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Cook County Recorder 45.50



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ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES is made and delivered as of this 19th day of October, 1998 by **RIVER NORTH LIMITED PARTNERSHIP NO. 3**, an Illinois limited partnership ("Assignor"), to and for the benefit of **AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO**, a national banking association ("Assignee").

WITNESSETH:

Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers, sets over and assigns to Assignee, all of the right, title and interest of Assignor in and to (i) all of the rents, issues and profits of and from the Premises described in Exhibit A attached hereto and made a part hereof (the "Premises"); (ii) all



This instrument was prepared by,
and after recording return to:

Merle Teitelbaum Cowin, Esq.
Rudnick & Wolfe
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601

Permanent Real Estate
Tax Index No:
17-09-120-001
17-09-120-016

Address:
429 West Superior Street
Chicago, Illinois

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1st AMERICAN TITLE order # CC1371a33
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leases and subleases now or hereafter existing on all or any part of the Premises (collectively, the "Leases"); (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all of Assignor's interest in any tenant improvements and fixtures located on the Premises.

THIS ASSIGNMENT OF RENTS AND LEASES IS GIVEN TO SECURE:

(a) Payment by Assignor when due of (i) the indebtedness evidenced by that certain Mortgage Note (the "Note") of even date herewith made by Assignor and payable to the order of Assignee in the principal sum of Four Million Three Hundred Seventy-Five Thousand and No/100 Dollars (\$4,375,000.00), and delivered to Assignee simultaneously with the execution and delivery of this Assignment, and any and all renewals, extensions or refinancings thereof; (ii) any other obligations, liabilities or indebtedness which may be due and owing from Assignor to Assignee pursuant to the Note or any of the other Loan Documents (as hereinafter defined), whether such obligations, liabilities or indebtedness are now existing or hereafter created, direct or indirect, absolute or contingent, joint or several, due or to become due, howsoever created, evidenced or arising and howsoever acquired by Assignee, and any and all renewals, extensions or refinancings thereof; and (iv) all costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees.

(b) Observance and performance by Assignor of the covenants, terms, conditions and agreements contained in the Note, this Assignment, the Loan Agreement (the "Loan Agreement") of even date herewith between Assignor and Assignee, the Mortgage and Security Agreement (the "Mortgage") of even date herewith made by Assignor to Assignee and creating a first mortgage lien on the Premises, the Security Agreement (Chattel Mortgage) ("Security Agreement") of even date herewith made by Assignor to Assignee and any other document or instrument evidencing or securing the Note. The Note, the Loan Agreement, the Mortgage, the Security Agreement, this Assignment and all such other documents and instruments evidencing or securing the Loan or delivered to Assignee to induce Assignee to make the Loan are hereinafter collectively referred to as the "Loan Documents".

AND ASSIGNOR HEREBY COVENANTS, AGREES, REPRESENTS AND WARRANTS AS FOLLOWS:

1. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that:

(a) This Assignment, as executed by Assignor, constitutes the legal and binding

obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor is and will be the lessor under all Leases;

(c) Assignor has not heretofore made any other assignment of its entire or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income or profits assigned hereunder or entered into any agreement to subordinate any of the Leases, or Assignor's right to receive any of the rents, issues, income or profits assigned hereunder; and

(d) Assignor has not heretofore executed any instrument or performed any act which may or might prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation.

2. Covenants of Assignor. Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Assignor shall not enter into any lease which constitutes a Material Lease (as hereinafter defined) for all or any portion of the Premises without the prior written consent of Assignee, which consent will not be unreasonably withheld; provided, however, that any consent required to be given by Assignee pursuant to this subparagraph (a) shall be deemed given if Assignee fails to give written notice to Assignor of its disapproval of a proposed lease within five (5) business days after it receives any request for consent (or if Assignee requests any supplementary financial or other information concerning the proposed tenant or the terms of the proposed lease within said five (5) business day period, said initial five (5) business day period shall be extended to the date which is five (5) business days following the receipt by Lender of any such requested supplementary information). For purposes of this Assignment, a "Material Lease" shall mean a proposed lease which does not satisfy each of the following terms and conditions: (i) the demised premises under the proposed lease are less than 5,000 rentable square feet; (ii) the proposed lease shall be written on Assignor's standard form of lease, with only non-material changes made thereto; (iii) the proposed lease shall not contain any option to purchase or any right of first refusal to purchase all or any portion of the Premises; (iv) the initial term of the proposed lease shall not be greater than ten (10) years; (v) the proposed lease shall provide for rental rates which are reasonably comparable to existing local market rates for properties that are reasonably comparable to the Premises and shall be an arms-length transaction; (vi) the proposed lease shall not contain any options for renewal or expansion by the tenant thereunder at rental rates which are below reasonably comparable market levels at the time of the renewal or expansion; and (vii) the proposed tenant thereunder shall be a tenant which Assignor reasonably determines is creditworthy. In addition, any lease of demised premises that are to be used solely for residential purpose

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shall not constitute a "Material Lease" for purposes hereof. Concurrently with the delivery by Assignor to Assignee of the quarterly rent roll required by the terms and provisions of the Loan Agreement, Assignor shall deliver to Assignee a true, complete and correct copy of each lease entered into by Assignor and not previously delivered to Assignee;

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof, or without the express written consent of Assignee, (i) release the liability of any tenant thereunder, or (ii) permit any tenant thereunder to withhold the payment of rent or to make monetary advances and off-set the same against future rentals, or (iii) permit any tenant thereunder to claim a total or partial eviction, or (iv) enter into any oral leases with respect to all or any portion of the Premises;

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, without the prior written consent of Assignee;

(e) Assignor shall not alter, modify or change the terms and provisions of any lease which at the time it was initially entered into was a Material Lease or to the extent that any such alteration, modification or change would cause such Lease to become a Material Lease, or give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease) or approval, required or permitted by the terms and provisions of a Material Lease or cancel or terminate any Lease (except upon the occurrence of a default by the tenant thereunder and in the ordinary course of Assignor's business), without the prior written consent of Assignee, which consent shall not be unreasonably withheld; provided, however, that any consent required to be given by Assignee pursuant to this subparagraph (e) shall be deemed given if Assignee fails to give written notice to Assignor of its disapproval of a proposed modification, consent or termination within five (5) business days after it receives any request for consent (or if Assignee requests any supplementary financial or other information concerning the tenant under the lease or the terms of any proposed modification, consent or termination within said five (5) business day period, said initial five (5) business day period shall be extended to the date which is five (5) business days following receipt by Assignee of such requested supplementary information);

(f) Assignor shall not accept a surrender of any Lease or convey or transfer, or

suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder;

(g) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law, without the prior written consent of Assignee, which consent shall not be unreasonably withheld;

(h) Assignor shall not waive or excuse the obligation to pay rent under any Lease, except as and to the extent expressly provided in any Lease;

(i) Assignor shall enforce the observance and performance of each material covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenant(s) thereunder, after the expiration of all applicable cure periods expressly provided for in each such Lease, and shall enforce all rights and remedies of the lessor thereunder in case of default thereunder in any material respect by any tenant and the expiration of all applicable cure periods expressly provided for therein;

(j) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear;

(k) Assignor shall give prompt notice to Assignee of any written notice of any default on the part of the lessor with respect to any Lease received from any tenant or guarantor thereunder;

(l) Assignor shall not permit any of the Leases to become subordinate to any lien or liens, other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(m) Assignor shall furnish to Assignee, within ten (10) days after a request by Assignee to do so, a written statement containing the names of all tenants and subtenants of the Premises, or any part thereof;

(n) Assignor shall exercise within five (5) days after a request by Assignee to do so, any right to request from the tenant under any Lease a certificate or estoppel

affidavit with respect to the status of said Lease; and

(o) In the event that any tenant under any Lease is or becomes 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 Lease assigned hereby, Assignor covenants and agrees that if any such Lease 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 both to 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 in accordance with the provisions of paragraph 6 below.

3. **Rights Prior to Default.** So long as Assignor is not in default hereunder, Assignee shall not demand from tenants under the Leases or any other person liable thereunder, any of the rents, issues, income and profits assigned hereunder, and Assignor shall have the right to collect at the time, but not more than thirty (30) days in advance of the date provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

4. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof that is not cured within the applicable grace or cure period, if any, set forth in the Loan Agreement, or (b) any other Event of Default described in the Loan Agreement, the Note, the Mortgage or any of the other Loan Documents. An Event of Default under this Assignment shall constitute an Event of Default under the Loan Agreement, the Note, the Mortgage and the other Loan Documents.

5. **Rights and Remedies Upon Default.** At any time upon or following the occurrence of any one or more Events of Default hereunder, Assignee may, at its option, exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event or Events of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or the guarantors of the Note from any obligation hereunder or thereunder, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien granted by the Loan Documents:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon and the Prepayment Premium (as defined in the Note), immediately due and payable;

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(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder, provided that, for such purpose, this Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Assignor will facilitate in all reasonable ways Assignee's collection of such rents, issues, income and profits, and upon request, will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Assignee; provided, however, that notwithstanding the foregoing, Assignor shall retain the benefit of any indemnity provisions made by any tenants under the Leases in favor of Assignor; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate (as defined in the Note).

6. **Application of Proceeds.** All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default under the provisions hereof shall be applied as follows:

(a) First, to reimbursement of Assignee for and of all expenses (including court costs and reasonable attorneys' fees) of: taking and retaining possession of the Premises; managing the Premises and collecting the rents, issues, income and profits thereof, including without limitation, salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary and proper; operating and maintaining the Premises, including without limitation, taxes, charges, claims, assessments, water rents, sewer rents, other liens, and premiums for any insurance provided in the Mortgage; the

cost of all alterations, renovations, repairs or replacements of or to the Premises which Assignee may deem necessary and proper, with interest thereon at the Default Rate;

(b) Second, to reimbursement of Assignee for and of all sums expended by Assignee pursuant to paragraph 5(e) above to make any payment or do any act required herein of Assignor, together with interest thereon as provided herein;

(c) Third, to reimbursement of Assignee for and of all other sums with respect to which Assignee is indemnified pursuant to paragraph 7 below, together with interest thereon as provided herein;

(d) Fourth, to reimbursement of Assignee for and of all other sums expended or advanced by Assignee pursuant to the terms and provisions of or constituting additional indebtedness under any of the Loan Documents, with interest thereon as provided therein;

(e) Fifth, to the payment of all accrued and unpaid interest on the principal sum of the Note;

(f) Sixth, to the payment of the Prepayment Premium;

(g) Seventh, to payment of the unpaid balance of the principal sum of the Note;
and

(h) Eighth, any balance remaining to Assignor.

7. **Limitation of Assignee's Liability.** Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises following the occurrence of any one or more Events of Default under the provisions hereof or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of any one or more Events of Default under the provisions hereof. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify Assignee for, and to hold Assignee harmless of and from, any and all liability, loss or damage which Assignee may or might incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including reasonable costs, expenses

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and attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger, except in any event in which Assignee has committed gross negligence or wilful misconduct after taking actual possession of the Premises pursuant to the provisions hereof. Nothing herein or in the Mortgage contained, and no exercise by Assignee of any of the rights herein or in the Mortgage conferred shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof. Assignee has not received nor been transferred any security deposited by any tenant with the lessor under the terms of any Lease and Assignee assumes no responsibility or liability for any security so deposited. Notwithstanding anything contained herein to the contrary, the indemnification contained in this paragraph 7 shall not apply to any instance in which Assignee has committed gross negligence or wilful misconduct.

8. **Non-Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Agreement, the Note, the guaranty of the Obligations or any of the Loan Documents; this Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments; and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

9. **Further Assurances.** Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may reasonably request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.

10. **Severability.** The invalidity or unenforceability of any particular provision of this Assignment shall not affect the other provisions, and this Assignment shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

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11. **Benefit.** This Assignment is binding upon Assignor, and its members, successors and permitted assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns, including without limitation, the holder from time to time of the Note.

12. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

13. **Exhaustion.** This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the Loan Documents.

14. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

15. **Notices.** All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Loan Agreement.

16. **Termination.** Upon full payment by Assignor of all amounts described in Recital (a) above and full performance by Assignor of all covenants, terms, conditions and agreements contained in Recital (b) above, this Assignment shall terminate and cease to exist.

17. **Limitation of Recourse.** The limitation of recourse provisions contained in Paragraph 20 of the Note are hereby incorporated herein by reference with the same force and effect as if set forth at length herein.

18. **WAIVER OF RIGHT TO TRIAL BY JURY.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ASSIGNOR AND ASSIGNEE, BY ITS ACCEPTANCE OF THIS ASSIGNMENT, HEREBY KNOWINGLY AND VOLUNTARILY MUTUALLY (A) WAIVE THE RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION, CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD-PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS ASSIGNMENT, THE LOAN AGREEMENT, THE NOTE, THE MORTGAGE, THE CERTIFICATE, ANY OF THE OTHER LOAN DOCUMENTS, OR THE LOAN EVIDENCED OR SECURED THEREBY, OR ANY RENEWAL, EXTENSION OR MODIFICATION THEREOF, OR ANY CONDUCT OF EITHER PARTY RELATING THERETO, AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

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

RIVER NORTH LIMITED PARTNERSHIP NO. 3, an Illinois limited partnership

By: Urban Innovations, Ltd., an Illinois corporation, its General Partner

By: David S. Sachs
Name: David S. Sachs
Title: Vice President

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STATE OF ILLINOIS)
) SS.
COUNTY OF)

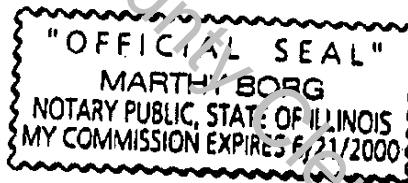
I, Martny Borg, a Notary Public in and for said County, in the State aforesaid, do hereby certify that David S. Saks, the Vice President of Urban Innovations, Ltd., an Illinois corporation and the sole general partner of River North Limited Partnership No. 3, an Illinois limited partnership ("Assignor"), 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 and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation and Assignor, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 19th day of October, 1998.

Martny Borg

NOTARY PUBLIC

(SEAL)



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EXHIBIT A

LEGAL DESCRIPTION

THE WEST 9.90 FEET OF LOT 10 AND ALL OF LOTS 11 TO 19, BOTH INCLUSIVE, IN BLOCK 7 IN HIGGINS, LAW AND COMPANY'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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