

UNOFFICIAL COPY

00105105

2000-02-10 11:08:55
Cook County Recorder 41.00

This instrument was prepared by and
after recording should be returned to:



00105105

Buchanan Ingersoll
One Oxford Centre, 20th Floor
301 Grant Street
Pittsburgh, Pennsylvania 15219-1410
Attention: Heather A. Wyman, Esquire

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ASSIGNMENT OF LEASES AND RENTS

9th THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of the
day of February, 2000 by VEF III FUNDING, LLC ("Assignor"), a Delaware limited
liability company, successor by merger to River North Chicago - VEF III, LLC, a Delaware
limited liability company, to PNC BANK, NATIONAL ASSOCIATION ("Assignee"), a
national banking association. Capitalized terms not otherwise defined herein shall have the
meanings ascribed to them in the Credit Agreement. Hw

FOR VALUE RECEIVED, and intending to be legally bound pursuant to that certain
Credit Agreement between the Assignor, the Guarantors party thereto, the Banks party thereto
and the Assignee dated as of October 28, 1998 (as the same may hereafter be amended, restated,
modified or supplemented, the "Credit Agreement"), Assignor hereby grants, sells, assigns,
transfers, sets over and delivers unto Assignee for the benefit of the Banks all right, title and
interest of Assignor in and to all Leases (as hereinafter defined) covering all or any part of those
certain premises described in Exhibit A attached hereto and made a part hereof or covering all or
any part of the improvements now or hereafter located thereon (hereinafter collectively called the
"Premises"), together with all the Rents (hereinafter defined) due and to become due to Assignor,
and together with all rights of Assignor to amend, modify, terminate, extend or renew the Leases
or to waive the Rents or the terms of the Leases.

TO HAVE AND TO HOLD the same unto Assignee for the benefit of the Banks, and
their respective successors and assigns, for the purpose of securing the performance and
discharge by Assignor of the Obligations (as hereinafter defined).

Assignor hereby covenants, promises and agrees as follows:

1. As used in this Assignment, the following terms shall have the meanings indicated,
unless the context otherwise requires:

(a) "Leases" shall mean the following agreements to which Assignor is a party as
lessor, sublessor or owner: (i) all present and future leases and subleases covering all or any
portion of the Premises, (ii) all agreements for use or occupancy of any portion of the Premises,

BOX 333-CTI

(iii) all modifications, supplements, extensions and renewals of any such Lease and any and all further Leases (including rights in respect of lessees and sublessees holding over and tenancies following attornment) of all or any part of the Premises, and (iv) any and all guaranties of the performance of any lessee or sublessee under any Lease.

(b) "Obligations" shall mean (i) all obligations owed by Assignor to the Assignee and the Banks under the Credit Agreement and the other Loan Documents, (ii) the prompt and punctual payment of all principal and interest and other sums coming due under the Notes (as defined in the Credit Agreement), and (iii) the prompt and punctual payment and performance of all obligations, liabilities, covenants and sums now or hereafter to be paid or performed by Assignor under that certain Mortgage and Security Agreement (said Mortgage and Security Agreement, together with all amendments, modifications, consolidations, increases, supplements and spreaders thereof being herein collectively called the "Mortgage") and under all other agreements, instruments and documents given to Assignee to evidence, secure or otherwise support the indebtedness evidenced by the Note (all such agreements, instruments and documents, including the Notes, the Mortgage and this Assignment, being hereinafter referred to as the "Loan Documents").

(c) "Rents" shall include all of the rents, income, receipts, revenues, security deposits, issues and profits now due or which may hereafter become due under any Lease and all other rents, income, receipts, revenues, issues and profits now due or which may hereafter become due with respect to the Premises, or any part thereof, or the use, occupancy or operation of the same; and the proceeds of all such Rents, both cash and noncash, including, but not limited to, any minimum rents, additional rents, percentage rents, parking, maintenance, insurance proceeds, tax contributions, any damages following default by a lessee or sublessee under any Lease, any penalties or premiums payable by tenant under any Lease and the proceeds of any policy of insurance covering loss of rents resulting from destruction or damage to any portion of the Premises.

2. The parties intend that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Assignee the right to collect the Rents and to apply them in payment of the principal and interest and all other sums payable on the Obligations. However, Assignee hereby grants to Assignor a license, subject to the provisions set forth below, to collect the Rents as they become due for its own account so long as no Event of Default exists. Nothing contained herein, nor any collection of Rents by Assignee or by a receiver, shall be construed to make Assignee a "mortgagee-in-possession" of the Premises so long as Assignee has not itself entered into actual possession of the Premises.

3. Upon the occurrence and during the continuance of an Event of Default, this Assignment shall constitute an irrevocable direction to and full authority to each lessee and sublessee under any Leases to pay all Rents to Assignee without proof of the default relied upon. Assignor hereby irrevocably authorizes each lessee, sublessee, guarantor, person and entity to rely upon and comply with any notice or demand by Assignee for the payment to Assignee for the benefit of the Banks of any Rents due or to become due.

4. Assignor warrants as to each Lease that:
 - (a) to the knowledge of Assignor, the terms of each Lease have been fully disclosed to and approved by Assignee, and each Lease is in full force and effect;
 - (b) no Lease or any interest therein has been previously assigned or pledged;
 - (c) to the knowledge of Assignor, no lessee or sublessee under any Lease has any defense, setoff or counterclaim against Assignor; and
 - (d) no Rents have been collected more than one (1) month in advance (except for up to two monthly installments of Rent that may be paid upon the entering of a new Lease).
5. Assignor agrees with respect to each Lease:
 - (a) If the Lease provides for a security deposit paid by the lessee or sublessee, this Assignment transfers to Assignee for the benefit of the Banks, to the extent permitted by law, all of Assignor's right, title and interest in and to the security deposit, provided that Assignor shall have the right to retain said security deposit so long as no Event of Default exists under the Loan Documents and provided further that Assignee shall have no obligation to the lessee or sublessee with respect to such security deposit, unless and until Assignee comes into actual possession and control of said deposit.
 - (b) Assignor shall not collect any Rents more than one (1) month in advance (except for up to two monthly installments of Rent that may be paid upon the entering of a new Lease).
 - (c) Assignor shall not discount any future accruing Rents.
 - (d) Assignor shall not execute any further pledge or assignment of its interest in any of the Leases or Rents or suffer or permit any such assignment to occur by operation of law.
 - (e) Assignor shall faithfully perform and discharge all material obligations of the lessor under the Leases and shall give prompt written notice to Assignee of any notice of Assignor's material default received from any lessee or sublessee or any other person and furnish Assignee with a complete copy of said notice. Assignor shall (or shall cause its insurer, if insurance is applicable, to) appear in and defend, at no cost to Assignee, any action or proceeding arising under or in any manner connected with any Lease in which Assignor is named as a party.
 - (f) Upon entering into a new Lease and upon becoming a landlord by assignment thereof, if applicable, Assignor shall within thirty (30) days thereafter provide to Assignee a true and correct copy of each executed Lease.
 - (g) Assignor shall, within thirty (30) days after request by Assignee, use diligent efforts to deliver to Assignee, duly executed estoppel certificates in accordance with the Mortgage between Assignor and Assignee made pursuant to the Credit Agreement.

(h) Nothing contained herein shall be construed to impose any liability or obligation arising prior to the date of a foreclosure sale or deed in lieu of foreclosure or of Assignee otherwise becoming the lessor or sublessor under any Lease on Assignee under or with respect to any Lease. Assignor shall indemnify and hold Assignee harmless from and against all liabilities, losses, damages, costs and expenses as and to the extent provided in Section 10.3 of the Credit Agreement. To the extent permitted by applicable law, any Rents collected by Assignee may be applied by Assignee, in its discretion, in satisfaction of any such liability, loss, damage, cost or expense.

6. Assignor hereby grants to Assignee the following rights:

(a) If an Event of Default has occurred and is continuing, Assignee may elect by notice to Assignor to be the creditor of each lessee or sublessee, as the case may be, in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such lessee. If Assignee make such election, Assignee shall file timely claims in such proceedings or otherwise pursue creditor's rights therein; provided, however, that Assignee shall notify Assignor if it decides not to file such claim or otherwise pursue such rights and thereupon Assignor shall have such rights.

(b) Assignee shall have the right to assign Assignee's right, title and interest in the Leases to any subsequent holder of the Mortgage or any replacement or renewal thereof or any participating interest therein as permitted under the Credit Agreement or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to Assignee.

(c) Assignee shall have the right (but not the obligation), upon any failure of Assignor to perform any of its agreements hereunder, and continuance of such failure for ten (10) Business Days after notice from Assignee (except if Assignee determines in good faith that its rights hereunder are in risk of impairment, in which case notice may be given immediately prior to the time Assignee acts and no grace period shall be required by Assignee to act) to take any action as Assignee may deem necessary or appropriate to protect its security, including, but not limited to, appearing in any action or proceeding and performing any obligations of the lessor under any Lease, and Assignor agrees to pay, within ten (10) Business Days, on demand, all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Assignee in connection therewith (subject to the provisions of Section 16 hereof). The foregoing sums not paid within ten (10) Business Days of demand shall bear interest from the date of demand until paid at the default rate set forth in the Credit Agreement.

(d) Upon the occurrence and during the continuance of an Event of Default and upon notice Assignor, Assignee for the benefit of the Banks shall have the following rights (none of which shall be construed to be obligations of Assignee), to the extent permitted by applicable law:

(i) Assignee shall have the right to apply any of the Rents to pay installments due for personal property rented or purchased on credit, insurance premiums on personal

property, or other charges relating to personal property on the Premises, provided, however, that this Assignment shall not make Assignee responsible for the control, care, management or repair of the Premises or any personal property or for the carrying out of any of the terms or provisions of the Leases;

(ii) Assignee shall have the right to apply the Rents and any sums recovered by Assignee pursuant hereto to outstanding Obligations and to all other charges for taxes, insurance, improvements, maintenance and other items relating to the Premises, all in such order as Assignee shall, in its discretion, determine and whether or not the same be then due;

(iii) Assignee shall have the right to execute new Leases;

(iv) Assignee shall have the right to cancel or alter any existing Leases;

(v) Assignee shall have the authority, as Assignor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of Assignor and to bind Assignor on all papers and documents relating to the operation, leasing and maintenance of the Premises.

All of the foregoing rights and remedies of Assignee are cumulative and Assignee for the benefit of the Banks shall also have, upon the occurrence and during the continuation of any such Event of Default, all other rights and remedies provided under the other Loan Documents or otherwise available at law or in equity or by statute.

7. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Mortgage or in any other document executed in connection with this transaction. Failure of the Assignee to avail itself of any terms, covenants or conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

8. Assignee may take or release other security, may release any party primarily or secondarily liable for any Obligations secured hereby, may grant extensions, renewals or indulgences with respect to such Obligations, may amend, modify or cancel all or any of the terms of the Obligations, and may apply any other security therefor held by Assignee to the satisfaction of such Obligations without prejudice to any of Assignee's rights hereunder or under the other Loan Documents. The rights of Assignee to collect the Obligations and to enforce any other security therefor held by Assignee may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action by Assignee hereunder. The failure of Assignee or any Bank to avail itself of any of the terms, covenants and conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Assignee and the Banks shall have the full right, power and authority to enforce this Assignment or any of the terms, covenants or conditions hereof at any time or times that Assignee and the Banks shall deem fit.

9. Any change, amendment, modification, abridgment, cancellation, or discharge of this Assignment or any term or provision hereof not permitted hereby shall be invalid unless in a writing signed by Assignee and Assignor.
10. Upon payment to Assignee for the benefit of the Banks of the full amount of all Obligations, or, provided no Event of Default exists, the release of the Premises from the Collateral Pool pursuant to the Credit Agreement or upon release of the Mortgage, this Assignment shall be void and of no further effect, except that Paragraph 5(h) and all covenants and agreements of Assignor contained herein relating to indemnification of the Assignee shall survive such payment or release, and Assignee shall execute and deliver to Assignor in recordable form all necessary documents for the removal of this Assignment from the public record.
11. The terms and conditions of this Assignment shall be binding upon Assignor, its successors and assigns, and shall inure to the benefit of Assignee and its successors and assigns.
12. Notices required or permitted to be given hereunder and all other communications hereunder shall be in writing and shall be sent or delivered, and shall be deemed to have been given in accordance with the terms of the Credit Agreement.
13. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.
14. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois without giving effect to its conflicts of law principles.
15. Any representations given in this Assignment "to the knowledge of Assignor" or any other phrase having similar import used in this Assignment shall mean the actual knowledge of the senior portfolio managers and senior asset managers who are making investment decisions for the Fund whether they are employed by Lend Lease Real Estate Investments, Inc. or otherwise.
16. Whenever in this Assignment the Assignor is obligated to pay or indemnify the Assignee or the Banks for costs and expenses of legal counsel, such payment and indemnification shall be subject to the terms of Sections 9.5 and 10.3 of the Credit Agreement as such Sections relate to Assignor's obligations to Assignee and the Banks for the payment of such fees and expenses. In the event of any inconsistency or conflict between the terms and provisions of this Assignment and the terms and provisions of the Credit Agreement, the terms and provisions of the Credit agreement shall prevail.
17. This Assignment may be executed by different parties hereto on any number of separate counterparts, each of which, when so executed and delivered, shall be an original, and all such counterparts shall together constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

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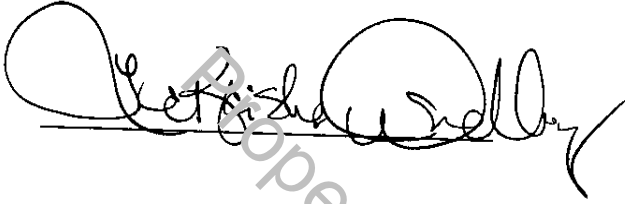
[SIGNATURE PAGE - ASSIGNMENT OF LEASES AND RENTS]


WITNESS the due execution hereof as of the day and year first above written.

ATTEST:

VEF III FUNDING, LLC, a Delaware limited liability company

By: VEF III Funding Corporation, a Delaware corporation, its Manager



By: 
Name: R. Steven Brown
Title: VEF III Manager

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00105105

STATE OF Georgia

COUNTY OF Fulton

On this 7th day of February, 2000, before me, a notary public, personally appeared

B. Stanton Dman, who acknowledged himself to be the

Vice President of VEF III Funding Corporation, a Delaware

corporation, Manager of VEF III FUNDING, LLC, a Delaware limited liability company, and

that he, as such officer, being authorized to do so, executed the foregoing instrument for the

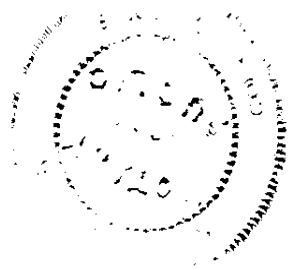
purposes therein contained by signing the name of the corporation by himself as such officer.

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

Math C. Cain
Notary Public

My commission expires:

Notary Public, Cobb County, Georgia
My Commission Expires July 17, 2000



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COOK COUNTY CLERK'S OFFICE
100 N. LAUREL ST. CHICAGO, IL 60602

EXHIBIT A

Legal Description

Parcel 1

That part of Block 2 in original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, at and below the horizontal plane of +50.00 feet above Chicago City Datum, bounded and described as follows:

Beginning at the point of intersection of the West line of North Dearborn Street (also being the East line of Lots 1 and 8 in said Block 2) and the North line of Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 187.48 feet to a point on a line 134.10 feet East (as measured at right angles) of and parallel with the East line of North Clark Street; thence North along said line (said line also being the East face of an existing concrete foundation wall and its Northerly and Southerly extension thereof), a distance of 305.09 feet; thence East at right angles to the last described line, a distance 187.37 feet to a point on the West line of said North Dearborn Street; thence South along the West line of said North Dearborn Street, a distance of 311.60 feet to the point of beginning, in Cook County, Illinois.

Parcel 2

That part of Block 2 in original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, at and above the horizontal plane of +50.00 feet above Chicago City Datum, bounded and described as follows:

Beginning at the point of intersection of the West line of North Dearborn Street (also being the East line of Lots 1 and 8 in said Block 2) and the North line of Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 185.48 feet to a point on a line 136.10 feet East (as measured at right angles) of and parallel with the East line of North Clark Street; thence North along said line, a distance of 305.16 feet; thence East at right angles to the last described line, a distance of 185.37 feet to a point on the West line of said North Dearborn Street; thence South along the West line of said North Dearborn Street, a distance of 311.60 feet to the point of beginning, in Cook County, Illinois.

Parcel 3

Easements appurtenant to and for the benefit of Parcels 1 and 2 aforesaid for purposes of ingress and egress for persons, vehicles and materials to permit the construction, maintenance, repair, replacement, restoration or reconstruction of that portion of any improvements directly abutting the hereinafter described property; for pedestrian and vehicular ingress and egress to and from

the land; to install and maintain caissons supporting improvements to be located on the land; permitting encroachments; and permitting general attachment to those improvements constructed on the hereinafter described property which lie at or below the "Plaza Level", all as set forth in the Easement and Operating Agreement dated January 14, 1986 and recorded January 21, 1986 as Document 86025944 and filed in the Office of the Registrar of Titles and made by and between LaSalle National Bank, as Trustee under Trust Agreement dated March 1, 1985 and known as Trust Number 109495, LaSalle National Bank, as Trustee under Trust Agreement dated June 29, 1981 and known as Trust Number 104102, Oxford Properties, Inc., LaSalle National Bank, as Trustee under Trust Agreement dated September 20, 1985 and known as Trust Number 110339 and the JDC-Tishman Chicago Hotel Company, and as amended by First Amendment to Easement and Operating Agreement dated August 23, 1988 and recorded on August 24, 1988 as Document Number 88384561 made by and between LaSalle National Bank as Trustee under Trust Agreement Number 109495, LaSalle National Bank as Trustee under Trust Agreement Number 164102, LaSalle National Bank as Trustee under Trust Number 112420, Quaker Tower Partnership and BCE Development Properties Inc., JDL Chicago Hotel Limited Partnership et al over, under and upon portions of the following described land:

That part of Block 2 in original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, at and below the horizontal plane of +50.00 feet above Chicago City Datum, bounded and described as follows:

Beginning at the point of intersection of the East line of North Clark Street (also being the West line of Lots 4 and 5 in said Block 2) and the North line of Chicago River, as occupied; thence North along the East line of said North Clark Street, a distance of 300.43 feet; thence East at right angles to the last described line, a distance of 134.10 feet; thence South along a line 134.10 feet East of and parallel with the East line of said North Clark Street, a distance of 305.09 feet to a point on the North line of said Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 134.18 feet to the point of beginning,

ALSO

That part of Block 2 in original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, at and above the horizontal plane of +50.00 feet above Chicago City Datum, bounded and described as follows:

Beginning at the point of intersection of the East line of North Clark Street (also being the West line of Lots 4 and 5 in said Block 2) and the North line of Chicago River, as occupied; thence North along the East line of said North Clark Street, a distance of 300.43 feet; thence East at right angles to the last described line, a distance of 136.10 feet; thence South along a line 136.10 feet East of and parallel with the East line of said North Clark Street, a distance of 305.16 feet to a point on the North line of said Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 136.18 feet to the point of beginning, in Cook County, Illinois.

Parcel 4

Easements appurtenant to and for the benefit of Parcels 1 and 2 aforesaid for pedestrian and vehicular ingress and egress to and from the garage to be constructed on the land to Carroll Avenue, as set forth in the Parking Agreement dated January 14, 1986 and recorded January 21, 1986 as Document 86025945 made by and between LaSalle National Bank, as Trustee under Trust Agreement dated September 20, 1985 and known as Trust Number 110339, the JDC-Tishman Chicago Hotel Company, LaSalle National Bank, as Trustee under Trust Agreement dated March 1, 1985 and known as Trust Number 109495, Oxford Properties, Inc. and LaSalle National Bank, as Trustee under Trust Agreement dated June 26, 1981 and known as Trust Number 104102, over, across, under and upon portions of the following described land:

That part of Block 2 in original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, at and below the horizontal plane of +50.00 feet above Chicago City Datum, bounded and described as follows:

Beginning at the point of intersection of the East line of North Clark Street (also being the West line of Lots 4 and 5 in said Block 2) and the North line of the Chicago River, as occupied; thence North along the East line of said North Clark Street, a distance of 300.43 feet; thence East at right angles to the last described line, a distance of 134.10 feet; thence South along a line 134.10 feet East of and parallel with the East line of said North Clark Street, a distance of 305.09 feet to a point on the North line of said Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 134.18 feet to the point of beginning,

ALSO

That part of Block 2 in original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, at and above the horizontal plane of +50.00 feet above Chicago City Datum, bounded and described as follows:

Beginning at the point of intersection of the East line of North Clark Street (also being the West line of Lots 4 and 5 in said Block 2) and North line of the Chicago River, as occupied; thence North along the East line of said North Clark Street, a distance of 300.43 feet; thence East at right angles to the last described line, a distance of 136.10 feet; thence South along a line 136.10 feet East of and parallel with the East line of said North Clark Street, a distance of 305.16 feet to a point on the North line of said Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 136.18 feet to the point of beginning, in Cook County, Illinois.

Property Address: 320 North Dearborn Street, Chicago, Illinois

PIN # 17-09-408-011-0000
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