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AND WHEN RECORDED MAIL TO:

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Eugene "Gene" Moore Fee: \$42.50  
Cook County Recorder of Deeds  
Date: 08/20/2004 03:39 PM Pg: 1 of 10

Fremont Investment & Loan  
303 W. Madison Street  
Suite 900  
Chicago, Illinois 60606  
Attn: Todd Finnely  
Loan No.: 950114588

03-29525  
SAS

## ASSIGNMENT OF RENTS (AND LEASES)

THIS ASSIGNMENT OF RENTS (AND LEASES) (this "Assignment"), dated as of April 14, 2004, is made by 9-25-W. HUBBARD, L.L.C., an Illinois limited liability company ("Borrower"), to FREMONT INVESTMENT & LOAN, a California industrial bank ("Lender").

### RECITALS

- A. Borrower is the owner of the real property described on Exhibit A attached hereto, together with the improvements now or hereafter located thereon (collectively, the "Project").
- B. Borrower and Lender are the parties to that certain Loan and Security Agreement of even date herewith (the "Loan Agreement"), pursuant to the terms of which Lender has agreed to make a loan to Borrower in the Loan Amount (the "Loan"). All initially-capitalized terms not otherwise defined herein shall have the meanings given such terms in the Loan Agreement.
- C. Lender has required the execution and delivery of this Assignment as a condition to the closing of the Loan.

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

#### 1. Definitions.

When used herein, the following initially-capitalized terms shall have the following meanings:

"Attorneys' Fees," "Attorneys' Fees and Costs," "attorneys' fees" and "attorneys' fees and costs" are defined in the Loan Agreement.

"Leases" means all leases, subleases, licenses, franchises, occupancy or other agreements now existing or hereafter created and affecting all or any portion of the Project or the use or occupancy thereof, including, without limitation, all guaranties, modifications, amendments, extensions and renewals thereof and all rights and privileges incident thereto. The term "Leases" shall also include, without limitation, all reciprocal easement agreements, operating covenants and covenants, conditions and restrictions relating to the any of the foregoing or the operation of the Project.

"Preservation Costs" means the reasonable costs of protecting and preserving the Project, including payment of taxes and insurance and compliance with building codes, if any.

"Rents" means all rents, additional rent, termination payments, escalations, issues, profits, revenue, royalties, income, proceeds, security deposits, letters of credit, letter of credit proceeds, escrow deposits, insurance proceeds, earnings and other benefits and payments, including, without limitation, all prepaid rents, derived from any of the Leases or the Project.

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"Tenants" means the tenants under the Leases and any guarantors of any or all of any tenant's obligations under the Leases.

## 2. Assignment.

Borrower hereby presently, absolutely and irrevocably grants, sells, assigns, transfers and sets over to Lender all of the Rents, together with all of Borrower's right, title and interest in (a) the Leases and all security deposits and other security now or hereafter held by Borrower as security for the performance of the obligations of the Tenants thereunder, (b) all insurance proceeds with respect to the Leases including, without limitation, rental loss coverage and business interruption coverage, and (c) all damages, claims, judgments and settlements of claims in favor of Borrower arising from the Leases or in connection with the Rents, and all rights, claims and causes of action under any legal proceeding, including, without limitation, any bankruptcy, reorganization or insolvency proceeding, or otherwise, arising from the Leases or in connection with the Rents.

This Assignment is intended by Borrower and Lender to create and shall be construed to create an absolute present assignment to Lender of all of Borrower's right, title and interest in the Rents, the Leases and the other rights and interests described herein, and shall not be deemed to create a security interest therein for the payment of any indebtedness or the performance of any obligations of Borrower under the Loan Documents. Borrower and Lender further agree that, during the term of this Assignment, the Rents and other rights and interests described herein shall not constitute property of Borrower (or of any estate of Borrower) within the meaning of 11 U.S.C. §541 or any other provision of the Bankruptcy Code, as amended from time to time. By its acceptance of this Assignment and so long as an Event of Default shall not have occurred under any of the Loan Documents, Lender hereby grants to Borrower a revocable license to enforce the Leases, to operate, maintain, repair and restore the Project in accordance with the Loan Documents, to collect and hold the Rents as a trust fund to be applied to the payment of the costs and expenses incurred in connection with the development, operation, maintenance, repair and restoration of the Project and to the Loan and any other indebtedness secured by the Project and permitted by the terms of the Loan Documents, and to distribute the balance, if any, to Borrower, in each case in accordance with the terms of the Loan Documents.

## 3. Revocation of License.

From and after the occurrence of an Event of Default under any of the Loan Documents, Lender shall have the right to revoke the license granted to Borrower in Section 2 by giving written notice of such revocation to Borrower without the necessity of Lender taking control of the Project in person, by agent or by a court-appointed receiver. Upon such revocation, Borrower shall promptly deliver to Lender all Rents then held by Borrower or, without limiting the terms of this Assignment, thereafter received by Borrower.

## 4. Collection by Lender.

From and after the occurrence of an Event of Default under any of the Loan Documents, Lender shall have the right to collect all or any portion of the Rents, including, without limitation, all Rents accrued and unpaid as of such date, directly or through a court-appointed receiver, together with, without limitation, the right to:

A. give notice to the Tenants in accordance with the provisions of Section 5 hereof and, with or without taking possession of the Project, to demand that all Rents, including, without limitation, all Rents accrued and unpaid as of such date, under the Leases thereafter be paid to Lender without deduction or offset;

B. enter into possession of the Project, to assume control with respect to, and to pay all expenses incurred in connection with, the development, operation, maintenance, repair or restoration of the Project, to enforce the Leases and to collect all Rents due thereunder, to apply all Rents received by Lender as provided in Section 6 hereof, to amend, modify, extend, renew and terminate any or all Leases,

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to execute new Leases and to do all other acts which Lender shall determine, in its good faith sole discretion, to be necessary or desirable to carry out the purposes of this Assignment; and

**C.** specifically enforce the provisions of this Assignment and to use all other measures, legal and equitable, deemed by Lender in its good faith sole discretion necessary or proper to enforce this Assignment and to collect the Rents.

Borrower hereby irrevocably constitutes and appoints Lender as its attorney-in-fact, effective upon an Event of Default under any of the Loan Documents, which power is coupled with an interest, and is deemed to be non-cancelable, with full power of substitution, to, in Lender's own name and capacity, or in the name and capacity of Borrower, demand, collect, receive and give complete acquittances for any and all Rents, and at Lender's good faith sole discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Borrower, which Lender may deem necessary or desirable in its good faith sole discretion in order to collect and enforce the payment of the Rents.

## **5. Protection of Tenants.**

Borrower and Lender agree that all Tenants shall be bound by and required to comply with the provisions of this Assignment. In connection therewith, Borrower further agrees as follows:

**A.** If requested by Lender with respect to any Tenant other than a residential Tenant, Borrower shall (i) notify each Tenant of the existence of this Assignment and the rights and obligations of Borrower and Lender hereunder; and (ii) use its best efforts to obtain such Tenant's agreement to be bound by and comply with the provisions of this Assignment.

**B.** From and after the occurrence of an Event of Default under any of the Loan Documents, Lender may, at its option, send any Tenant a written notice that: (i) an Event of Default has occurred and Lender has revoked Borrower's license to collect the Rents; (ii) Lender has elected to exercise its rights under this Assignment; and (iii) such Tenant is thereby directed to thereafter make all payments of Rent, including, without limitation, all Rents accrued and unpaid as of such date, and to perform all obligations under its Lease, to or for the benefit of Lender or such party as Lender shall direct.

**C.** Upon receipt of any such notice from Lender, each Tenant is hereby instructed by Borrower and Lender to comply with the provisions of notice, to make all payments of Rent, including, without limitation, all Rents accrued and unpaid as of such date, and to perform all obligations under the applicable Lease, to and for the benefit of Lender or such party as Lender shall direct. Such notice and direction shall remain effective until the first to occur of: (i) the receipt by such Tenant of a subsequent written notice from Lender directing another method of payment of the Rents, (ii) the appointment of a receiver, in which event such Tenant shall thereafter make payments of Rent and perform all obligations under the applicable Lease as may be directed by such receiver, or (iii) the issuance of an order of a court of competent jurisdiction terminating this Assignment or otherwise directing another method of payment of the Rents.

**D.** Each Tenant who receives a written notice from Lender pursuant to this Assignment shall be entitled to rely upon such notice and shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this Assignment. Borrower hereby indemnifies and agrees to defend and hold each Tenant harmless for, from and against any and all expenses, loss, claims, damage or liability arising out of such Tenant's compliance with such notice or performance of the obligations under the applicable Lease by such Tenant made in good faith in reliance on and pursuant to such notice.

**E.** Neither the payment of Rent to Lender pursuant to any such written notice, nor the performance of the obligations under any Lease to or for the benefit of Lender or such party as Lender directs, nor the enforcement by Lender of any provision in any Lease, shall cause Lender to assume or

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be bound by, or be deemed or construed to constitute an assumption by Lender of, the provisions of any Lease.

F. The provisions of this Section 5 are expressly made for the benefit of, and shall be binding on and enforceable by, each Tenant under the Leases.

## 6. Application of Rents; Security Deposits.

A. All Rents received by Lender pursuant to this Assignment shall be applied by Lender, in its good faith sole discretion and in the order it elects, to any of the following:

- (i) the costs and expenses of collection of the Rents, including, without limitation, reasonable attorneys' fees and costs;
- (ii) the costs and expenses incurred in connection with the development, operation, ownership, lease, maintenance, repair and/or restoration of the Project;
- (iii) the establishment of reasonable reserves as determined by Lender for working capital and for anticipated or projected costs and expenses, including, without limitation, capital improvements which may be reasonably necessary or desirable in Lender's reasonable discretion or which may be required by law; and
- (iv) the payment of any indebtedness then owing by Borrower to Lender.

B. Notwithstanding the foregoing, if Lender revokes Borrower's license to receive the Rents pursuant to Section 2 by any means other than the appointment of a receiver, and pursuant to this Assignment Tenants pay Rents directly to Lender, Borrower may make written demand upon Lender to pay the Preservation Costs from such Rents received by Lender. From and after Lender's receipt of such written demand by Borrower, Lender shall pay, within ten (10) days of Lender's receipt of invoices, bills, statements or other evidence reasonably satisfactory to Lender of the amounts due, the Preservation Costs then due and payable to the extent of any Rents then actually held and unapplied by Lender; provided, however, that neither the provisions of this Section 6(B), nor any such acts by Lender, shall cause Lender to become a mortgagee in possession or to expend any amounts in excess of the Rents actually received by Lender pursuant to this Assignment. Except as expressly provided herein with respect to Preservation Costs then due and payable to the extent of any Rents then actually held and unapplied by Lender, (i) nothing contained in this Section 6(B) shall be deemed or construed to limit or affect Lender's right to apply any Rents as provided in Section 6(A) or elsewhere provided in the Loan Documents or by applicable law; and (ii) no Rents applied by Lender as provided in Section 6(A) or elsewhere provided in the Loan Documents or by applicable law shall be deemed or construed to be available for the payment of Preservation Costs. Lender's duties under this Section 6(B) upon receipt of a written demand by Borrower pursuant to this Section 6(B), shall not be deemed or construed to obligate Lender to operate or manage the Project, which obligations shall remain those of Borrower. Lender's obligations under this Section 6(B) shall continue until the earlier of (a) the date on which Lender obtains the appointment of a receiver for the Project pursuant to application in a court of competent jurisdiction, or (b) the date on which Tenants are no longer obligated to pay Rents to Lender pursuant to this Assignment. Nothing contained herein shall be deemed or construed to affect, supersede or diminish the right of Lender to the appointment of a receiver or any of such receiver's rights or obligations.

C. Borrower further agrees that all Rents received by Lender from any Tenant may be allocated first, if Lender so elects, to the payment of all current obligations of such Tenant under its Lease and not to amounts which may be accrued and unpaid as of the date of revocation of Borrower's license to collect such Rents. Lender may, but shall have no obligation to, pursue any Tenant for the payment of Rent which may be due under its Lease with respect to any period prior to the exercise of Lender's right to revoke Borrower's license under this Assignment or which may become due thereafter. Lender shall hold and apply in accordance with the applicable Leases any security deposits or prepaid rental that has

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been paid to and received by Lender, but otherwise, and notwithstanding anything to the contrary contained herein, Lender shall not be liable to any Tenant for the payment or return of any security deposit under any Lease except and to the extent that such security deposit has been paid to and received by Lender and Borrower hereby indemnifies and agrees to defend and hold the Indemnitees harmless for, from and against any and all expenses, loss, claims, damage or liability arising out of any claim by a Tenant with respect thereto. Borrower further agrees that the collection of Rents by Lender and the application of such Rents by Lender to the costs, expenses and obligations referred to in this Section 6 shall not cure or waive any default, Potential Default, or Event of Default, under any of the Loan Documents or invalidate any act (including, but not limited to, any sale of all or any portion of the Project or any other Collateral now or hereafter securing the Loan) done in response to or as a result of such default, Potential Default, or Event of Default, under any of the Loan Documents.

## 7. Indemnity.

Borrower hereby indemnifies and agrees to defend and hold the Indemnitees harmless for, from and against all expenses, loss, claims, damage or liability which the Indemnitees incur under any of the Leases or under or by reason of this Assignment or by reason of any alleged obligation or undertaking on Lender's part to perform or discharge any covenants or agreements contained in any of the Leases; provided that such indemnity shall not extend to expenses, loss, claims, damage or liability to the extent arising from an Indemnitee's gross negligence or willful misconduct or arising after the date, if ever, that Lender takes title to the Project through the foreclosure of the Security Instrument or a deed in lieu or in aid thereof.

## 8. Priority of Assignment; Further Assurances.

Borrower hereby represents and warrants that this Assignment is a first priority assignment and that no other assignments of all or any portion of the Rents or the Leases exist or remain outstanding. Borrower agrees to take such actions and, within ten (10) days after Lender's written request, to execute, deliver and record such documents in form reasonably satisfactory to Lender, as may be reasonably requested by Lender to evidence the assignments set forth herein, to establish the priority thereof and to carry out the intent and purpose hereof. If requested by Lender, Borrower shall, within ten (10) days after Lender's written request, execute and deliver to Lender a specific assignment of any Lease now or hereafter affecting all or any portion of the Project, in form and substance reasonably satisfactory to Lender.

## 9. Lender not Responsible for Borrower's Obligations.

Notwithstanding the absolute, unconditional, present nature of this Assignment, nothing contained herein shall operate or be construed to obligate Lender to perform any of the terms, covenants and conditions contained in any Lease or otherwise to impose any obligation upon Lender with respect to any Lease, including, without limitation, any obligation arising out of any covenant of quiet enjoyment in any Lease in the event the Tenant under such Lease is joined as a party in any foreclosure action and the estate of such Tenant is thereby terminated. Prior to actual entry into and taking possession of the Project by Lender, this Assignment shall not operate to place upon Lender any responsibility for the development, operation, control, maintenance, repair or restoration of the Project or any portion thereof, and the execution of this Assignment by Borrower shall constitute conclusive evidence that all responsibility therefor is and shall be that of Borrower.

## 10. Termination of Assignment.

A full and complete release and reconveyance of the Security Instrument shall operate as a full and complete release of all of Lender's rights and interest hereunder, except as provided in this Section 10. Upon the recordation of such full and complete release and reconveyance, except as provided in this Section 10, this Assignment shall thereafter be void and of no further effect. Notwithstanding anything in this Assignment or implied by law to the contrary, any indemnities made by Borrower herein shall survive

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the payment of the Loan, the satisfaction of the Secured Obligations and/or the termination of this Assignment.

## 11. WAIVER OF JURY TRIAL.

~~BORROWER AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CONTROVERSY OR CLAIM, WHETHER ARISING IN TORT OR CONTRACT OR BY STATUTE OR LAW, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS ASSIGNMENT (INCLUDING, WITHOUT LIMITATION, THE VALIDITY, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF) OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION HEREWITH. EACH PARTY ACKNOWLEDGES AND AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BORROWER'S AND LENDER'S ENTERING INTO THE LOAN DOCUMENTS AND THE PARTIES WOULD NOT HAVE ENTERED INTO THE LOAN DOCUMENTS WITHOUT THIS WAIVER. LENDER AND BORROWER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 11 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL.~~

## 12. Successors and Assigns.

The provisions of this Assignment shall be binding upon and shall inure to the benefit of Borrower, Lender and their respective successors and assigns.

## 13. Notices.

Any notice, or other document or demand, required or permitted to be given under this Assignment shall be in writing and shall be given in the manner provided in the Loan Agreement.

## 14. Counterparts.

This Assignment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Assignment to physically form one document, which may be recorded.

## 15. Governing Law.

This Assignment shall be governed by, and construed and enforced in accordance with, the laws of the Governing State.

## 16. Retail Center Projects.

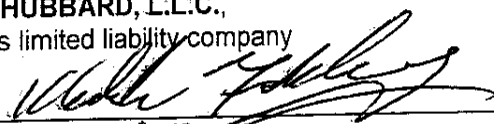
Lender, at all times (whether before or after an Event of Default or Potential Default under the Loan Documents), independent of Borrower, shall have the standing and the right to specifically enforce, by injunction or otherwise, all or any provisions of the Leases as though Lender originally was a party thereto. The license granted Borrower in this Assignment shall not affect or diminish Lender's rights hereunder, but shall be interpreted to give Borrower certain concurrent rights with Lender. To the extent that Borrower has any interest therein, Borrower's covenants hereunder and the provisions of Section 5 shall be deemed covenants running with the retail center of which the Project is a part and shall be binding upon all tenants, subtenants, licensees and other occupants thereof and the assignees of same.

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IN WITNESS WHEREOF, Borrower has executed and delivered this Assignment.

**Borrower:**

**9-25 W. HUBBARD, L.L.C.,**  
an Illinois limited liability company

By:   
Its: Manager

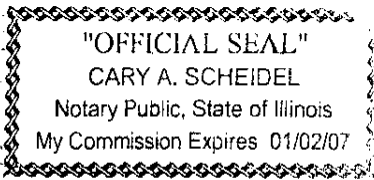
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STATE OF Illinois )  
COUNTY OF Cook ) SS.

On April 8 2004 before me, Cary A. Scheidel, a Notary Public, personally appeared Ronald F. Farkas, and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.  
Cary A. Scheidel  
Notary Public





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## EXHIBIT A

### Legal Description of the Project

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That certain real property located in the City of Chicago, County of Cook, State of Illinois, having a street address of 9 - 25 West Hubbard Street, more particularly described as follows:

See attached.

Property of Cook County Clerk's Office

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Property Address: 9-15 & 17-19 W. HUBBARD STREET  
CHICAGO, IL.

PIN #: 17-09-262-005                      17-09-262-006  
17-09-262-007                      17-09-262-003  
17-09-262-004

Parcel 1:

Lots 14 and 15 in Block 1 in Wolcott's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

The East 1/2 of Lot 12 and all of Lot 13 in Block 1 in Wolcott's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3:

Lot 11 (except the East 1 foot) in Block 1 in Wolcott's Addition to Chicago in the East 1/2 of the Northeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 4:

The West 1/2 of Lot 12 and the East 1 foot of Lot 11 in Block 1 in Wolcott's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.