



COLLATERAL ASSIGNMENT OF LEASES AND RENTS

THIS COLLATERAL ASSIGNMENT OF LEASES AND RENTS made October 31, 2003 (this "Assignment"). by 6350 NORTH HOYNE, LLC, an Illinois limited liability company, having its office at Hallmark and Johnson, 6160 North Cicero Avenue, Suite 620, Chicago, Illinois 60646 (the "Assignor"), to THE PRIVATEBANK AND TRUST COMPANY, a banking corporation organized and existing under the laws of the State of Illinois and having a place of business at 920 South Waukegan Road, Lake Forest, Illinois 60045 (the "Assignee");

WITNESSETH:

Section 1. Definitions. Each reference in this Assignment to the following terms shall be deemed to have the following meanings and all other references shall have the meaning assigned thereto in the Loan Agreement defined below.

Improvements. Construction and development of a thirty-one (31) unit condominium development.

Lease: Each agreement providing for the use and occupancy of the Leased Premises, in writing or oral, now or hereafter existing, affecting any portion or all of the Leased Premises and any modifications, amendments, renewals and extensions thereof or agreements in substitution for any of the foregoing.

Leased Premises: The Premises and the Improvements.

Lessee: Each present and future lessee, tenant, and occupant occupying all or any portion of the Premises pursuant to a Lease.

Loan Agreement: That certain Construction Loan Agreement of even date herewith by and between the Assignor and the Assignee pursuant to which the Assignee has agreed, subject to the terms and conditions thereof, inter alia, to make a loan to the Assignor in the principal amount of Three Million Eight Hundred Eighty-Two Thousand Dollars (\$3,882,000.00) and the Assignor has agreed, inter alia, to execute and deliver this Assignment as partial security for such loan.

Note: That certain secured construction promissory note in the principal sum of Three Million Eight Hundred Eighty-Two Thousand Dollars (\$3,882,000.00) of the Assignor, payable to the order of the Assignee and of even date herewith.

Obligations: Payment of the principal, interest and any other sums now or hereafter due and payable to the Assignee under the Note, the Loan Agreement, the Security Documents, this Assignment and/or any other agreements between the Assignor and the Assignee, now or hereafter existing and performance and satisfaction of all other agreements, warranties, representations and obligations of the Assignor contained in this Assignment, the Loan Agreement, the Note, the Security Documents, any Lease, and/or any other agreements of the Assignor, now or hereafter existing, and relating to the Note, Loan Agreement, the Security Documents, any Lease, and/or the Leased Premises.

BOX 333-CTI

8/29 3:23 PM
②

10 P

UNOFFICIAL COPY

Premises: That certain real estate located in Cook County, State of Illinois, more particularly described on Exhibit A attached hereto.

Rents: All rents, payments, profits, benefits and other sums of every kind, now or hereafter due and payable to the Assignor and arising under or in connection with any Lease and any extensions or renewals thereof or out of the construction, use and occupancy of the Leased Premises or any portion thereof.

Security Documents: Collectively, all of the Security Instruments (as defined in the Loan Agreement), including, without limitation, the Assignor's construction mortgage agreement granting the Assignee a first mortgage and security interest as to the Leased Premises and form UCC-1 financing statements relating thereto, and all other documents, instruments and agreements now or hereafter executed and/or delivered by the Assignor for the purpose of granting the Assignee security for the Obligations.

NOW, THEREFORE, in consideration of the Loan Agreement, the loan pursuant thereto and other valuable consideration, the receipt of which is hereby acknowledged and as further security for payment and performance of the Obligations, the Assignor hereby grants, sells, conveys, transfers, assigns and sets over to the Assignee all of the Assignor's rights, title and benefits under, in and to each Lease, the Rents and any present or future guarantees of any Lease and Rents.

TO HAVE AND TO HOLD the same with all of the rights, privileges and appurtenances thereunto belonging unto the Assignee, its successors and assigns until such time as the Obligations have been paid and satisfied in full for the purpose of further and collaterally securing the same.

The Assignor and the Assignee agree that the following terms and conditions shall govern this Assignment:

1. **Assignor's Covenants.** The Assignor, for itself and for its successors and assigns, covenants and warrants as follows:

(a) That each existing Lease is in full force and effect and that there is to the knowledge of the Assignor, no default on the part of any party thereto;

(b) That the Assignor is the sole owner of the entire lessor's interest under each existing Lease, that each existing Lease is free from all encumbrances and liens, except as provided in any Lease, other than the Security Documents, that the Assignor has full power and authority to assign each Lease and Rents in accordance herewith, that the Assignor will warrant and defend each Lease and Rents to the Assignee against the lawful claims and demands of all persons, and that the Assignor has not sold, assigned, transferred, mortgaged or pledged any Lease and/or Rents or any interest thereon, whether now or hereafter to become due, to any person, firm or corporation other than the Assignee;

UNOFFICIAL COPY

(c) That no Rents becoming due after the date hereof have been collected, nor has payment of any of the same been anticipated, waived, released, discounted or otherwise discharged or compromised;

(d) That the Assignor will not assign, pledge or otherwise encumber any Lease or any of the Rents without the prior written consent of the Assignee in each instance and then only subject to and in accordance with any conditions set forth in such written consent;

(e) Upon an Event of Default under the Security Documents, the Assignor will not, without the prior written consent of the Assignee in each instance directly or indirectly amend, modify, cancel, terminate or accept any surrender of any Lease or waive or consent to any default or variation in the performance thereof, but that the Assignor will enforce all of the terms and conditions thereof at all times;

(f) If Assignee grants Assignor a license pursuant to section 2 hereof, Assignor will not in any way violate or permit a violation of such license;

(g) That the Assignor will fulfill or cause to be fulfilled all of the terms, covenants and conditions on the Assignor's part to be fulfilled under each Lease;

(h) That the Assignor will, upon written request by the Assignee, while this Assignment remains in force and effect, execute and deliver all such powers of attorney, instruments of pledge or assignment, and such other instruments or documents as the Assignee may reasonably request at any time for the purpose of further securing the Assignee's rights hereunder; and

(i) That the Assignor will provide the Assignee with written notice of any extension, renewal, amendment or modification of any Lease within five (5) days thereof, and that the Assignor will similarly furnish to the Assignee, on demand, true copies of all agreements or letters effecting same.

2. **License to Lease.** So long as no Event of Default shall exist under any of the documents under which the Obligations arise, Assignee may, in its sole discretion, grant the Assignor a license to lease the Leased Premises pursuant to each Lease, to exercise Assignor's rights as lessor thereunder, and to collect all Rents and receipt therefor; provided, however, that without the prior written consent of the Assignee in each instance the Assignor shall not collect any installment of Rents more than thirty (30) days in advance of the due date prescribed for the payment thereof in any Lease.

3. **Assignee's Rights in Event of Default.**

3.1 Upon three (3) days' notice after the occurrence of any event of default after the expiration of any applicable grace period under any of the documents under which the Obligations arise, and until such event of default shall have been cured as hereinafter defined, the license under section 2 hereof shall, at the option of the Assignee, terminate and in such event the Assignee is hereby expressly and irrevocably authorized to enter and take possession of the Leased Premises by actual physical possession, or by notice in accordance with section 9 hereof to the Assignor without further authorization, notice or demand and without the commencement

UNOFFICIAL COPY

of any action to foreclose any of the interests granted in any of the Security Documents or to exercise its power of sale and other remedies thereunder.

3.2 Upon an event of default under any of the Security Documents, the Assignor hereby constitutes and appoints the Assignee irrevocably, and with full power of substitution and revocation, the true and lawful attorney, for and in the name, place and stead of the Assignor, to demand and receive any and all Rents; to enter into any and all agreements with any Lessee or any other party at any time for the disposition of the Rents; to compromise and adjust any matters of dispute with any Lessee or any other party with reference to any Lease, Rents and any other sums due or to become due in connection therewith; and to give all such receipts, releases, assurances, acquittances, discharges and other instruments that any Lessee or any other party may require for the Rents and other sums or any part thereof; to enforce, amend or terminate any Lease and enter into any agreements or new Lease in substitution for or in addition to any Lease; to exercise all rights and remedies of the Assignor under any Lease; to construct, complete, repair and/or alter the Leased Premises as the Assignee may, in its reasonable discretion, deem proper; to perform any of the actions and rights provided by any of the Security Documents in the event of a default thereunder; to pay, from and out of the Rents or from or out of any other funds, any taxes, assessments, water, sewer or other government charges assessed or imposed against the Leased Premises and also any and all other charges and expenses which may be necessary or advisable for the Assignee to pay in the construction, completion, management or operation of the Leased Premises, including, without limitation, the costs of such construction, completion, repairs and alterations, commissions for renting or selling the Leased Premises or any portions thereof and legal expenses of exercising such rights and remedies. The Assignor hereby grants unto said attorney full power and authority to do and perform each and every act whatsoever requisite to be done in and about the Leased Premises, as fully to all intents and purposes, as the Assignor could do if personally present, hereby ratifying and confirming all that said attorney shall lawfully do or cause to be done by virtue hereof; provided, however, that any acts or omissions by the Assignee after an event of default shall be at the Assignee's discretion and shall not be or become the basis for any liability of the Assignee. The Assignor hereby authorizes and directs each Lessee and all other parties to pay and deliver all Rents and other sums due and to become due to the Assignor under each Lessee's Lease to the Assignee in accordance with the provisions hereof.

3.3 The Assignee shall apply the net amount of Rents received by it from the Leased Premises and/or under any Lease, after payment of all proper costs and charges (including, without limitation, any liability, loss, expense or damage hereinafter referred to in section 4 hereof), in such order and in such proportion as the Assignee shall elect in accordance with the Loan Agreement, including, without limitation, to the Obligations then due and to the payment when due, of interest payable under the Note and thereafter to the payment of the principal due under the Note. Any of such funds remaining after such application shall be paid as soon as reasonably practicable by the Assignee to the Assignor or at the Assignor's direction set forth in Notice from the Assignor.

3.4 The Assignee shall be accountable to the Assignor only for funds actually received by the Assignee pursuant to this Assignment and the acceptance of this Assignment shall not constitute a satisfaction of all or any part of the Obligations except to the extent of funds actually received and applied by the Assignee on account of the same.

UNOFFICIAL COPY

3.5 The rights and powers of the Assignee hereunder shall continue and remain in full force and effect until all Obligations, including any deficiency resulting from exercise of remedies under any of the Security Documents, are paid or satisfied in full, and shall continue after commencement of foreclosure and after foreclosure sale and until expiration of the equity of redemption, notwithstanding sale of the Leased Premises to a purchaser other than the Assignee. The Assignee shall not be liable to the Assignor or anyone claiming under or through the Assignor by reason of any act or omission by the Assignee hereunder.

3.6 An event of default shall be cured only when the Assignor shall have paid and/or satisfied in full all Obligations and other sums owing and past due and/or shall have performed all other terms, covenants and conditions, the event of default of which terminates the license hereinabove mentioned.

4. Indemnification.

4.1 The Assignor agrees to indemnify, defend and hold harmless the Assignee from and against any and all liability, loss, damage and expense, including reasonable attorneys' fees which the Assignee may or shall incur under or in connection with any Lease and/or the Leased Premises or by reason of any of the Obligations or actions taken or omitted by the Assignee under any of the Obligations, including, without limitation, any action or omission which the Assignee in its discretion may take to protect its interest in any Lease and/or the Leased Premises and from and against any and all claims and demands whatsoever which may be asserted against the Assignor and/or the Assignee by reason of any of the terms and conditions of any Lease.

4.2 If the Assignee incurs any such liability, loss, damage or expense, the amount thereof plus interest thereon at the rate per annum equal to five percent (5%) plus the annual rate of interest published by The Wall Street Journal from time to time as the prime rate shall be paid by the Assignor to the Assignee immediately upon demand, or at the option of the Assignee, the Assignee may reimburse itself therefor out of any Rents collected by the Assignee.

4.3 Nothing contained herein shall operate or be construed to obligate the Assignee to perform any of the terms, covenants or conditions contained in any Lease, or to take any action to collect any Rents or other payments or to impose any obligation on the Assignee relating to any Lease and/or Leased Premises, including, without limitation, any obligation to construct, complete, operate, sell, lease, retain, repair and/or maintain the Improvements.

4.4 Prior to any actual taking of possession of the Leased Premises by the Assignee, the Assignee shall not have any duty to perform any of the Assignor's obligations under any Lease or any duty to construct, complete, operate, maintain, manage, repair, sell, lease and/or retain the Leased Premises, and the Assignor covenants that such duties are exclusively the Assignor's responsibility.

5. Exercise of Remedies. The rights and remedies of the Assignee under this Assignment are cumulative and in addition to any other rights and remedies which the Assignee shall have under or as a result of any other of the Obligations and may be exercised as often as the Assignee deems such exercise to be desirable. Failure of the Assignee to avail itself of any of

UNOFFICIAL COPY

the terms, covenants and conditions of this Assignment for any period of time, or at any time or times, shall not constitute a waiver of any of its rights hereunder.

6. **Assignment by Assignee.** The Assignee shall have the right to assign the Assignor's rights, title and interest in the Leased Premises and/or any Lease to any subsequent holder of the mortgage which is one of the Security Documents or to any person acquiring title to the Leased Premises, subject, however, to the provisions of this Assignment. After the Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in the Leased Premises, no assignee of the Assignee's interest in any Lease shall be liable to account to the Assignor for any Rents thereafter accruing.

7. **Termination.** Upon payment and satisfaction in full of the Obligations, as evidenced by recorded satisfactions or releases of the recorded Security Documents, and of any sums which may be payable hereunder, or under any present or future agreement between the Assignor and the Assignee, this Assignment shall be void and of no effect and, in that event, upon the Assignor's request, the Assignee agrees to execute and deliver to the Assignor instruments evidencing the termination of this Assignment in recordable form.

8. **No Merger.** There shall be no merger of any Lease or the leasehold estate created thereby with the fee estate in the Leased Premises or with any mortgage of said fee by reason of the fact that any Lease or any interest therein may be held by or for the account of any person, firm or corporation which may be or become the mortgagee or owner of said fee estate, unless the Assignee shall consent in writing to said merger.

9. **Notices.** Any notice, demand, request or other communication given in connection with this Assignment shall be deemed sufficient if in writing and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to receive such notice at its address first set forth above or as set forth in the Loan Agreement, or at such other address as such party may hereafter designate by notice given in like fashion. Notices shall be deemed given when mailed. Notwithstanding the foregoing, routine communications such as timely payments of Rents may be sent by ordinary first-class mail.

10. **Miscellaneous.**

10.1 This Assignment shall be construed and enforced in accordance with and governed by the laws of the State of Illinois.

10.2 No amendment, cancellation or discharge of this Assignment shall be valid unless the Assignee shall have consented thereto in writing.

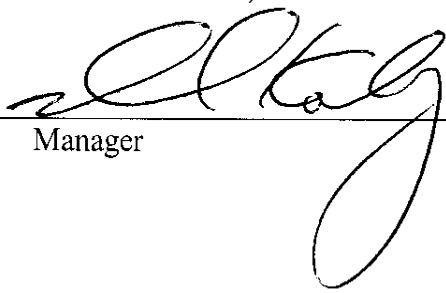
10.3 In the event there is any conflict between the terms and provisions of any other Security Documents and the terms and provisions of this Assignment, the terms and provisions of this Assignment shall prevail.

The terms, covenants, and conditions contained herein shall inure to the benefit of and bind the Assignee and the Assignor and their respective successors and assigns.

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed on its behalf by its duly authorized on the date first set forth above.

6350 NORTH HOYNE, LLC

By: 

Manager

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
 LAKS) SS.
COUNTY OF ~~COOK~~)

I, Jeffrey S. Lyon, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Michael A. Kdolny, Manager of 6350 North Hoyne, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as Manager 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 said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30 day of October, 2003.



Notary Public

OFFICIAL SEAL
JEFFREY S LYON
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES MAY 2, 2005

My commission expires _____

UNOFFICIAL COPY

EXHIBIT A

Legal Description of Property

Property of Cook County Clerk's Office



Address: 6350 North Hoyne, Chicago, Illinois

P.I.N. 14-06-110-084-0000

UNOFFICIAL COPY

THAT PART OF THE NORTH 169.604 FEET THEREOF (AS MEASURED PERPENDICULARLY TO THE NORTH LINE THEREOF) OF THE EAST 20 RODS OF THE NORTH HALF OF THE WEST HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTH LINE OF DEVON AVENUE AND WEST OF THE WEST LINE OF HOYNE AVENUE (EXCEPTING FROM THE ABOVE DESCRIBED PROPERTY, THE NORTH 125.00 FEET OF THAT PART THEREOF LYING WEST OF A LINE 198.30 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF NORTH HOYNE AVENUE AS DESCRIBED IN DOCUMENT 10810155) ALSO EXCEPT THE WEST 30 FEET (MEASURED ALONG THE SOUTH LINE OF WEST DEVON AVENUE) OF THE NORTH 125 FEET (MEASURED PERPENDICULAR TO THE SOUTH LINE OF WEST DEVON AVENUE), IN COOK COUNTY, ILLINOIS.