

# UNOFFICIAL COPY

93359684

May 12, 1993

This document prepared by  
and when recorded mail to:  
Robert G. Higgins  
Banyan Management Corp.  
150 South Wacker Drive, Suite 2900  
Chicago, Illinois 60606

DEPT-01 RECORDING 133.50  
103333 TRAN 4851 05/24/93 12159100  
09319 0 \* 93-389684  
COOK COUNTY RECORDER

## JUNIOR ASSIGNMENT OF LEASES AND RENTS

THIS JUNIOR ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of the 12<sup>th</sup> day of MAY, 1993, by First Chicago Trust Company of Illinois, not personally but solely as Trustee under Trust Agreement dated February 15, 1993 and known as Trust No. HV-011993 ("First Party") to Banyan Short Term Income Trust, a Massachusetts business trust, with its office at 150 South Wacker Drive, Suite 2900, Chicago, Illinois ("Lender").

WHEREAS, Dearborn Park Townhome Partnership, an Illinois general partnership has previously made and delivered to Lender its Promissory Note of even date herewith in the principal sum of \$590,000.00 (the "Note");

WHEREAS, First Party has executed and delivered its Mortgage (the "Mortgage") to secure the principal and interest under the Note and certain other indebtedness described in said Mortgage, which Mortgage conveys the premises (the "Premises") described in Exhibit "A" hereto; and

WHEREAS, First Party (hereinafter sometimes called the "undersigned") is desirous of further securing the principal and interest under the Note and the indebtedness Hereby Secured, as defined in the Mortgage.

NOW, THEREFORE, the undersigned, for and in consideration of these presents and the mutual agreements herein contained and as further and additional security to Lender, and in consideration of the sum of ONE DOLLAR (\$1.00) to the undersigned in hand paid, the receipt whereof is hereby acknowledged, does hereby sell, assign and transfer unto Lender all leases of the Premises, or any part thereof, together with all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, of any lotting of, or of any agreement for the use or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Lender under the powers herein granted, together with all guaranties of any of the foregoing, it being the intention hereby to establish an absolute transfer and assignment of all the said leases and agreements, and all the avails thereof, to Lender, and does hereby appoint irrevocably Lender its true and lawful attorney in its name and stead and hereby authorizes Lender (with or without taking possession of the Premises), to lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Premises, with the same rights and power and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Premises pursuant to the provisions hereinafter set forth.

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The undersigned represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Premises has been or will be waived, released, reduced or discounted or otherwise discharged or compromised by the undersigned. The undersigned waives any right of set off against any person in possession of any portion of the Premises. The undersigned agrees not to make any other or further assignment of the rents or profits or leases prior to the release of this Assignment.

Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted by Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by the undersigned.

The undersigned further agrees to execute and deliver immediately upon the request of Lender, all such further assurances and assignments in the Premises as Lender shall from time to time reasonably require.

Although it is the intention of the parties that this assignment is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Lender shall not exercise any of the rights and powers conferred upon it herein until and unless there shall occur, a default as defined in the Note or an Event of Default as defined in the Mortgage and nothing herein contained shall be deemed to affect or impair any rights which Lender may have under the Note and Mortgage or any other instrument herein or therein mentioned.

In any case in which, under the provisions of the Mortgage, Lender has a right to institute foreclosure proceedings, whether before or after the entire principal sum secured thereby is declared to be immediately due, or whether before or after institution of legal proceedings to foreclose the lien thereof or before or after sale thereunder, forthwith, upon demand of Lender, the undersigned agrees to surrender to Lender and Lender shall be entitled to take actual possession of the Premises of any part thereof personally, or by its agents or attorneys, and Lender in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all the documents, books, records, papers and accounts of the undersigned or then owner of the Premises relating thereto, and may exclude the undersigned, its agents or servants, wholly therefrom and may as attorney-in-fact or agent of the Assignor, or in its own name under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of security of the avails, rents, issues and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any times hereafter, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the undersigned to cancel the same, to elect to disaffirm any lease or sublease made prior to or subsequent to the Mortgage or subordinated to the lien thereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements

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to the Premises that may seem judicious, in its discretion, to insure and reinsure the same for all risks incidental to Lender's possession, operation and management thereof and to receive all such avails, rents, issues and profits.

Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty or liability under any leases or rental agreements relating to the Premises, and the Assignor shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases or under or by reason of the assignment thereof 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 of its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Lender incur any such liability, loss or damage, under said Leases or under or by reason of the assignment thereof, or in the defense of any claims or demands the undersigned agrees to reimburse Lender for the amount thereof, including direct costs, direct expenses and reasonable attorney's fees, immediately upon demand.

Lender in the exercise of the rights and powers conferred upon it by this assignment shall have full power to use and apply the avails, rents, issues and profits of the Premises and to the payment of or on account of the following, in such order as Lender may determine:

(a) To the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Lender and its agent or agents, if management be delegated to an agent or agents, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), to establish claims for damages, if any, and to pay premiums on insurance hereinabove authorized;

(b) To the payment of taxes and special assessments now due or which may hereafter become due on the Premises;

(c) To the payment of all repairs, decorating, renewals, replacements, alterations, additions or betterments and improvements of the Premises, including, without limitation, the cost from time to time of installing or replacing such fixtures, furnishings and equipment therein, and of placing the Premises in such conditions as will, in the reasonable judgment of Lender, make it readily rentable;

(d) To the payment of any indebtedness Hereby Secured, as defined by the Mortgage, or any deficiency which may result from any foreclosure sale.

The undersigned further specifically and irrevocably authorize and instruct each and every present and future lessee or tenant of the whole or any part of the Premises and to pay all unpaid rental agreed upon in any tenancy to Lender upon receipt of demand from Lender to pay the same.

It is understood and agreed that the provisions set forth in this Assignment herein shall be deemed a special remedy given to Lender and shall not be deemed exclusive of any of the remedies granted in the Mortgage, but shall be deemed an additional remedy and shall be

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cumulative with the remedies therein granted and elsewhere granted in any instrument securing the Note, all of which remedies shall be enforceable concurrently or successively.

Whenever the word "undersigned" is mentioned herein, it is hereby understood that the same includes and shall be binding upon successors and assigns (including successors by consolidation) of the undersigned, and any party or parties holding title to the Premises by, through or under the undersigned. All of the rights, powers, privileges and immunities herein granted and assigned to Lender shall also inure to its successors and assigns, including all holders, from time to time, of the Note.

It is expressly understood that no judgment or decree which may be entered on any debt secured or intended to be secured by the Mortgage shall operate to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness Hereby Secured in whatever form the said indebtedness Hereby Secured may be until the indebtedness Hereby Secured shall have been paid in full and all bills incurred by virtue of the authority herein contained have been fully paid out of rents, issues and profits of the property, or by the undersigned, or until such time as this instrument may be voluntarily released. This instrument shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale, until the issuance of a deed pursuant to a foreclosure decree, unless the indebtedness is fully satisfied before the expiration of any period of redemption.

This Assignment is executed by First Party not personally, but as Trustee as aforesaid, in exercise of the power and authority conferred upon and vested in it as such Trustee (and said First Party hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said First Party personally, to pay the Note or any interest that may accrue thereon or on any indebtedness accruing hereunder or to perform any covenant, representation, agreement or condition, either express or implied herein contained or with regard to any warranty contained in this Assignment, except the warranty made in this paragraph, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right to security hereunder, and that so far as First Party and its successors and assigns are concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the Premises for the payment thereof in the manner herein and in the Note provided but this shall not be construed in any way so as to affect or impair the lien of this Assignment, or construed in any way so as to limit or restrict any of the rights or remedies in any proceedings or any other enforcement for the payment of indebtedness Hereby Secured out of and from the security given therefor in the manner herein provided or to affect or impair the personal liability, if any of the Maker of the Note (exclusive of First Party) or the any guarantors thereof, if any.

The interest evidenced and created by this instrument and all rights and remedies hereunder are subject and subordinate to the interest of the First National Bank of Chicago ("Senior Lender") as mortgagee, assignee of leases and rents and secured party pursuant to a series of loan documents recorded prior to this instrument and that certain Subordination Agreement bearing even date herewith by and among First Party, Dearborn Park Townhome Partnership, Lender and Senior Lender.

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IN WITNESS WHEREOF, the undersigned has executed this Assignment as of the day and year first above written.

First Chicago Trust Company of Illinois  
as trustee of as aforesaid

By: [Signature]  
Trustee Vice President  
(Title)

Attest: [Signature]  
Trust Officer  
(Title)

STATE OF ILLINOIS )  
                          )  
COUNTY OF COOK )

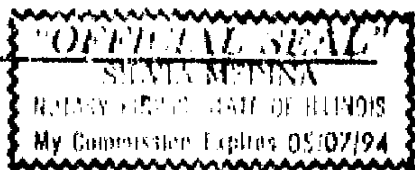
vs.

Sylvia Medina a Notary Public in and for said County in the State aforesaid, do hereby certify that MORTON V. ... and MARTIN S. EDWARDS being personally known to me as the persons whose names are subscribed to the foregoing instrument as such ... and ... respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary acts, and as the free and voluntary act of First Chicago Trust Company of Illinois, as Land Trustee, for the uses and purposes therein set forth, and the said ... did also then and there acknowledge that he, as custodian of the corporate seal of First Chicago Trust Company of Illinois did affix the corporate seal of First Chicago Trust Company of Illinois to said instrument as his own free and voluntary act and as the free and voluntary act of First Chicago Trust Company of Illinois, as Land Trustee, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 28<sup>th</sup> day of July 1993.

[Signature]  
Notary Public

My commission expires:



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## EXHIBIT "A"

(legal description)

ALL OF BLOCK 1 TOGETHER WITH BLOCK 4, EXCEPT THE SOUTH 381.50 FEET THEREOF, IN DEARBORN PARK UNIT NO. 2, BEING A RESUBDIVISION OF SUNDRY LOTS AND VACATED STREETS AND ALLEYS IN PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

CONTAINING 162,818 SQUARE FEET (3.7378 ACRES) OF LAND, MORE OR LESS.

### Permanent Real Estate Index Numbers

17-21-211-086

17-21-211-087

17-21-211-193

### Address of Real Estate:

1300 South Federal Street  
Chicago, Illinois

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## EXHIBIT "A"

(legal description)

ALL OF BLOCK 1 TOGETHER WITH BLOCK 4, EXCEPT THE SOUTH 381.50 FEET THEREOF, IN DEARBORN PARK UNIT NO. 2, BEING A RESUBDIVISION OF SUNDRY LOTS AND VACATED STREETS AND ALLEYS IN PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

CONTAINING 162,818 SQUARE FEET (3.7378 ACRES) OF LAND, MORE OR LESS.

### Permanent Real Estate Index Numbers

17-21-211-066

17-21-211-067

17-21-211-193

### Address of Real Estate:

1300 South Federal Street  
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## EXHIBIT A

(Legal Description)

### PARCEL 1:

LOTS 1 THROUGH 84 AND LOT A IN FEDERAL SQUARE BEING A RESUBDIVISION OF PARTS OF BLOCKS 1 AND 4 IN DEARBORN PARK UNIT NO. 2 BEING A RESUBDIVISION OF SUNDRY LOTS AND VACATED STREETS AND ALLEYS IN PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

BLOCK 1, EXCEPT THAT PART LYING SOUTH OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 1; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 309.99 FEET ALONG THE WEST LINE THEREOF TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 51 MINUTES 44 SECONDS EAST 55.78 FEET; THENCE NORTH 00 DEGREES 08 MINUTES 18 SECONDS EAST 2.35 FEET; THENCE SOUTH 89 DEGREES 51 MINUTES 44 SECONDS EAST 10.82 FEET; THENCE SOUTH 00 DEGREES 08 MINUTES 18 SECONDS WEST 27.72 FEET; THENCE SOUTH 89 DEGREES 51 MINUTES 44 SECONDS EAST 129.63 FEET; THENCE NORTH 00 DEGREES 08 MINUTES 18 SECONDS EAST 27.72 FEET; THENCE SOUTH 89 DEGREES 51 MINUTES 44 SECONDS EAST 13.25 FEET TO A POINT ON THE EAST LINE OF BLOCK 1 WHICH POINT IS 307.94 FEET SOUTH OF THE NORTHEAST CORNER THEREOF, IN DEARBORN PARK UNIT #2, BEING A RESUBDIVISION OF SUNDRY LOTS AND VACATED STREETS AND ALLEYS IN PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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### Permanent Real Estate Index Numbers:

17-21-211-066  
17-21-211-067  
17-21-211-193

### Address of Real Estate:

1300 South Federal Street  
Chicago, Illinois

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