

UNOFFICIAL COPY

43455-2 0111-04

93242964

21300

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OR RENTS AND LEASES ("Assignment"), made this day of March, 1993, by Horizon Development Group, Inc., an Illinois corporation ("Horizon"), which has its principal place of business at 3512 West Dempster Street, Skokie, Illinois 60076, and Columbia National Bank of Chicago, not personally, but solely as Trustee under Trust Agreement dated March 1, 1993, and known as Trust No. 4294 ("Trustee"), which has its principal place of business at 5250 North Harlem Avenue, Chicago, Illinois 60656 (Horizon and Trustee are sometimes collectively referred to as "Assignor", to Columbia National Bank of Chicago, a national banking association ("Columbia").

RECITALS

WHEREAS, Assignor and Columbia are parties to a Loan Agreement of even date herewith (the "Loan Agreement") pursuant to which Columbia has agreed to make a loan to Assignor, in the aggregate principal amount of up to \$608,000.00 (the "Loan") on the terms and conditions set forth in the Loan Agreement and for the purposes set forth therein; and

WHEREAS, as evidence of the indebtedness incurred under the Loan, Assignor has executed and delivered to Columbia a Note of even date herewith, payable to Columbia, in the original principal amount of \$608,000.00 (the "Note"), payment of which is secured by, among other things, a Mortgage of even date herewith (the "Mortgage") from Trustee covering the real estate described therein as well as other security; and

WHEREAS, the execution and delivery of this Assignment is a condition precedent to the performance by Columbia of its obligations under the Loan Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, Assignor agrees as follows:

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby unconditionally and absolutely transfers, assigns and sets over to Columbia, its successors and assigns, from and after the date hereof, all of Assignor's right, title and interest in and to (a) all leases, subleases, licenses, rental contracts and other agreements, now existing or hereafter entered into, relating to the occupancy and affecting that certain real property located in Skokie, Illinois as more fully described in Exhibit A attached hereto and made a part

93242964

BOX 333

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000000000

UNOFFICIAL COPY

hereof (the "Property"), together with all guarantees, modifications, extensions and renewals thereof which now exist or may hereafter be made (collectively, the "Leases"), and (b) all rents, issues, profits, income and proceeds due or to become due from tenants of the Property, including but not limited to, rentals under all present and future Leases, together with all deposits of tenants thereunder, including, without limitation, security deposits, now or hereafter held by Assignor in connection with the Property (collectively, the "Rents").

In connection with and as part of the foregoing assignment, Assignor hereby makes the following grants, covenants, agreements, representations and warranties:

1. Subject to the provisions of Paragraph 3 below, Columbia shall have the right, power and authority: (a) to collect Rents and to notify any and all tenants and other obligors on Leases that the same have been assigned to Columbia and that all Rents are to be paid directly to Columbia (and such tenants are hereby authorized to make such payments to Columbia without inquiry of any kind), whether or not Columbia shall have foreclosed or commenced foreclosure proceedings against the Property and whether or not Columbia has taken possession of the Property, (b) to settle, compromise or release, on terms acceptable to Columbia, in whole or in part, any amounts owing under any Leases and any Rents; (c) to enforce payment of Rents and to prosecute any action or proceeding, and to defend legal proceedings, with respect to any and all Rents and Leases and to extend the time of payment, make allowances, adjustments and discounts; (d) to enter upon, take possession of and operate the Property; (e) to lease all or any part of the Property, and/or (f) to enforce all other rights of the lessor under the Leases. Notwithstanding anything herein to the contrary, Columbia shall not be obligated to perform or discharge, and Columbia does not undertake or perform or discharge under or by reason of this Assignment, any obligation, duty or liability (including, without limitation, liability under any covenant of quiet enjoyment contained in any Lease or under the law of any state in the event that any tenant shall be joined as a party defendant in any action to foreclose the Mortgage, and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Property) with respect to the Leases or the Rents. This Assignment shall not operate to place responsibility for the control, care, maintenance or repair of the Property upon Columbia, or to make Columbia responsible or liable for any waste committed on the Property by any tenant or other person, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Nothing contained in this Assignment shall be construed as constituting Columbia a trustee or mortgagee in possession.

93242964

UNOFFICIAL COPY

Property of Cook County Clerk's Office

4025175800

UNOFFICIAL COPY

9 3 2 4 2 9 3 4

2. Subject to the provisions of paragraph 3 below, Columbia shall have the right, power and authority to use and apply any Rents received hereunder (a) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this Assignment or the rights of Columbia hereunder, and collecting any Rents, and (b) for the operation and maintenance of the Property and the payment of all costs and expenses in connection therewith, in such order and manner as Columbia shall determine, including, without limitation, the payment of (i) rentals and other charges payable by Assignor under any ground lease affecting the Property, (ii) interest, principal or other amounts with respect to any and all loans secured by mortgages on the Property, including, without limitation, the Mortgage, (iii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property or any part thereof, (iv) insurance premiums, (v) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents, (vi) wages and salaries of employees, commissions of agents and attorneys' fees, and (vii) all other carrying costs, fees, charges and expenses whatsoever relating to the Property. To the extent not paid pursuant to the immediately preceding sentence, after the payment of all such costs and expenses and after Columbia shall have set up such reserves as it, in its reasonable discretion, shall deem necessary for the proper management of the Property, Columbia shall apply all remaining Rents collected and received by it to the reduction of the Indebtedness (as defined in the Mortgage). Exercise or nonexercise by Columbia of the rights granted in this Assignment, or collection and application of Rents by Columbia or its agent shall not be a waiver of any default by Assignor under this Assignment, the Mortgage, the Loan Agreement, the Note or any other Loan Document (as defined in the Loan Agreement). No action or failure to act by Columbia with respect to any of the obligations of Assignor under the Loan Documents, to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to such obligations, shall in any manner affect, impair or prejudice any of Columbia's rights and privileges under this Assignment or discharge, release or modify any of Assignor's duties or obligations hereunder. This Assignment is intended by Assignor and Columbia to create, and shall be construed to create, an absolute assignment to Columbia, subject only to the terms and provisions hereof, and not as an assignment as security for the payment of the Indebtedness and performance of the obligations evidenced by the Loan Documents, or for any other indebtedness of Assignor.

3. Although it is the intention of the parties that the assignment discussed herein shall be a present absolute assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Assignee shall not exercise any of the right or powers conferred upon it by this Assignment until

UNOFFICIAL COPY

Property of Cook County Clerk's Office

4000000000

UNOFFICIAL COPY

9 3 2 4 2 9 5 4

a default shall have occurred under this Assignment or any of the other Loan Document (as defined in the Loan Agreement) and the default shall not have been cured within the applicable grace period provided therefor, if any. Unless and until such an "Event of Default" exists, Assignor agrees to apply the proceeds of Rents to the payment of debt service on the Property and of taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Property or any part thereof, insurance premiums, tenant finish and other obligations of Assignor as lessor under the Leases, and to operation and maintenance charges relating to the Property which are due and payable at the time of collection of such proceeds of Rents and for the payment of other "Operating Expenses" (as defined in the Loan Agreement) before using such proceeds for any other purpose. Assignor agrees that (i) as between Assignor and Columbia (and their successors and assigns), the Leases shall remain in full force and effect irrespective of any merger of the interest of the lessor and lessee hereunder; (ii) that none of the rights or remedies of Columbia under the Mortgage shall be delayed or in any way prejudiced by this Assignment; and (iii) notwithstanding any variation of the terms of the Mortgage or any extension of time for payment thereunder or any release of any portion of the Real Estate (as defined in the Mortgage), the assignment of Leases and benefits made pursuant hereto shall remain in full force and effect until the obligations set forth in Paragraph 4 of this Assignment have been satisfied. Assignor shall (a) observe and perform faithfully every obligation which Assignor is required to perform under the Leases so that a default permitting the tenant to terminate its Lease does not arise; (b) enforce, or use commercially reasonable efforts to secure the performance of, at its sole cost and expense, every obligation to be performed by the tenants under the Leases; (c) promptly give notice to Columbia of any notice of default received by Assignor from any tenant under the Leases, and any notice of default given by Assignor to any tenant under the Leases together with a copy of such notices; (d) not collect any Rents for more than thirty (30) days in advance of the time when the same shall become due, or anticipate any payments under any of the Leases, except for bona fide security deposits not in excess of an amount equal to two (2) month's rent; (e) not discount any future accruing Rents; (f) not further assign any of the Leases or the Rents, except with respect to sales of Units (as defined in the Loan Agreement) to third party purchasers; (g) except with Columbia's prior written consent, not waive, condone or in any manner discharge any tenants from their obligations under the Leases; (h) except with respect to sales of Units (as defined in the Loan Agreement) to third party purchasers or except with Columbia's prior written consent, not cancel, abridge or accept surrender or termination of any of the Leases unless Assignor shall have entered into a Lease for the space to be vacated as a result thereof upon terms (including, without limitation, rentals and term) at least as favorable to Assignor and commencing within thirty (30) days after such cancellation, abridgment, surrender or

93242964

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/15/2023 10:10:10 AM

UNOFFICIAL COPY

93242964

termination or if such surrender or termination is a result of the default of the tenant, thereunder; (i) except with Columbia's prior written consent or as otherwise expressly permitted pursuant to the terms of the Mortgage, not modify or amend, by sufferance or otherwise, any of the Leases or any of the terms, provisions or covenants thereof or grant any concessions in connection therewith; (j) execute any further leases of any portion of the Property without the prior written approval of Columbia; (k) provide in all Leases executed after the date hereof that any cancellation, abridgment, surrender, modification or amendment of such Leases, without the prior written consent of Columbia, except as permitted by the provisions of this Assignment or the Mortgage, shall be voidable as against Columbia, at its option; (l) comply with all laws, rules, orders, ordinances and requirements of all governmental authorities relating to the Property; (m) deliver to Columbia copies of all Leases and amendments to Leases (whether or not Columbia's consent is required prior to the execution thereof) promptly after the execution of such Lease or amendment, as the case may be; (n) appear in and defend against, at Assignor's sole cost and expense, any action or proceeding arising under, or in any manner connected with the Leases, the Rents or the obligations, duties or liabilities of the lessor, tenants or guarantors thereunder; and (o) furnish loss of rents insurance to Columbia in accordance with the terms of the Mortgage.

4. This Assignment shall continue in full force and effect until (a) all sums due and payable under the Loan Documents shall have been fully paid and satisfied, together with any and all other sums which may become due and owing under this Assignment, and (b) all other obligations of Assignor under the Loan Documents have been satisfied. At such time, this Assignment and the authority and powers herein granted by Assignor to Columbia shall cease and terminate and Assignor shall assume payment of all unmatured or unpaid charges, expenses or obligations incurred or undertaken by Columbia, if any, in connection with the management of the Property.

5. Assignor hereby represents and warrants the following to Columbia:

(a) The Leases which now effect the Property are valid, subsisting and in full force and effect, and have been duly executed and unconditionally delivered by Assignor and, to the best of Assignor's knowledge and belief, have been duly executed and unconditionally delivered by the tenants under the Leases; (b) Assignor has good right to sell, assign, transfer and set over the Leases as provided herein and to grant and confer upon Columbia the rights, interest and powers granted and conferred herein; (c) Assignor has not executed or granted any modifications or amendments of the Leases either orally or in writing not previously exhibited to and approved by Columbia; (d) there are no material defaults now existing

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025/01/14

UNOFFICIAL COPY

93242964

under any of the Leases and, there are no defaults now existing under any of the Leases and no event has occurred which, with the delivery of notice or the passage of time or both, would constitute such a default or which would entitle the lessor under the Leases or the tenants thereunder to cancel the same or otherwise avoid their obligations thereunder; (e) Assignor has not assigned or pledged any of the Leases or its right, title and interest therein; (f) that no rents have been paid by any tenant for more than one installment in advance, and that 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 Assignor; and (g) that no security deposit has been made by any tenant under the Leases except as previously disclosed to Columbia.

6. Columbia shall not in any way be liable to Assignor or any other party for any act done or anything omitted to be done to the Property, the Leases or the Rents by or on behalf of Columbia in good faith in connection with this Assignment except for the consequences of its own gross negligence or willful misconduct. Columbia shall not be liable for any act or omission of its agents, servants, employees or attorneys, provided that reasonable care is used by Columbia in the selection of such agents, servants, employees and attorneys. Columbia shall be accountable to Assignor only for monies actually received by Columbia pursuant to this Assignment.

7. Assignor shall indemnify, defend and hold Columbia and its officers, directors, employees and agents harmless from and against any and all liability, loss, damage, cost or expense, including reasonable attorneys' fees, which it may incur under any of the Leases, or with respect to this Assignment or any action or failure to act of Columbia hereunder, and from and against any and all claims and demands whatsoever which may be asserted against Columbia by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants and conditions of any of the Leases or with respect to any Rents, except to the extent caused by or resulting from the gross negligence or willful misconduct of Columbia, its agents, employees or representatives or the failure of Columbia to materially comply with the terms hereof. In the event that Columbia incurs any such liability, loss, damage, cost or expense, the amount thereof, together with interest thereon from the date such amount was suffered or incurred by Columbia until the same is paid by Assignor to Columbia at a rate equal to the Delinquency Rate (as defined in the Note) shall be payable by Assignor to Columbia immediately upon demand, or at the option of Columbia, Columbia may reimburse itself therefor out of any Rents collected by Columbia.

8. Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 3 2 4 2 9 6 4

Assignment, including any amounts received in connection with any cancellation, modification, or amendment of any of the Leases prohibited by the terms of this Assignment and any amounts received by Assignor as rents, income, issues, or profits from the Property from any after the occurrence of an Event of Default hereunder or under the Mortgage, shall be held by Assignor as trustee for Columbia and all such amounts shall be accounted for to Columbia and shall not be commingled with other funds of Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Columbia as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith; by way of example and not of limitation, such notice may be given by an instrument recorded with the Recorder of Deeds of Cook County stating that Assignor has received or will receive such amounts in trust for Columbia.

9. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents to secure said indebtedness contained in the mortgage or in any other document. Any provision in the Loan Agreement that pertains to this Assignment shall be deemed to be incorporated herein as if such provision were fully set forth in this Assignment. In the event of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail. A provision in this Assignment shall not be deemed to be inconsistent with the Loan Agreement by reason of the fact that no provision in the Loan Agreement covers such provision in this Assignment.

10. Upon issuance of a deed or deeds pursuant to foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor.

11. All notices, demands, requests and other communications which are required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given when delivered or mailed in the manner set forth in the Loan Agreement.

12. Upon request of Columbia, Assignor shall execute and deliver to Columbia, such further instruments as Columbia reasonably may deem necessary to effect this Assignment and the covenants of Assignor contained herein.

13. This Assignment shall be assignable by Columbia to any assignee of Columbia under the Loan Agreement, and all of the representations, warranties, covenants, agreements and provisions in this Assignment shall bind and inure to the benefit of Columbia

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 3 2 4 2 9 6 4

and Assignor and their respective legal representatives, successors and assigns.

14. This Assignment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

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

16. It is expressly intended, understood and agreed that this Assignment, and the other Loan Documents, are made and entered into for the sole protection and benefit of Assignor and Columbia, and their respective successors and assigns; that no other person shall have any right at any time to action hereon or rights to the proceeds of the Loan, that the Loan proceeds do not constitute a trust fund for the benefit of any third party; that no third party shall under any circumstances be entitled to any equitable lien on any undisbursed Loan proceeds at any time; and that Columbia shall have a lien upon and right to direct application of any undisbursed Loan proceeds as provided in the Loan Documents.

17. The relationship between Assignor and Columbia is solely that of a lender and borrower, and nothing contained herein or in any of the Loan Documents shall in any manner be construed as making the parties hereto partners, joint venturers or any other relationship other than lender and borrower.

18. Assignor and Columbia intend and believe that each provision in this Assignment comports with all applicable local, state or federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Assignment is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision or public policy, and if such court should declare such portion, provision or provisions of this Assignment to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Assignor and Columbia that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein and that the rights, obligations and the interests of Assignor and Columbia under the remainder of this Assignment shall continue in full force and effect.

19. Notwithstanding anything herein to the contrary, all requirements, obligations, rights, remedies and other terms in this Assignment shall be expressly subject to the terms and conditions of the Illinois Condominium Act and the Condominium Organizational Documents (as defined in the Loan Agreement).

UNOFFICIAL COPY

20. The occurrence of any of the following events shall constitute an Event of Default under this Assignment:

(a) default in the due observance or performance of any of the terms, covenants or conditions contained in this Assignment or in any other Loan Document which continues for more than fifteen (15) days after receipt from the Assignee of written notice of such default. Notwithstanding anything contained in this subsection (a) to the contrary, such grace period set forth in this subsection (a) shall not apply to any other Event of Default expressly set forth in this Section 20; or

(b) should any representation or warranty made herein or in any other Loan Document prove to be untrue in any material respect; or

(c) default beyond any applicable grace period under any obligation set forth in any of the other Loan Documents.

21. This Assignment is executed by Columbia National Bank of Chicago, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed hereunder (whether or not the same are expressed in the terms of covenants, promises or agreements) by the named bank as trust company, are undertaken by it solely as trustee under the trust agreement, and not individually, and no personal liability shall be asserted or be enforceable against said named bank or trust company by reason of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

UNOFFICIAL COPY

any of the terms, provisions, stipulations, covenants and conditions contained in this Assignment.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed and delivered on the date first above written.

BORROWER:

/Development
Horizon Group Development, Inc., an
Illinois corporation

By:


Daniel Michael

Its: President

Attest:

By:


Its: Secretary

COLUMBIA NATIONAL BANK OF CHICAGO,
not personally but solely as Trustee
as aforesaid

By:


Its: TRUST OFFICER

THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING SHOULD BE
RETURNED TO:

Charles H. Braun, Esq.
Herwood, Marcus & Braun Chartered
333 West Wacker Drive, Suite 2800
Chicago, Illinois 60606
(312) 606-3200

UNOFFICIAL COPY

Property of Cook County Clerk's Office

SEARCHED
SERIALIZED
INDEXED
FILED

UNOFFICIAL COPY

EXHIBIT A

Legal Description

LOT 19 (EXCEPT THE EAST 8 FEET THEREOF) LOT 20, 21, 22 IN
BLOCK 4 IN OLIVER SALINGER AND COMPANY'S "L" TERMINAL
SUBDIVISION BEING A SUBDIVISION OF PART OF LOT 4 AND ALL
OF LOT 5 IN COUNTY CLERKS DIVISION TWO SECTION 16,
TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL
MERIDIAN, IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office

PIN: 10-16-217-034
10-16-217-035
10-16-217-036
10-16-217-063

Common Address: 5014 West Church Street
Skokie, Illinois 60076

UNOFFICIAL COPY

Property of Cook County Clerk's Office