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Eugene "Gene" Moore Fee: \$42.00
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Document prepared by and
after recording to be
returned to:

Daniel Kohn, Esq.
DUANE MORRIS LLP
227 West Monroe Street
Suite 3400
Chicago, Illinois 60606

8/18/79/19 LMT 01

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (hereinafter "this Assignment") is made as of May 24, 2004, by and among **1035 NORTH DEARBORN, LLC**, an Illinois limited liability company ("Assignor"), with a mailing address of 900 N. North Branch, Chicago, Illinois 60622, to **FIRST AMERICAN BANK**, an Illinois banking corporation, its successors and its assigns ("Lender"), at its office at 1650 Louis Avenue, Elk Grove Village, Illinois 60007, Attention: James Berton.

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I

RECITALS

WHEREAS, Assignor has executed and delivered to Lender (a) a Revolving Note of even date herewith (together with all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, the "Revolving Note"), wherein Assignor promises to pay to the order of Lender the principal amount of Eighteen Million and No/100 Dollars (\$18,000,000.00) in repayment of a revolving construction loan from Lender in like amount (the "Revolving Loan"), together with interest thereon, at variable rates of interest and otherwise as set forth in the Note, which Note is due and payable on or before May 24, 2005, as it may be extended or accelerated in accordance with the terms thereof; and (b) a Term Note of even date herewith (together with all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, the "Term Note"; the Revolving Note and the Term Note are sometimes hereinafter collectively referred to as the "Notes"), wherein Assignor promises to pay to the order of Lender the principal amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) in repayment of a term construction loan from Lender in like amount (the "Term Loan"; the Revolving Loan and the Term Loan are sometimes hereinafter collectively referred to as the "Loan"), together with interest thereon, at variable rates of interest and otherwise as set forth in the Note, which Note is due and payable on or before May 24, 2005, as it may be extended or accelerated in accordance with the terms thereof, which Loans are in the aggregate amount of Eighteen Million Seven Hundred Thousand and No/100 Dollars (\$18,700,000.00).

WHEREAS, as security for the repayment of the Loans, in addition to this Assignment, certain other loan documents have been executed and delivered to Lender (the Notes, the Construction Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement of even date herewith from Assignor (the "Mortgage"), granting to Lender a first lien on the real estate described on Exhibit "A" attached hereto and made a part hereof

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(the "**Premises**"), and all other documents or instruments executed and/or delivered as additional evidence of, or security for repayment of, the Loans, whether now or hereafter existing, and all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, are hereinafter sometimes collectively referred to as the "**Loan Documents**"). The terms and provisions of the other Loan Documents are hereby incorporated herein by this reference; and

WHEREAS, in consideration of advances, credits and other financial accommodations heretofore or hereinafter made to Assignor by Lender, Lender has required Assignor hereby to execute and deliver this Assignment.

II

THE GRANT

NOW, THEREFORE, as further security for the repayment of the Loans and consideration of the matters recited hereinabove, Assignor does hereby sell, assign and transfer to Lender all of Assignor's right, title and interest in, to and under, together with all rents, issues, deposits and profits now due and which may hereinafter become due, under or by reason of any lease or any letting of, or any agreement for the use, sale, or occupancy of the Premises or any portion thereof (whether written or verbal) which may have been heretofore or may hereafter be made or agreed to or which may be made or agreed to by Lender under the powers herein granted, including without limitation sale contracts, escrow and other agreements, it being Assignor's intention hereby to establish an absolute transfer and assignment of all such leases, contracts and agreements pertaining thereto (such leases, contracts and agreements being collectively referred to hereinbelow as "agreements" and any such individual lease, contract, escrow or other agreement being referred to hereinbelow as an "agreement"), and all the avails thereof, to Lender; and

Assignor does hereby irrevocably appoint Lender as its true and lawful attorney in its name and stead (with or without taking possession of the Premises) to rent, lease, let or sell all or any portion of the Premises to any party or parties at such price and upon such terms as Lender in its sole discretion may determine, and to collect all of such rents, issues, deposits, profits and avails now due or that may hereafter become due under any and all of such agreements or other tenancies now or hereafter existing on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability, and rights of recourse and indemnity as Lender would have upon taking possession of the Premises pursuant to the provisions set forth hereinbelow.

This Assignment confers upon Lender a power coupled with an interest and it cannot be revoked by Assignor.

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III

GENERAL AGREEMENTS

3.1 Available Rents. Assignor represents and agrees that no rent for right of future possession has been or will be paid by any person in possession of any portion of the Premises in excess of one installment thereof paid in advance and that no payment of rents to become due for any portion of the Premises has been or will be waived, conceded, released, reduced, discounted, or otherwise discharged or compromised by Assignor without the prior written consent of Lender. Assignor waives any right of set-off against any person in possession of any portion of the Premises. Assignor agrees that it will not assign any of such rents, issues, profits, deposits or avails, except to a purchaser or grantee of the Premises.

3.2 Lease Modifications/Executions. Except as permitted pursuant to the terms of the Loan Documents, Assignor shall not agree to any modification or amendment of the terms, or any termination or voluntary surrender, of any lease or agreement, or enter into any new leases, pertaining to all or any portion of the Premises without the prior written consent of Lender, such consent not to be unreasonably delayed.

3.3 Management of Premises. At all times while Lender is not in actual possession of the Premises, Assignor shall manage the Premises, or cause the Premises to be managed, in accordance with sound business practices.

3.4 Future Assignments. Assignor further agrees to assign and transfer to Lender all future leases and agreements pertaining to all or any portion of the Premises and to execute and deliver to Lender, immediately upon demand of Lender, all such further assurances and assignments pertaining to the Premises as Lender may from time to time reasonably require.

3.5 Performance of Lease Obligations. Assignor shall, at its own cost: (i) at all times perform and observe all of the covenants, conditions and agreements of the lessor under the terms of any or all leases or similar agreements affecting all or any part of the Premises; (ii) at all times enforce and secure the performance and observance of all of the covenants, conditions and agreements of the lessees under the terms of any or all of said leases or other agreements; (iii) appear in and defend any action or other proceeding arising out of or in any manner connected with said leases and other agreements, and to pay any and all costs of Lender incurred by reason of or in connection with said proceedings, including reasonable attorneys' fees and court costs, and (iv) promptly furnish Lender with copies of any notices of default either sent or received by Assignor under the terms of or pursuant to any of said leases or other agreements.

3.6 Tenant Certificates. Assignor further agrees to furnish Lender, within ten (10) days of Lender's request, with a written statement containing the names, spaces and rentals of all lessees of the Premises or any part thereof, and to exercise, within ten (10) days of Lender's request, any rights of Assignor to demand from any lessee a certificate regarding the status of said lessee's lease as may be required to be given by such lessee pursuant to its lease.

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IV

DEFAULTS AND REMEDIES

4.1 Exercise of Rights. Although it is the intention of Assignor and Lender that this Assignment be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Lender shall not exercise any of the rights and powers conferred upon it herein unless and until an "Event of Default" has occurred in the payment of interest or principal due under the Notes or in the performance or observance of any of the other provisions of the Notes, the Mortgage, this Assignment or any of the other Loan Documents and such Event of Default has not been cured within any applicable notice or cure period; provided, however, that nothing contained herein shall be deemed to affect or impair any rights Lender may have under the Notes or any of the other Loan Documents.

4.2 Application of Rents. Except as expressly limited in the Mortgage, Lender, in the exercise of the rights and powers conferred upon it herein, shall have full power to use and apply the rents, issues, deposits, profits and avails of the Premises to the payment of or on account of the following, in such order as Lender may in its sole discretion determine:

- (a) operating expenses of the Premises (including without limitation all costs of management, sale and leasing thereof, which shall include reasonable compensation to Lender and its agents, if management be delegated thereto, reasonable attorneys' fees and costs, and lease or sale commissions and other compensation and expenses of seeking and procuring tenants or purchasers and entering into leases or sales), establishing any claims for damages, and premiums on Insurance authorized hereinabove;
- (b) taxes, special assessments, water and sewer charges on the Premises now or that may hereafter become due;
- (c) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Premises (including without limitation the cost from time to time of placing the Premises in such condition as will, in the sole judgment of Lender, make them readily rentable or salable);
- (d) any indebtedness secured by the Mortgage, or any deficiency that may result from any foreclosure sale pursuant thereto; and
- (e) any remaining funds to Assignor or its successors or assigns, as their interests and rights may appear.

4.3 Authorization to Lessees. Assignor does further specifically authorize and instruct each and every present and future lessee or purchaser of all or any portion of the Premises to pay all unpaid rentals or deposits agreed upon in any lease or agreement pertaining to the Premises to Lender upon receipt of written demand from Lender to pay the same without any further notice or authorization by Assignor, and Assignor hereby waives any rights or claims it may have against any lessee by reason of such payments to Lender.

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4.4 Right of Possession. In the event Lender is authorized under Paragraph 4.1 hereof to exercise its rights hereunder (whether before or after declaration of the entire principal amount secured thereby to be immediately due, before or after institution of legal proceedings to foreclose the lien of the Mortgage, or either one of them, or before or after sale thereunder), Assignor agrees, immediately upon demand of Lender, to surrender to Lender and Lender (personally or by its agents or attorneys) shall be entitled to take actual possession of the Premises or any portion thereof, and in any such case Lender in its sole discretion may enter upon and take and maintain possession of all or any portion of the Premises, together with all the documents, books, records, papers and accounts of Assignor or the then owner of the Premises relating thereto may exclude Assignor and its employees and agents wholly therefrom, and may, as attorney-in-fact or agent of Assignor, or in its own name as Lender and under the powers herein granted, hold, operate, manage and control the Premises and conduct business thereon either personally or by its agents, with full power to use such measures, legal or equitable, as in its sole discretion may be deemed proper or necessary to enforce the payment of security of such rents, issues, deposits, profits and avails of the Premises (including without limitation actions for the recovery of rent, actions in forcible detainer and actions in distress for rent). Assignor hereby grants Lender full power and authority to exercise each and every one of the rights, privileges and powers herein granted at any and all times thereafter, without notice to Assignor, and with full power to cancel or terminate any lease (and any sublease) or agreement pertaining to the Premises or any cause or on any ground that would entitle Assignor to cancel the same, to disaffirm any such lease (and any sublease) or agreement made subsequent to the Mortgage or subordinated to the liens thereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises that Lender in its sole discretion deems appropriate, to insure (and reinsure) the same for all risks incidental to Lender's possession, operation and management thereof, and to receive all such rents, issues, deposits, profits and avails. Assignor further agrees to cooperate and facilitate Lender's collection of said funds and, upon Lender's request, shall promptly execute written notice to all lessees to make all rental payments to Lender.

4.5 Indemnity. Until Lender takes possession of the Premises following the occurrence of an Event of Default, or by foreclosure or deed in lieu of foreclosure, Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligations, duty or liability under any leases or agreements pertaining to the Premises, and Assignor shall and does hereby agree to indemnify and hold Lender harmless from and against any and all liability, loss and damage that Lender may or might incur under any such leases or agreements or under or by reason of the assignment thereof, as well as any and all claims and demands whatsoever which be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part, to perform or discharge any of the terms, covenants or conditions contained in such leases or agreements. Should Lender incur any such liability, loss or damage under such leases or agreements, or under or by reason of the assignment thereof, or in the defense of any claims or demands relating thereto, Assignor shall reimburse Lender for the amount thereof (including without limitation reasonable attorneys' fees and expenses and court costs) immediately upon demand.

4.6 Limitation of Liability. Nothing herein contained shall be construed as making or constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions set forth herein. In the exercise

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of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Assignor.

4.7 Nature of Remedies. It is understood and agreed that the provisions set forth herein shall be deemed a special remedy given to Lender and shall not be deemed exclusive of any of the remedies granted in the Note, the Mortgage or any of the other Loan Documents, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted.

4.8 Continual Effectiveness. It is expressly understood that no judgment or decree entered on any debt secured or intended to be secured by any of the other Loan Documents shall operate to abrogate or lessen the effect of this Assignment, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness secured thereby, in whatever form such indebtedness may be, and until the indebtedness secured thereby shall have been paid in full and all bills incurred by virtue of the authority contained herein have been fully paid out of the rents, issues, deposits, profits and avails of the Premises, by Assignor, or by any guarantor of payment of the Note, or until such time as this Assignment may be voluntarily released. This Assignment shall also remain in full force and effect during the pendency of any foreclosure proceedings pursuant to the Mortgage, both before and after sale, until the issuance of a deed pursuant to a foreclosure decree, unless the indebtedness secured by the Mortgage is fully satisfied before the expiration of any period of redemption.

v

MISCELLANEOUS

5.1 Notices. Any notice that Lender or Assignor may desire or be required to give to the other shall be in writing and shall be mailed or delivered in accordance with the terms of **Paragraph 5.1** of the Mortgage to the intended recipient thereof at its address hereinabove set forth as such intended recipient may, from time to time, by notice in writing, designate to the sender pursuant thereto.

Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Assignment is not required to be given.

5.2 Governing Law; Litigation. This Assignment shall be construed and enforced according to the laws of the State of Illinois. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, ASSIGNOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS ASSIGNMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ASSIGNOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH 5.2.**

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5.3 Rights and Remedies. All rights and remedies set forth in this Assignment are cumulative, and the holder of the Notes and of every other obligation secured hereby may recover judgment thereon, issue execution therefor and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby. Unless expressly provided in this Assignment to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein regarding any breach or default by any other interested party referred to herein, in the performance by such other party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or waiver of the performance by such Party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other obligations hereunder.

5.4 Interpretation. If any provision of this Assignment or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Assignment shall be construed as if such invalid part were never included herein. The headings of sections and paragraphs in this Assignment are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof. As used in this Assignment, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words "including", "include" or "includes" are used in this Assignment, they should be interpreted in a non-exclusive manner as though the words "without limitation," immediately followed the same.


5.5 Successors and Assigns. This Assignment and all provisions hereof shall be binding upon Assignor, its successors, assigns and legal representatives, and all other persons or entities claiming under or through Assignor and the word "Assignor," when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Notes or this Assignment. The word "Lender," when used herein, shall include Lender's successors, assigns and legal representatives, including all other holders, from time to time, of the Notes. This Assignment shall run with the land constituting the Premises.

5.6 Jury Waiver. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF ASSIGNOR AND LENDER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS ASSIGNMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF ASSIGNOR AND LENDER WITH RESPECT TO THIS ASSIGNMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF ASSIGNOR AND LENDER HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ASSIGNOR OR LENDER MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF ASSIGNOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

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

1035 NORTH DEARBORN, LLC,
an Illinois limited liability company

By: 
James D. Letchinger, its sole Manager

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STATE OF ILLINOIS

)
) SS.

COUNTY OF COOK

I, Michelle Madrigal, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James D. Letchinger, personally known to me to be the manager of **1035 NORTH DEARBORN, LLC**, an Illinois limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid in his capacity as member of the limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24th day of May, 2004.

Michelle Madrigal
Notary Public



Notary Public, State of Illinois, My Commission Expires 9/19/05

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EXHIBIT A

LEGAL DESCRIPTION

LOTS 1, 2, 3, 4 AND 5 IN SUBDIVISION OF LOT 4 IN BLOCK 16 OF BUSHNELL'S ADDITION TO CHICAGO IN THE EAST HALF OF THE SOUTHEASTG QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. Nos.: 17-04-424-001-0000; 17-04-424-002-0000; 17-04-424-003-0000; 17-04-424-004-0000; and 17-04-424-005-0000

Common Address: 1035 North Dearborn Street, Chicago, Illinois