateral to secure the Secured Obligations. Until Lender makes such demand and the deposits are paid over to Lender, Lender assumes no responsibility for any such security deposit.

7.5 Attorney in Fact. Borrower hereby irrevocably appoints Lender, its successors and assigns, as Borrower's agent and attorney-in-fact, which appointment is irrevocable and coupled with an interest, to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as Lender may deem necessary to make this Assignment and any further assignment effective.

7.6 Assignment of Future Leases. Until the Secured Obligations shall have been paid in full, Borrower will on demand of Lender deliver to Lender executed copies of any and all other and future Leases upon all or any part of the said Premises and agrees to make, execute and deliver unto Lender upon demand and at any time or times, any and all assignments and other instruments sufficient to assign such Leases and Rents thereunder to Lender or that Lender may deem to be advisable for carrying out the true purposes and intent of this Assignment. From time to time upon request of Lender, the Borrower agrees to furnish Lender with a rent roll of the Premises disclosing current tenancies, rents payable, and such other matters as Lender may reasonably request.

7.7 No Lender in Possession. Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting Lender as "Lender in Possession".

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7.8 Lender Creditor of Tenant. Borrower agrees that Lender, and not Borrower, shall be and be deemed to be the creditor of the tenant in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such tenant (without obligation on the part of Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein), with an option to Lender to apply any money received by Lender as such creditor in reduction of the Secured Obligations.

7.9 Continuing Rights. The rights and powers of Lender or any receiver hereunder shall continue and remain in full force and effect until all Secured Obligations, including any deficiency remaining from a foreclosure sale, are paid in full, and shall continue after commencement of a foreclosure action and after foreclosure sale and until expiration of any period of redemption.

ARTICLE

8.

MISCELLANEOUS

8.1 Successors and Assigns. This Assignment and each and every covenant, agreement and provision hereof shall be binding upon the Borrower and its successors and assigns including without limitation each and every record owner of the Premises or any other person having an interest therein from time to time and shall inure to the benefit of Lender and their successors and assigns. As used herein the words "successor and assigns" shall also be deemed to mean the heirs, executors, representatives and administrators of any natural person who is a party to this Assignment.

8.2 Governing Law. This Assignment and its terms shall be construed in accordance with the substantive laws of the State of Illinois, without reference to its conflict of laws provisions.

8.3 Severability. It is the intent of this Assignment to confer on Lender the rights and benefits hereunder to the full extent allowable by law. The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid. Any provisions found to be unenforceable shall be severable from this Assignment.

8.4 Notices. Except as otherwise provided herein, all notices or other communications hereunder shall be delivered in accordance with Section 4.5 of the Mortgage.

8.5 Captions and Headings. The captions and headings of the various sections of this Assignment are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

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8.6 Counterparts. This Assignment may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Assignment.

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IN WITNESS WHEREOF, this Assignment of Leases and Rents, dated for reference purposes only as of September 3, 2003.

NORTH AND CLYBURN, L.L.C.

By: 

Harry Seigle, member

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STATE OF ILLINOIS)
)SS:
COUNTY OF COOK)

The Undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 3rd day of September, 2003, personally appeared before me Harry Seigle, a member of NORTH AND CLYBOURN, L.L.C., an Illinois limited liability company, to me personally well known and known to be the person who signed the foregoing instrument, as his free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

Janice E. Cohen
Notary Public



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EXHIBIT A

Description of the Land

LOTS 168, 169 AND 170 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N.: 14-32-425-083
14-32-425-084
14-32-425-085

Commonly Known As: 1617-21 North Clybourn Avenue
Chicago, Illinois 60614

Property of Cook County Clerk's Office