



Doc#: 0513141111
Eugene "Gene" Moore Fee: \$40.00
Cook County Recorder of Deeds
Date: 05/11/2005 12:51 PM Pg: 1 of 9

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Recording requested by, and
when recorded mail to:

Otten, Johnson, Robinson,
Neff & Ragonetti, P.C.
950 Seventeenth Street
Suite 1600
Denver, Colorado 80202
Attention: David T. Brennan, Esq.

ASSIGNMENT OF LEASES AND RENTS AND OTHER INCOME

THIS ASSIGNMENT OF LEASES AND RENTS AND OTHER INCOME is given as of the 3rd day of May, 2005, by HERITAGE CAPITAL VENTURES I, L.L.C., an Illinois limited liability company, whose address is 9121 Kedvale, Skokie, Illinois 60076 ("Assignor"), to FIRST SUNAMERICA LIFE INSURANCE COMPANY, a New York corporation ("Assignee"), whose address is c/o AIG Global Investment Corp., 1 SunAmerica Center, 38th Floor, Century City, Los Angeles, California 90067-6022.

RECITALS

A. Assignor is the owner of the real property described in Exhibit A attached hereto. Such real property, together with all improvements now or hereafter located thereon and all appurtenances thereto, is referred to as the "Property."

B. Assignor has executed a promissory note (the "Note") of even date herewith, payable to the order of Assignee in the principal face amount of \$4,070,000.00. The Note is secured, in part, by a Mortgage, Security Agreement, Fixture Filing, Financing Statement, and Assignment of Leases and Rents of even date herewith (the "Mortgage"), encumbering the Property, from Assignor to Assignee.

C. The Note, the Mortgage, this assignment, an Environmental Indemnity Agreement of even date herewith by Assignor and Stanley Weissbrot to Assignee, and all other

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documents now or hereafter executed or delivered by Assignor in connection with the loan evidenced by the Note (the "Loan"), as any or all such documents may be amended, substituted for, or replaced from time to time, are referred to collectively as the "Loan Documents."

ASSIGNMENT

NOW, THEREFORE, to induce Assignee to make the Loan, as a partial source of repayment of the Loan, and as additional security for the payment and performance of all obligations of Assignor to Assignee evidenced by or referred to in the Loan Documents, whether now existing or subsequently incurred, Assignor hereby undertakes and agrees as follows:

1. **Assignment of Leases.** Assignor hereby presently, absolutely and unconditionally assigns, sells, and conveys to Assignee all of Assignor's right, title, and interest in and to all leases or occupancy agreements, in whatever form, which now or subsequently affect all or any part of the Property. All such leases and occupancy agreements are collectively referred to as the "Leases."

2. **Assignment of Rents and Other Income.** Assignor hereby assigns, sells, and conveys to Assignee all of Assignor's right, title, and interest in and to all deposits (whether for security or otherwise), rents, issues, profits, revenues, royalties, contract rights, and benefits of every nature of and from the Property. Assignor does hereby irrevocably appoint Assignee as its true and lawful attorney in its name and stead (with or without taking possession of the Property) to rent, lease or let all or any portion of the Property to any party or parties at such rent and upon such terms as Assignee 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 the Leases, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Assignee would have upon taking possession of the Property pursuant to the provisions set forth hereinbelow. This assignment confers upon Assignee a power coupled with an interest and it cannot be revoked by Assignor.

3. **Ownership and Preservation of Leases.** Assignor represents, warrants, and covenants that it now is (or with respect to Leases not yet in existence, will be immediately upon the execution thereof) the absolute owner of the Leases, with full right and title to assign the same and the rents, income, and profits due or to become due thereunder; that any existing Leases are valid, in full force and effect, and have not been modified or amended except as stated herein; that there is no outstanding assignment or pledge thereof or of the deposits (for security or otherwise), rents, income and profits due or to become due thereunder; that to the best of Assignor's knowledge there are no existing defaults under the terms thereof on the part of any party thereto; that the lessees thereunder have no present defenses, set-offs, or counterclaims against Assignor; and that no rents, income, or profits payable thereunder have been (to the best of its knowledge) or will be hereafter discounted, released, waived, compromised, or otherwise discharged without Assignee's prior written consent. Except as expressly permitted by the terms of Section 5.3 of the Mortgage, Assignor will not cancel, terminate, or permit the surrender of any Lease, or amend or modify any provision thereof without the prior written consent of Assignee. Any such attempted cancellation, termination, surrender, amendment, modification, or assignment of any Lease without the prior written consent of Assignee shall, at Assignee's option, be null and void.

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4. Defense of Actions. Assignor will, at Assignor's sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any way connected with the Leases or the obligations, duties, or liabilities of the lessor or lessee thereunder, and, in the event that Assignee becomes a party to such action or proceeding, will at its sole cost and expense defend Assignee in connection therewith with counsel acceptable to Assignee and pay on request all costs and expenses, including attorneys' fees, which Assignee may incur in connection with Assignee's appearance in any such action or proceeding.

5. Assignee's Right of Possession. At any time after the execution of this assignment, Assignee may, at its option, enter and take possession of the premises affected by any Lease and perform all acts necessary for the operation and maintenance of such premises in the same manner and to the same extent as Assignor could do the same things. Without limiting the effect of the preceding sentence, Assignee is empowered, but shall have no obligation, to collect the rents, income, and profits accruing under the Leases or any of them, to enforce payment thereof and the performance of any and all terms and provisions thereof, to exercise all the rights and privileges of Assignor thereunder, including the right to fix or modify rents, to demand and sue for possession of the premises covered by any Lease, and to relet such premises and collect the rents, income, and profits resulting from such reletting. Assignee will from time to time apply the net income derived under the Leases, after payment of all proper costs and charges, past and present (including any loss or damage of the nature referred to in paragraph 8 hereof, and including reasonable attorneys' fees and other costs of collection), to any sums then due Assignee under the Loan Documents, in such order as Assignee may elect, but Assignee will in no event be accountable for any sums not actually received by Assignee pursuant to this assignment.

6. Forbearance by Assignee. By accepting this assignment, Assignee agrees not to exercise the rights and powers granted in paragraph 5 above until and unless there has been a default by Assignor (following any applicable notice or cure period) in the payment or performance of any obligation contained in, secured by, or referred to in the Loan Documents. If any such default occurs and is not cured within any applicable grace or cure period, Assignee may at any time (including the time covered by any foreclosure proceeding and the period provided for redemption, if any) without notice, proceed to exercise any or all of the rights and powers conferred upon Assignee in said paragraph 5.

7. Direction to Lessees. Assignor hereby irrevocably and unconditionally agrees and directs that the lessee under each Lease shall, upon demand and notice from Assignee that Assignee has elected to exercise its rights hereunder, pay all rents, income, and profits under such Lease to Assignee, without liability on the part of such lessee for determining the validity or propriety of Assignee's demand, and notwithstanding any claim by Assignor that Assignee's exercise of its right to receive payment is invalid or improper. Assignor will have no claim against any such lessee for any rents or other sums paid by such lessee to Assignee and hereby agrees to indemnify, defend and hold any such lessee harmless from and against losses, damages, costs and expenses (including but not limited to reasonable attorneys' fees) arising from any claim that any such lessee's payment of rents or other sums to Assignee was improper or unlawful.

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8. Limitation on Assignee's Duties; Indemnification. Prior to Assignee's actual entry and taking possession of the premises immediately affected by any Lease, this assignment shall not operate to place responsibility upon Assignee for the condition, safety, control, care, management, or repair of such premises. Nothing contained herein shall be construed to bind Assignee at any time to the performance of any of the terms or provisions in any Lease, or otherwise to impose any obligation on Assignee, including, without limitation, any liability under any covenant of quiet enjoyment contained in any Lease if any Lease is terminated or any lessee dispossessed upon foreclosure of any of the Loan Documents. Assignor agrees to indemnify and hold Assignee harmless of and from any and all claims, liabilities, losses, expenses, or damages, including attorneys' fees, which Assignee may incur under any Lease, or by reason of this assignment, as well as any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking to be performed or discharged by Assignee under any such Lease or under or by reason of this assignment, except that Assignor shall not indemnify Assignee against any liability arising as the result of Assignee's gross negligence or willful misconduct in the exercise of its remedies hereunder.

9. Performance by Assignor. Assignor will perform, both before and (to the extent that rentals and other revenues from the Property, if required, are available to Assignor) after any exercise by Assignee of its rights or powers herein set forth, all of Assignor's covenants, agreements, and obligations as lessor under the Leases, and will neither do nor fail to do anything which may result in any release of liability of any lessee or lease guarantor or the accrual of any right in any lessee to withhold any rent or other sum payable under the terms of any Lease. Upon request of Assignee, Assignor will give prompt notice to Assignee of any notice of default received from any lessee or from any other person, and will furnish Assignee with a copy of any such notice. If requested by Assignee, Assignor will enforce each Lease and all remedies available to Assignor against the lessee thereunder in the event of any default by such lessee.

10. Assignor's Negative Covenants. Assignor will not make any other or further assignment of any Lease or of any interest therein, or of any of the rents payable thereunder, except any further assignments to Assignee. Except as expressly permitted by the terms of Section 5.3 of the Mortgage, Assignor will not modify or amend the terms of any guaranty of any Lease or cancel or terminate any such guaranty, nor consent to the assignment of any Lease, or any subletting thereunder, without the prior written consent of Assignee. In addition to those obligations set forth in any of the Loan Documents, Assignor will, within ten (10) days following the request of Assignee, deliver to Assignee a certified rent roll of all Leases in such detail and containing such information as Assignee may reasonably request.

11. Assignee's Right to Perform Defaulted Obligations. If Assignor fails to make any payment or to perform any act required of Assignor under the terms hereof, then Assignee may, but will not be obligated to, without further notice to or demand on Assignor, and without releasing Assignor from any obligation under this assignment, make the payment or perform the act in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limitation, appearing in and defending any action or proceeding purporting to affect the security hereof or the rights or powers of Assignor or Assignee, and performing or discharging any obligation, covenant, or agreement of Assignor

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under any Lease. In exercising any of such powers, Assignee may pay all necessary costs and expenses, employ counsel, and incur and pay reasonable attorneys' fees. Any sum advanced or paid by Assignee for any such purpose shall be immediately due and payable to Assignee, and shall bear interest from the date paid or advanced by Assignee until repaid by Assignor at the "Default Rate" as specified in the Note.

12. Cross-Default Clause. Any default by Assignor in the performance or observance of any covenant or condition hereof shall be deemed an Event of Default under each of the Loan Documents, entitling Assignee to exercise all or any remedies available to Assignee under the terms of any or all Loan Documents, any Event of Default under any other Loan Document shall be deemed a default hereunder, entitling Assignee to exercise any or all remedies provided for herein. Failure by Assignee to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Assignee, and the waiver by Assignee of any default by Assignor hereunder shall not constitute a continuing waiver or a waiver of any other default or of the same default on any future occasion.

13. Reassignment by Assignee. Assignee may assign all or part of Assignor's right, title, and interest in any or all Leases (to the extent of the interests therein conferred upon Assignee by the terms hereof) to any subsequent holder, owner, co-owner or participant, of or in the Note or other Loan Documents, or to any person who acquires title to the Property through foreclosure or otherwise. From and after the acquisition of title to the Property by any person, through foreclosure or conveyance in lieu of foreclosure, no assignee of Assignor's interest in any Lease shall be liable to account to Assignor for the rents, income, and profits thereafter accruing. The recording of any valid release of the Mortgage shall operate as a release of this assignment in favor of the then owner of the Property; provided, that the recording of any valid partial release of the Mortgage shall operate as a release hereof only with respect to that portion of the Property thereby released from the Mortgage, the term "Property" as used herein being deemed thereafter to refer only to that portion of the Property remaining encumbered by the Mortgage and the term "Assignor" as used herein being deemed thereafter to refer only to the owner or owners of such remaining portion of the Property; and provided further, that the affidavit of any officer of Assignee stating that any part of the indebtedness secured hereby remains unpaid shall constitute conclusive evidence of the validity, effectiveness, and continuing force of this assignment, and any person may and is hereby authorized to rely upon such affidavit.

14. Binding Effect. The provisions of this assignment shall bind and benefit the parties hereto and their respective successors and permitted assigns.

15. Notices. Notices under this assignment shall be given in the manner set forth in Section 9.10 of the Mortgage.

16. Limitation of Liability. Nothing herein contained shall be construed as making or constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee pursuant to the provisions set forth herein. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

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17. Nature of Remedies. It is understood and agreed that the provisions set forth herein shall be deemed a special remedy given to Assignee 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.

18. 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 this assignment shall continue in full force and effect until the payment and discharge of any and all indebtedness secured hereby, in whatever form such indebtedness may be, and until the indebtedness secured hereby 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, and avails of the Property, 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.

19. Governing Law. This assignment shall be construed and enforced according to the laws of the State of Illinois.

20. Rights and Remedies. All rights and remedies set forth in this assignment and in the other Loan Documents are cumulative, and the holder of the Note 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 the performance by such other 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.

21. 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.

22. 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 Note or this assignment. The word "Assignee," when used herein, shall include Lender's successors, assigns

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and legal representatives, including all other holders, from time to time, of the Note. This assignment shall run with the land constituting the Property.

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Signed and delivered as of the date first above written.

ASSIGNOR:

HERITAGE CAPITAL VENTURES I, L.L.C., an Illinois limited liability company

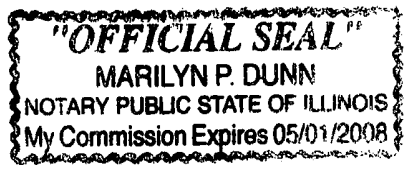
By: Stanley Weissbrot
Stanley Weissbrot
Manager

STATE OF ILLINOIS)
) ss.
COUNTY OF Cook)

I, Marilyn Dunn, certify that Stanley Weissbrot, as Manager of Heritage Capital Ventures I, L.L.C., an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

My commission expires [5/1/06]

Witness my hand and official seal.



Marilyn P. Dunn
Notary Public

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EXHIBIT A
to
ASSIGNMENT OF LEASES AND RENTS AND OTHER INCOME

(Legal Description)

Lots 10, 11 and 12 in Krohn's Chestnut Avenue Subdivision of parts of the Northwest ¼ of Section 26 and the Northeast ¼ of Section 27, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

1941-2017 JOHNS DRIVE
GLENVIEW, ILLINOIS

04-27-203-008-0000

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