

# UNOFFICIAL COPY

95143514

This instrument was prepared by and shall be returned to:

Scott A. Lindquist  
8000 Sears Tower  
Chicago, Illinois 60606



95143514

First American Title Order #

Above Space For Recorder's Use Only

## ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment"), dated as of February 27, 1995, by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under a Trust Agreement dated March 23, 1994 and known as Trust No. 118105-04 ("Trustee") and CHI TOWN PARTNERS, L.P., an Illinois limited partnership ("Beneficiary") (Beneficiary and Trustee are sometimes collectively referred to herein as "Assignor"), and ORIX USA CORPORATION, a Delaware corporation ("Assignee").

WHEREAS, Assignor and Assignee are parties to a Loan Agreement of even date herewith (the "Loan Agreement") pursuant to which Assignee has agreed to make a loan to Assignor, in the aggregate principal amount of up to \$12,000,000.00 (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 Assignee a Note of even date herewith, payable to Assignee, in the original principal amount of \$12,000,000.00 (the "Note"), payment of which is secured by a Mortgage of even date herewith (the "Mortgage") from Assignor 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 Assignee of its obligations under the Loan 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:

A handwritten signature or set of initials, possibly "H. A. Lindquist", written in dark ink. The signature is somewhat stylized and appears to be written over the bottom right portion of the document.

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1. All terms used herein shall have the definitions set forth in the Loan Agreement, unless such terms are otherwise defined herein.

2. Assignor hereby grants, transfers and assigns to Assignee all of its interest in any and all leases demising and leasing all or portions of the premises legally described on Exhibit A attached hereto and made a part hereof ("Premises"), whether currently in effect or to be executed by Assignor after the date hereof, together with any and all extensions, modifications, amendments and renewals thereof, and any and all other licenses, concession agreements, and other arrangements for the possession or occupancy of any portion of the Property (collectively referred to herein as the "Leases"), together with all sums payable by the lessees, licensees, or occupants under the Leases (the "Lessees") and all benefits and advantages to be derived therefrom to hold and receive them unto Assignee, including but not limited to all rents, issues, profits, room charges, service fees, expense contributions, receivables, accounts, security deposits, and other proceeds under or pursuant to any Leases (collectively herein called "Rents"), and together with all rights against guarantors, if any, of the obligations of the Lessees under the Leases.

This Assignment is given for the purpose of assuring (i) the payment of all sums now or at any time hereafter due Assignee under the Note and/or the other Loan Documents, and (ii) the performance and discharge of the obligations, covenants, conditions, and agreements of Assignor contained herein and in the Loan Documents. This Assignment is and shall be primary and on a parity with the real estate conveyed by the Mortgage and not secondary. All amounts collected hereunder, after deducting the reasonable expenses of operation of the Premises and after deducting the reasonable expenses of collection, shall be applied on account of the indebtedness secured by the Loan Documents, or in such other manner as may be provided for in the Loan Documents. Nothing herein contained shall be construed as constituting Assignee a trustee or mortgagee in possession.

3. After the occurrence of an Event of Default, Assignor does hereby empower Assignee, its agents or attorneys, to collect, sue for, settle, compromise and give acquittances for all of the Rents that may become due under the Leases and avail itself of and pursue all remedies for the enforcement of the Leases and Assignor's rights in and under the Leases as Assignor might have pursued but for this Assignment.

4. Trustee represents and to Beneficiary's "knowledge" (as such term is defined in the Loan Agreement), Beneficiary represents and warrants that as of the date hereof: (i) there are no existing Leases affecting the Property (which for the purpose of this representation and warranty shall not include hotel room

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occupancy in the ordinary course) other than those shown on the rent roll delivered to Assignee in connection with the closing of the Loan (the "Rent Roll"), and Assignor has delivered to Assignee true, correct, and complete copies of such Leases; (ii) such Leases are in full force and effect; (iii) Assignor has not heretofore assigned or pledged the same or any interest therein, and no default exists on the part of any of the Lessees, or Assignor, as Lessor, in the performance on the part of either, of the terms, covenants, provisions or agreements in the Leases contained; (iv) Assignor knows of no condition which with the giving of notice or the passage of time or both would constitute a default on the part of any of the Lessees or Assignor; (v) no rent has been paid by any Lessee 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; (vi) that no security deposit has been made by any Lessee under the Leases except as shown on the Rent Roll; and (vii) the Rent Roll is a true and accurate in all material respects presentation of the information regarding the Leases contained therein.

## 5. Assignor agrees

(a) that the Leases shall remain in full force and effect irrespective of any merger of the interest of the Lessor and Lessee thereunder;

(b) that, without Assignee's prior written consent, Assignor will not unless permitted to do so pursuant to Section 12.1(o) of the Loan Agreement: (i) amend or modify any Lease so as to reduce the unexpired term thereof, decrease the amount of Rent payable thereunder, or otherwise diminish any obligation imposed therein upon the Lessee; (ii) unless the Lessee has failed to comply with a material obligation imposed upon it in the Lease, terminate, accept surrender of or permit cancellation of the Lease if the unexpired term thereof is one year or longer, unless the tenant under such Lease is replaced with a tenant paying a rental equal to or higher than the tenant under the Lease being terminated; or (iii) modify, amend, extend, renew, terminate or accept the surrender of any Lease, or consent to or permit the modification, amendment, termination or surrender of any guaranty of any Lease;

(c) not to collect any of the Rents arising or accruing under any of the Leases more than thirty (30) days in advance of the time when the same become due under the terms thereof;

(e) not to discount any future accruing Rents;

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(f) not to sell, transfer, or assign of any of the Leases or any interest therein or any of the Rents thereunder;

(g) not to request, consent to, agree to or accept a subordination of any of the Leases to any mortgage or other encumbrance now or hereafter affecting the Premises;

(h) to perform all of Assignor's covenants and agreements as lessor under the Leases and not to suffer or permit to occur any release of liability of any of the Lessees, or any right of the Lessees to withhold payment of rent, and to promptly provide Assignee with copies of any notices of default sent or received by Assignor;

(i) if so requested by Assignee, to enforce the Leases and all remedies available to Assignor against the Lessees, in case of default under any of the Leases by any of the Lessees;

(j) that 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 Premises, the Leases and benefits hereby assigned shall continue as additional security in accordance with the terms hereof until the indebtedness secured hereby is repaid in full;

(k) not to alter, modify or change the terms of any guarantees of any of the Leases or cancel or terminate such guarantees without the prior written consent of Assignee;

(l) not to consent to any assignments of any of the Leases, or any subletting thereunder, except in accordance with their respective terms, without the prior written consent of Assignee unless Assignor would be authorized at the time of the assignment or sublease under the terms of the Loan Agreement to enter into a lease with such proposed assignee or sublessee without Assignee's consent on the terms and conditions contained in the applicable lease;

(m) within five days after request therefor by Assignee, to deliver to Assignee copies of executed originals of all Leases and other instruments affecting the Property; and

(n) give prompt notice to Assignee of the material failure by either the lessor or the lessee to comply with any material obligation imposed upon such party under the Lease, with a copy of any notice of default or other communication with respect thereto given by either the lessor or the lessee to the other.

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6. 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. Assignor hereby irrevocably appoints Assignee and its successors and assigns, as its agent and attorney in fact, to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose, if such instruments are not promptly executed by Assignor upon demand.

7. In the exercise of the powers herein granted to Assignee, no liability shall be asserted or enforced against Assignee, all such liability being hereby expressly waived and released by Assignor. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under any of the Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify, defend and hold Assignee, and its officers, directors, employees and agents, free and harmless of and from any and all liability, loss or damage which Assignee may incur under any of the Leases or under or 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 any of the Leases except for any liability arising out of the gross negligence or wilful misconduct of Assignee. Should Assignee incur any such liability, expense, cost, loss or damage (1) under any of the Leases (for which it is to be indemnified as aforesaid), or (2) by reason of the exercise of Assignee's rights under this Assignment, or (3) in the defense of any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees and expenses, shall be secured hereby and by all of the Loan Documents (whether or not such amount, when aggregated with other sums secured by the Loan Documents, exceeds the face amount of the Note) and shall (a) be due and payable immediately upon demand by Assignee, and (b) bear interest at the Default Rate set forth in the Note if not paid within five (5) days following demand.

8. The occurrence of any of the following shall constitute an Event of Default hereunder:

- (1) A default by Assignor in the observance or performance of any obligation, covenant, condition or agreement hereof, which default is not cured within thirty (30) days after written notice thereof to Assignor;
- (2) Any representation or warranty made by Assignor herein which is not true and correct in any

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material respect as of the date hereof and the condition or circumstances which cause such representation and warranty to be untrue or incorrect have not been changed or corrected within thirty (30) days after written notice from Lender so as to make such representation and warranty true and correct (provided that such cure period shall not be applicable in the case of any representation or warranty of Assignor known by Beneficiary to have been untrue and incorrect when made; and

- (3) A default by Assignor under any of the Loan Documents, which default is not cured within any applicable grace period.

9. Although it is the intention of the parties that this instrument shall be an absolute, unconditional and presently effective assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Assignee shall not exercise any of the rights or powers herein conferred upon it until the occurrence of an Event of Default, but upon the occurrence of an Event of Default, Assignee shall be entitled to all Rents and other amounts then due under the Leases and thereafter accruing without the institution of legal proceedings of any kind whatsoever, and this Assignment shall constitute a direction to and full authority to the Lessees to pay all such amounts to Assignee upon notice to the Lessees from Assignee. Each of the Lessees, upon written notice from Assignee, shall be and is hereby authorized by Assignor to pay to Assignee any rental or other sums which may be or thereafter become due under the Leases, or any of them, and to perform each of such Lessee's undertakings under the Leases without any obligation to determine whether or not such an Event of Default has in fact occurred. The requirement for notice to the Lessees is intended solely for the benefit of such Lessees and not Assignor or any person claiming through or under Assignor and all payments made to Assignor by the Lessees after an Event of Default, whether before or after notice to the Lessees that an Event of Default has occurred, shall be held in trust by Assignor for the benefit of Assignee.

10. Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this 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 Premises from and after the occurrence of an Event of Default, shall be held by Assignor as Trustee for Assignee and all such amounts shall be accounted for to Assignee and shall not be commingled with other funds of Assignor. Any person acquiring

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or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Assignee 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 the county in which the Premises are located stating that Assignor has received or will receive such amounts in trust for Assignee.

11. In the event any Lessee should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of any of the Leases, Assignor covenants and agrees that if any of the Leases for more than 5,000 square feet is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such lease will be made payable to both Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to monthly debt service on the indebtedness secured by this Assignment.

12. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of leases and 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.

13. This Assignment shall be assignable by Assignee to any assignee of Assignee under the Loan Agreement and all representations, warranties, covenants, powers and rights herein contained shall be binding upon, and shall inure to the benefit of, Assignor and Assignee and their respective legal representatives, successors and assigns, including, in the case of Assignee, all holders, from time to time, of the Note.

14. 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.

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15. The duties and obligations of Assignor under this Assignment shall terminate when all sums due Assignee under the Loan Documents are paid in full and all obligations, covenants, conditions and agreements of Assignor contained in the Loan Agreement are performed and discharged.

16. This Assignment shall be governed by and construed under the internal laws of the State of Illinois. To the greatest extent permitted by law, Assignor hereby waives any and all rights to require marshalling of assets by Assignee.

17. 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 Assignee, 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 Assignee shall have a lien upon and right to direct application of any undisbursed Loan proceeds as provided in the Loan Documents.

18. The relationship between Assignor and Assignee 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.

19. Assignor and Assignee 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 Assignee 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 interests of Assignor and Assignee under the remainder of this Assignment shall continue in full force and effect.

20. Notwithstanding anything contained herein to the contrary, Assignee agrees for itself and its successors and assigns that the liability hereunder of Beneficiary shall be

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limited to the extent provided in Section III.M of the Note, Section 37 of the Mortgage and Section 17.18 of the Loan Agreement and such provisions are incorporated herein by reference as if fully set forth herein.

21. This instrument is executed by Trustee, not personally but solely 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 Bank are undertaken by it solely as Trustee, as aforesaid, and not individually and no personal liability shall be asserted to be enforceable against Trustee by reason of any of the terms, provisions, stipulations, covenants and conditions contained in this instrument.

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IN WITNESS WHEREOF, Trustee and Beneficiary have executed this Assignment as of the 27th day of February, 1995.

TRUSTEE:

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, not personally  
but as Trustee, as aforesaid

ATTEST:

By: 

Its AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO

By: 

Its \_\_\_\_\_

BENEFICIARY:

CHI-TOWN PARTNERS, L.P., a Delaware  
limited partnership

By: AG CHI-TOWN ACQUISITION CORP.,  
a Delaware corporation, its  
Managing General Partner

By: 

Its: Vice President

(Title)

By: AE-HURON, INC., an Illinois  
corporation, its Operating General  
Partner

By: 

Its: VP + SEC

Title

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EXHIBIT A

LEGAL DESCRIPTION

THE SOUTHEAST 1/4 (EXCEPT THE WEST 1 1/2 FEET THEREOF) OF BLOCK  
45 OF KINZIE'S ADDITION TO CHICAGO IN THE NORTH FRACTIONAL 1/2 OF  
SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD  
PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

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140-160 E Huron St.

Chicago, IL

17-10-106-007

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## EXHIBIT B

### SCHEDULE OF SECURITY DEPOSITS

Security Deposits are as listed on the rent roll delivered to Lender.

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STATE OF )  
                  ) SS.  
COUNTY OF )

I, Patricia A. Murphy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael L. Gordon, the Vice President of AG-Chi-Town Acquisition Corp., as the general partner of Chi-Town Partners, L.P., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that \_\_\_\_\_ signed, sealed and delivered the said instrument as \_\_\_\_\_ free and voluntary act, and as the free and voluntary act of AG-Chi-Town Acquisition Corp., as general partner of said partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27<sup>th</sup> day of February, 1995.

Patricia A. Murray  
Notary Public

My Commission Expires:

June 30, 1995

PATRICIA A. MURRAY  
Notary Public, State of New York  
No. 43-483666  
Qualified In Richmond County  
Commission Expires June 30, 1995

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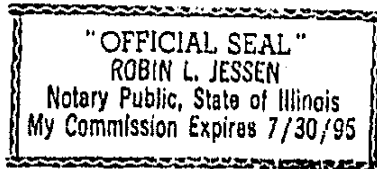
STATE OF )  
 ) SS.  
COUNTY OF )

I, Robin L. Jessen, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Howard TREATMAN, the Vice President of AE-Huron, Inc., as the general partner of Chi-Town Partners, L.P., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act of AE-Huron, Inc., as general partner of said partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of February, 1995

Robin L. Jessen  
Notary Public

My Commission Expires:  
7/30/95, 1995



DEPT-01 RECORDING \$49.50  
T#0006 TRAN 3135 03/02/95 13:29:00  
#2324 #LF \*-95-143514  
COOK COUNTY RECORDER

95143514

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

SOL FLORES

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that J. MICHAEL WIDELAN, the Gregory S. Kasprzyk of American National Bank and Trust Company of Chicago, and VICE PRESIDENT, the ASSISTANT SECRETARY of said corporation, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such.

VICE PRESIDENT and ASSISTANT SECRETARY, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said ASSISTANT SECRETARY then and there acknowledged that he, she as custodian of the corporate seal of said Corporation, did affix the corporate seal of said Corporation to said instrument as his, her own free and voluntary act and as the free and voluntary act of said Corporation, as Trustee as aforesaid, for the uses and purposes therein set forth.

MAD 1 1995 GIVEN under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 1995.

"OFFICIAL SEAL"  
Sol Flores  
Notary Public, State of Illinois  
My Commission Expires 10/21/98

Sol Flores  
Notary Public

My Commission Expires: \_\_\_\_\_

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