

6294594

6294594  
03/04/96 4:35 PM 28-00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
FOUNDERS TITLE  
REC BY: V LORBY DEPUTY - WI

Instrument Prepared By,  
Record and Return To:  
Robinson Silverman Pearce  
Aronsohn & Berman  
1290 Avenue of the Americas  
New York, New York 10104  
Attention: Eric I Cohen, Esq.

AMENDED AND RESTATED ASSIGNMENT OF LEASES AND RENTS

THIS AMENDED and RESTATED ASSIGNMENT, made as of the 15<sup>th</sup> day of February, 1996 by NATIONAL WAREHOUSE INVESTMENT COMPANY, a California limited partnership, having an office at 70 The Shidler Group, Four Embarcadero Center, Suite 3150, San Francisco, California 94111 (the "Assignor") to UNIBANK A/S, having an office at 13-15 West 54th Street, New York, New York 10019, (the "Assignee"),

WHEREAS, Assignor is the Landlord under certain leases in respect to the premises, and the improvements thereon, more particularly described in Schedule A annexed hereto and made a part hereof (the "Premises");

WHEREAS, Assignor has guaranteed a loan in the amount of \$10,500,000 made by Assignee to Holman/Shidler Investment Corporation (the "Borrower"), the current outstanding balance of which is \$5,405,651.88 (the "Loan"), upon the terms and conditions of a certain guaranty dated July 16, 1991 (the "Prior Guaranty"), and the Assignor, in order to secure its obligations pursuant thereto, executed and delivered to Assignee a certain mortgage (the "Prior Mortgage"), dated July 16, 1991, and recorded on August 7, 1995 in Book 7201, page 1102 in the Office of the Recorder, County of Salt Lake, State of Utah, encumbering the Premises.

WHEREAS, Assignor executed and delivered to Assignee that certain Assignment of Leases and Rents dated as of July 16, 1991 (the "Prior Assignment"), and recorded on August 7, 1995 in Book 7201, page 1092 in the Office of the Recorder, County of Salt Lake, State of Utah;

WHEREAS, Assignor has entered into that certain Amended and Restated Term Loan Agreement dated as of the date hereof with the Assignee, (the "Loan Agreement");

WHEREAS, Assignor has entered into that certain Amended and Restated Guaranty dated the date hereof (the "Guaranty"), amending and restating the Prior Guaranty;

WHEREAS, Assignor, in order to secure its obligations pursuant to the Guaranty, has executed and delivered to Assignee an Amended and Restated Mortgage, Deed of Trust, Deed to Secure Debt and Security Agreement dated as of the date hereof (the "Mortgage"), modifying the terms of the Prior Mortgage; and

WHEREAS, in order to induce the Assignee to enter into the Loan Agreement, the Assignor has agreed to modify the Prior Assignment in the manner hereinafter set forth and to assign to the Assignee, pursuant to the terms and conditions contained herein, all of the Assignor's right, title and interest in and to any and all leases, in or relating to, the Premises, or any portion thereof now or hereafter entered into by Assignor (collectively the "Leases" or singly the "Lease").

W I T N E S S E T H:

FOR VALUE RECEIVED, subject to the terms and conditions hereof and of the Mortgage the Assignor hereby grants, transfers and assigns to the Assignee all of the Assignor's right, title and interest in and to the Leases, all deposits and advance payments made thereunder (to the extent permitted by applicable law); together with all right, power and authority of the Assignor to alter, modify, or change the terms of the Leases or to surrender, cancel, or terminate the same without the prior written consent of the Assignor; together with all rents, additional rents, income, and profits arising from the Leases, and renewals thereof, if any, and together with all rents, income, and profits due or to become due from the Premises and from all Leases for the use and occupation of the Premises which may be executed in the future during the term of this Assignment.

FOR THE PURPOSE OF SECURING:

- (1) Assignor's obligations under the Guaranty.
- (2) Performance and discharge of each and every obligation of the Assignor herein and in the Mortgage.

The Assignor hereby represents and warrants to the Assignee that to Assignor's knowledge the Leases contain all of the agreements between the landlord and tenant or any other party with a right of occupancy (any such party being hereinafter referred to and included in the term "tenant") in or relating to the Premises; that there are no defaults thereunder on the part of landlord; that the tenants have no right to prepay rent more than one month in advance of the date due and the Assignor will not accept any such prepayment without the express written consent of the Assignee; that the Assignor, but for this assignment has not transferred, assigned or encumbered, in whole or in part the Leases or any of Assignor's rights or interests thereunder, including, without limitation, Assignor's rights to the rent or additional rent payable under the Leases.

A. TO PROTECT THE SECURITY OF THIS ASSIGNMENT, ASSIGNOR AGREES:

1. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.
2. To faithfully perform every obligation under the Leases by Assignor to be performed; at the sole cost and expense of Assignor to use reasonable efforts to enforce or secure the performance of every obligation of the Leases by the tenant to be performed; not to modify or in any way alter the terms of the Leases (except as may be expressly permitted in the Mortgage); not to anticipate the rents, income or profits thereunder except for a security deposit delivered at the commencement of the term not to exceed one month's rent, or to waive or release the tenant thereunder from the obligations by said tenant to be performed; not to execute any other assignment of lessor's interest in the Leases or assignment of rents, income or profits arising from the Leases or the Premises, except for Permitted Indebtedness or as otherwise permitted by Section 6.02 of the Loan Agreement, any attempt on the part of Assignor to exercise any such right without the written consent of Assignee shall constitute a breach of the terms hereof entitling Assignee to declare all sums secured hereby or by the Mortgage immediately due and payable.
3. At Assignor's sole cost and expense (except as may be limited by the Mortgage) to appear in and defend any action or proceeding connected with the Leases and to pay all costs and

expenses of Assignee, including attorney's fees in a reasonable sum, in any such action or proceeding in which Assignee may appear.

4. That should Assignor fail to make any payments or do any act as herein provided, then Assignee, but without obligation to do and without releasing Assignor from any obligation hereof, may after ten (10) days' written notice to Assignor, make or do the same.

5. To pay all sums expended by Assignee under the authority hereof together with interest thereon at the rate provided in that certain Amended and Restated Term Note dated as of the date hereof, executed and delivered by Borrower to Assignee, together with any and all future modifications or amendments thereto (the "Note") with respect to interest on the indebtedness immediately upon demand therefor made together with reasonable documentation of such sums.

6. That Assignor shall not distrain, repossess the premises demised under the Leases, or declare any of the Leases terminated without the written authority and consent of the Assignee being first had and obtained.

B. IT IS AGREED THAT:

1. So long as no default beyond the applicable notice and/or grace period shall have occurred and be continuing hereunder or under the Guaranty and no Event of Default shall have occurred under the Mortgage and there shall be no default in the performance of any obligation in the Leases contained, Assignor shall have the license to collect upon, but not more than one (1) month prior to accrual, all rents and other sums payable under the Leases.

2. (a) Upon the occurrence and during the continuance of any Event of Default under and as defined in the Mortgage, Assignee may declare all sums secured hereby or by the Mortgage immediately due and payable after applicable notice and grace periods contained in the Mortgage, and may, at its option, without notice, and without regard to the adequacy of the security for the indebtedness hereby secured or secured by the Mortgage, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon and take possession of the Premises and manage and operate the Premises or any part thereof; do any acts which Assignee deems proper to protect the security hereof, and either with or without taking possession of the Premises, sue for or otherwise collect and receive such rents and any other charges and apply the same, less costs and expenses of building operations, management and collections, including reasonable attorney's fees, toward payment of the Loan and any indebtedness secured hereby or by the Mortgage, in accordance with the terms of the Mortgage. The entering upon and taking possession of the Premises and the collection of such rents and other sums and the application thereof shall not cure any default under the Note and Mortgage or hereunder. Assignor agrees that the exercise by Assignee of one or more of its rights and remedies hereunder shall in no way be deemed or construed to make Assignee a mortgagee in possession. From and after any occurrence and during the continuance of a default beyond the applicable notice and/or grace period hereunder or under the Guaranty or an Event of Default under the Mortgage, all rents, income and profits of the Premises received by Assignor shall be held by Assignor in trust for the benefit of Assignee. All such amounts shall be turned over to Assignee with or without demand immediately upon receipt.

(b) Notwithstanding anything to the contrary contained herein, the rents and other charges collected by

Assignee hereunder shall be applied by Assignee as provided in Section 8.03 of the Loan Agreement.

3. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify and to hold the Assignee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment unless such liability, loss or damage results from Assignee's acting in a negligent manner after having taken control of the Premises 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 the Leases, other than any such liability, loss, damage, claim or demand arising from Assignee's gross negligence or wilful misconduct; should the Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, except as otherwise provided in the Loan Agreement, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse the Assignee therefor promptly upon demand, and upon the failure of Assignor to do so Assignee may upon ten (10) days' notice declare all sums secured hereby and by the Mortgage to be immediately due and payable.

4. Assignor agrees that nothing in this Assignment shall be construed to limit or restrict in any way the rights and powers granted in the Mortgage to Assignee; an action to foreclose may be commenced, notwithstanding that Assignee continues in possession of the property, both real and personal, herein referred to, and continues to collect the rents, issues and profits thereof.

5. A notice in writing by Assignee to the tenants under the Leases advising them that Assignor has defaulted hereunder beyond the applicable notice or grace period or an Event of Default has occurred under the Mortgage, and requesting that all future payments of rent, additional rent or other charges under the Leases be made to Assignee (or its agent), shall be construed as conclusive authority to such tenants that such payments are to be made to Assignee (or its agent), and the tenants under the Leases shall be fully protected in making such payments to Assignee.

6. The creation of this Assignment, the attachment and perfection of the lien or security interest in the Leases and the Mortgaged Property (as defined in the Mortgage), and the rights and remedies of the Assignee and the enforcement thereof with respect to the Leases and the Mortgaged Property, as provided herein and by the laws of the state in which the Mortgaged Property is located, shall be governed by and construed in accordance with the internal laws of the state in which the Mortgaged Property is located (except where the laws or conflict of laws rules of such state would otherwise require; see, e.g., Section 9-103(3)(b) of the Uniform Commercial Code).

7. No failure or delay on the part of Assignee in exercising any power or right hereunder shall operate as a waiver thereof or a waiver of any other term, provision or condition hereof, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. All rights and remedies of Assignee hereunder are cumulative and shall not be deemed exclusive of any other rights or remedies provided by law.

8. This agreement embodies the entire agreement and understanding between the parties relating to the subject matter hereof and may not be amended, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

9. This Assignment applies to, inures to the benefit of, and binds the parties hereto, their successors and assigns.

10. ASSIGNOR, AS LANDLORD, HEREBY DIRECTS ANY TENANT OF ANY PORTION OF THE PREMISES, AFTER IT IS NOTIFIED BY ASSIGNEE OF THE OCCURRENCE OF ANY EVENT OF DEFAULT, TO PAY RENT AND ALL OTHER AMOUNTS DUE UNDER ITS LEASE TO UNIBANK A/S, ITS ASSIGNEE OR DESIGNEE (COLLECTIVELY, THE "DESIGNATED RECIPIENT") AND AGREES THAT ANY TENANT PAYING RENTS TO THE DESIGNATED RECIPIENT PURSUANT TO INSTRUCTIONS FROM THE DESIGNATED RECIPIENT SHALL BE CONSIDERED TO HAVE PAID THOSE SUMS TO THE LANDLORD AND THUS TO HAVE SATISFIED, TO THAT EXTENT, ITS OBLIGATION TO MAKE PAYMENTS UNDER ITS LEASE AGREEMENT.

11. (a) This Assignment is intended to be an absolute, present assignment from Assignor to Assignee and not merely the grant of a security interest. The rents, issues and profits are hereby assigned absolutely by Assignor to Assignee contingent only upon the occurrence of a default beyond the applicable notice and/or grace period hereunder or under the Guaranty or an Event of Default under the Mortgage.

(b) The full performance of the Mortgage and the cancellation as by law provided of the Mortgage or the duly recorded release or reconveyance of the Mortgaged Property (as defined in the Mortgage) shall render this Assignment void.

12. Notwithstanding any other provision of this Assignment, the obligation of Assignor to pay the amounts to be paid by it pursuant to the Guaranty, and to perform and observe and make good the other covenants, warranties and agreements contained herein, shall not be enforced by any action or proceeding against Assignor or its partners wherein or whereby any deficiency or other money judgment shall be sought against Assignor or its partners (a "Deficiency Action") and neither Assignor nor its partners shall be liable for such deficiency or other money judgment; provided that Assignor may be made a party defendant in a foreclosure action against the Premises and any judgment in such foreclosure action shall be enforceable against the Premises, and provided further that nothing contained above shall be deemed (i) to affect the lien of this Assignment, (ii) to be a release or impairment of the other obligations of Assignor under the Guaranty, this Assignment or any other documents, (iii) to limit Assignee from enforcing its rights under the Note, this Assignment or any document, or to constitute a waiver, release or discharge of any indebtedness or obligation under the Note or secured by this Assignment, or (iv) to affect the personal liability of the Guarantor under the Guaranty or the Personal Guaranty or of the indemnitors under the Environmental Indemnity (as such term is defined in the Mortgage), to the extent such liability may be limited therein. Nothing set forth in (i) through (iv) of the preceding sentence shall be deemed to give rise to any personal liability of Assignor or its partners, except to the extent that they are personally liable pursuant to the Guaranty, the Personal Guaranty or the Environmental Indemnity. Notwithstanding the foregoing, Assignor shall be personally liable to Assignee at all times for the misapplication by the Assignor in a manner which is fraudulent and/or contrary to the provisions of the Mortgage of (a) any insurance proceeds paid under any insurance policies by reason of damage, loss or destruction to the Premises or the Improvements (as such term is defined in the Mortgage) to the full extent of such proceeds or (b) proceeds or awards resulting from condemnation or other taking in lieu of condemnation of any portion of the Premises to the

full extent of such proceeds or awards or (c) tenant security deposits, but only to the extent actually received by Assignor and not applied on account of a tenant default; and Assignor, Guarantor and the aforesaid indemnitors shall be personally liable for any damages to Assignee resulting from any fraud or intentional misrepresentation made by Assignor, Guarantor or the aforesaid indemnitors, as the case may be.

IN WITNESS WHEREOF, ASSIGNOR HAS EXECUTED AND DELIVERED THIS INSTRUMENT UNDER SEAL THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

NATIONAL WAREHOUSE INVESTMENT COMPANY, a California limited partnership

In the presence of:

Name: Elaine Tucker  
Name: Elaine Tucker  
Name: Edm. Aquino  
Name: Peter S. Ho

By: Holman/Shidler Investment Corporation, a Hawaii corporation general partner

By: Jay H. Shidler  
Title: Vice President

UNIBANK A/S

By: Michael J. Maher  
Name: Michael J. Maher  
Title: Senior Vice President

By: Thomas P. Hooley  
Name: Thomas P. Hooley  
Title: Vice President

[Corporate Seal]

Attest:

Instrument Prepared By, Record And Return To:

ROBINSON SILVERMAN PEARCE ARONSON & BERMAN  
1290 Avenue of the Americas  
New York, New York 10104

Attention Eric I Cohen, Esq.


BK7343762721

CORPORATE GENERAL PARTNER ACKNOWLEDGEMENT

STATE OF HAWAII )  
 ) ss.:  
CITY AND COUNTY OF HONOLULU )

On this 31 day of FEBRUARY, 1996, before me, the undersigned officer, personally appeared Jay H. Shidler personally known and acknowledged themselves to me to be the Vice President of Holman/Shidler Investment Corporation, a Hawaii corporation (the "Corporation") said Corporation acting in its capacity as the corporate general partner of National Warehouse Investment Corporation, a California limited partnership (the "Partnership"), pursuant to the partnership agreement of the Partnership, and that as such officers, being duly authorized to do so pursuant to its by-laws or a resolution of its board of directors, executed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by themselves as such officers as their free and voluntary act and deed and the free and voluntary act and deed of said Corporation and Partnership.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public  
Name: Elaine Tucker

NOTARIAL SEAL

My Commission Expires: 11/29/96

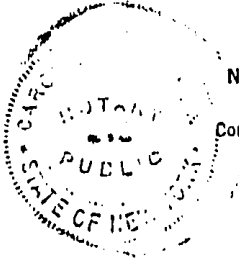
My County of Residence: Honolulu



BK7313162722

STATE OF NEW YORK            )  
  ) ss. :  
COUNTY OF NEW YORK        )

On this 14th day of February, 1996, before me personally appeared Michael L. Miller, to me known, who being by me duly sworn, did depose and say that he is Senior Vice President of Unibank A/S, the bank described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.




CAROL A. GOODMAN  
Notary Public, State of New York  
No. 01G05019812  
Qualified in New York County  
Commission Expires Nov. 1, 1997

Carol A. Goodman  
Notary Public



STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On this 15<sup>th</sup> day of February, 1996, before me personally appeared Thomas Hickey, to me known, who, being by me duly sworn, did depose and say that he is Vice President of Unibank A/S, the bank described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

  
Notary Public

ARLENE GORMAN  
NOTARY PUBLIC, State of New York  
No. 01G05020996  
Qualified in Nassau County  
Commission Expires December 6, 1997

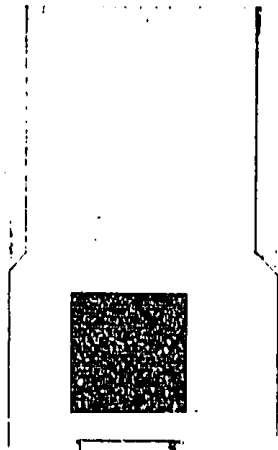


SCHEDULE A

The land referred to in this Commitment is described as follows:

BEGINNING at a point which is South  $0^{\circ}03'34''$  East 66.50 feet and North  $89^{\circ}56'26''$  East 36.85 feet from the North quarter corner of Section 3, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence along the East line of Redwood Road South  $0^{\circ}54'51''$  East 167.96 feet; thence South  $01^{\circ}41'39''$  East 300.04 feet; thence South  $6^{\circ}48'55''$  East 52.5 feet; thence North  $89^{\circ}56'26''$  East 1001.68 feet; thence North  $0^{\circ}03'34''$  East 520.00 feet to the South line of the Salt Lake Garfield and Western Railroad property; thence South  $89^{\circ}56'26''$  West 1020.00 feet along said South line of Railroad property to the point of beginning.

+++++



BK73143162725