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Doc#: 0516114287
Eugene "Gene" Moore Fee: \$44.00
Cook County Recorder of Deeds
Date: 06/10/2005 11:43 AM Pg: 1 of 11

This instrument was prepared
by and, after recording,
return to:

Robert N. Sodikoff
Aronberg Goldgehn Davis &
Garmisa
One IBM Plaza - Suite 3000
Chicago, Illinois 60611

Location:
Property commonly known as
5100 West 96th Street
Oak Lawn, Illinois

Permanent Real Estate Tax
Index No.:
24-09-202-016-0000 through 24-09-202-023-0000 and
24-09-202-036-0000 through 24-09-202-043-0000

Space above this line for Recorder's use only

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS is made and delivered as of the 2nd day of June, 2005 by **MORNINGSIDE MIDCO RESIDENTIAL, LLC**, an Illinois limited liability company ("Assignor"), whose address is c/o Morningside Group, 223 West Erie Street, 3rd Floor, Chicago, Illinois 60610 to **MIDWEST BANK AND TRUST COMPANY**, an Illinois banking corporation ("Assignee"), whose address is 500 West Chestnut Street, Hinsdale, Illinois 60521.

ACCORDINGLY, Assignor hereby assigns to Assignee as follows:

Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers, sets over and assigns to Assignee, all of the right, title and interest of Assignor (i) in and to all of the rents, issues, assessments, accounts, and profits of and from the Premises described in Exhibit A attached hereto and made a part hereof ("Premises"); (ii) in and to all leases and subleases ("Leases") now or hereafter existing on all or any part of the Premises; (iii) in and to all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all of Assignor's interest in any tenant improvements and fixtures located on the Premises.

Box 400-CTCC

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THIS ASSIGNMENT OF LEASES AND RENTS IS GIVEN TO SECURE:

A. Payment by Assignor when due of (i) the obligations evidenced by that certain Construction Note ("Note" or "Construction Note") of even date herewith in the principal sum of SIXTEEN MILLION SEVEN HUNDRED SEVENTY SIX THOUSAND AND NO/100 DOLLARS (\$16,776,000.00) executed by Assignor in favor of Assignee, and delivered to Assignee simultaneously with the execution and delivery of this Assignment, and any and all renewals, extensions or refinancings thereof; (ii) any other obligations, liabilities or indebtedness which may be due and owing from the Assignor to Assignee, or by any co-maker or guarantor of the Note, whether such obligations, liabilities or indebtedness are now existing or hereafter created, direct or indirect, absolute or contingent, joint or several due or to become due, howsoever created, evidenced or arising and howsoever acquired by Assignee, and any and all renewals, extensions or refinancings thereof; and (iii) all costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including without limitation, court costs and attorneys' fees.

B. Observance and performance by Assignor of the covenants, terms, conditions and agreements contained in the Note, this Assignment, the Construction Mortgage, Security Agreement and Fixture Financing Statement ("Mortgage") of even date herewith made by the Assignor to Assignee and creating a first mortgage lien on the Premises, and any other document or instrument evidencing or securing the Note or delivered to induce Assignee to disburse the proceeds thereof. The Mortgage, this Assignment and all such other documents and instruments evidencing or securing the Note and delivered to induce Assignee to disburse the proceeds thereof are hereinafter collectively referred to as the "Loan Documents".

AND ASSIGNOR HEREBY COVENANTS, AGREES, REPRESENTS AND WARRANTS AS FOLLOWS:

1. Representations and Warranties of Assignor. The Assignor represents and warrants to Assignee that:

(a) This Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor is or will be the lessor under all Leases, in each case either directly or as successor in interest to the named lessor thereunder;

(c) Assignor has not heretofore made any other assignment of its entire or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income or profits assigned hereunder or entered into under any agreement to subordinate any of the Leases, or Assignor's right to receive any of the rents, issues, income or profits assigned hereunder.

(d) Assignor has not heretofore executed any instrument or performed any act which may or might prevent Assignee from operating under any of the terms and

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provisions hereof or which would limit Assignee in such operation; and

(e) No tenant is in default under any Lease.

2. Covenants of Assignor. Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof or without the express written consent of Assignee, (i) release the liability of any tenant thereunder, or (ii) allow any tenant thereunder to withhold the payment of rent or to make monetary advances and offset the same against future rentals, or (iii) consent to Assignor's claim of total or partial eviction, (iv) permit any tenant thereunder to terminate or cancel any Lease, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(b) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

(c) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder without the prior written consent of Assignee;

(d) Assignor shall not accept a surrender of any Lease in which the tenant thereunder is in default, or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder other than any Lease in which the tenant is in default;

(e) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law, without the prior written consent of Assignee;

(f) Assignor shall not waive or excuse the obligation to pay rent under any Lease;

(g) Assignor shall enforce the Leases and all rights and remedies of the lessor thereunder in case of default thereunder by any tenant;

(h) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any

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Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and attorneys' fees, in any such action or proceeding in which Assignee may appear;

(i) Assignor shall give prompt notice to Assignee of any notice of any default on the part of the lessor with respect to any Lease received from any tenant or guarantor thereunder;

(j) Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenant(s) thereunder;

(k) To the extent applicable, Assignor shall furnish to Assignee within thirty (30) days after the end of each calendar quarter, or within thirty (30) days after Lender's written request, a written statement containing the names of all tenants and subtenants of the Premises, amount of monthly rental, security deposit, term of Lease and whether or not such Lease is in default; and

(l) In the event that any tenant under any Lease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Leases will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied in accordance with the provisions of paragraph 6 below.

3. Rights Prior to Default. So long as Assignor is not in default hereunder, Assignee shall not demand from tenants under the Leases or any other person liable thereunder, any of the rents, issues, income and profits assigned hereunder, and Assignor shall have the right to collect at the time, but not more than thirty (30) days in advance of the date, provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

4. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Assignment:

(a) The occurrence of any default under the Note, Mortgage or any of the other Loan Documents and the failure of Assignor to cure within the applicable cure periods, if any; or

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(b) Failure by the Assignor to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Assignor under this Assignment, the Note, the Mortgage, or any other Loan Document within thirty (30) days after notice; provided, however, that in the event that such failure cannot be cured within said thirty (30) days, and Assignor has otherwise diligently commenced to cure the same within said thirty (30) days and thereafter continues to diligently pursue cure, then no Event of Default shall exist to Assignee during this period, not to exceed in any event sixty (60) days after Assignee's original notice, unless the value of the collateral securing the Loan, or the safety of the Premises, would be materially impaired, threatened or jeopardized, in which event such period shall be unavailable to Assignor the time permitted under the Loan Documents for such performance or observance; or

(c) The existence of any material inaccuracy or untruth knowingly made in any representation, covenant or warranty contained in this Assignment or any Loan Document, or of any statement or certification as to facts delivered to Assignee by Assignor, any guarantor of the Note, or any applicant for the loan evidenced by the Note; or

(d) At any time, any guarantor of the Note files a voluntary petition in bankruptcy, or is adjudicated bankrupt or insolvent, or institutes (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or admits in writing his, her or its inability to pay his, her or its debts as they mature, or makes an assignment for the benefit of his, her or its creditors, or seeks or consents to the appointment of any receiver, trustee or similar officer for all or any substantial part of his, her or its property; or

(e) The commencement of any involuntary petition in bankruptcy against Assignor, any guarantor of the Note, or the institution against the Assignor or any guarantor of the Note, of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or the appointment of a receiver, trustee or other officer for all or any substantial part of the property of the Assignor, or any guarantor of the Note, which shall remain undismissed or undischarged for a period of sixty (60) days; or

(f) Any sale, transfer, lease, assignment, conveyance, pledge, lien or encumbrance made in violation of the provisions of the Loan Documents; or

(g) The making of any levy, judicial seizure or attachment on the Leases or any portion thereof, which shall remain undismissed or undischarged for a period of thirty (30) days.

5. Rights and Remedies Upon Default. At any time upon or following the occurrence of any one or more Events of Default hereunder, Assignee may, at its option, exercise

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any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event or Events of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or any guarantor of the Note from any obligation hereunder, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien granted by the Loan Documents:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) In compliance with applicable law, enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovation, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder, provided that, for such purpose, this Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Assignor will facilitate in all reasonable ways Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Assignee; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at an annual rate ("Default Rate") equal to the Default Rate then in effect under the Note and shall be secured by this Assignment.

6. Application of Proceeds. All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more events of default under the provisions of Paragraph 4 of this Assignment shall be applied as follows:

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(a) First, to reimbursement of Assignee for and of all expenses (including court costs and reasonable attorneys' fees) of: taking and retaining possession of the Premises; managing the Premises and collecting the rents, issues, income and profits thereof, including without limitation, salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary and proper; operating and maintaining the Premises, including without limitation, taxes, charges, claims, assessments, water rents, sewer rents, other liens, and premiums for any insurance provided in the Mortgage; the cost of all alterations, renovations, repairs or replacements of or to the Premises which Assignee may deem necessary and proper, with interest thereon at the Default Rate;

(b) Second, to reimbursement of Assignee for and of all sums expended by Assignee pursuant to Paragraph 5(d) above to make any payment or do any act required herein of Assignor, together with interest thereon as provided herein;

(c) Third, to reimbursement of Assignee for and of all other sums with respect to which Assignee is indemnified pursuant to Paragraph 7 below, together with interest thereon as provided herein;

(d) Fourth, to reimbursement of Assignee for and of all other sums expended or advanced by Assignee pursuant to the terms and provisions of or constituting additional indebtedness under any of the Loan Documents, with interest thereon as provided therein;

(e) Fifth, to the payment of all accrued and unpaid interest on the principal sum of the Note;

(f) Sixth, to payment of the unpaid balance of the principal sum of the Note; and

(g) Seventh, any balance remaining to Assignor, its respective heirs, legatees, administrators, legal representatives, successors and assigns.

7. Limitation of Assignee's Liability. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises following the occurrence of any one or more Events of Default under the provisions hereof or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of any one or more Events of Default under the provisions hereof, except for the gross negligence or willful misconduct of Assignee. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment, until such time as Assignee succeeds to Assignor's title under any such Lease by foreclosure or otherwise, and Assignor shall and does hereby agree to indemnify Assignee for, and to hold Assignee harmless of and from, any and all liability, loss or damage which Assignee

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may or might incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and attorneys' fees, shall become immediately due and payable by Assignor with interest hereon at the Default Rate and shall be secured by this Assignment. Until such time as Assignee succeeds to Assignor's title in the Premises by foreclosure or otherwise, this Assignment shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing herein or in the Mortgage contained, and no exercise by Assignee of any of the rights herein or in the Mortgage conferred shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof.

8. Non-Waiver. Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the guaranty thereof or any of the Loan Documents; this Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments; and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

9. Further Assurances. Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may reasonably request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.

10. Security Deposits. Assignor hereby acknowledges that Assignee has not received nor been transferred any security deposited by any tenant with lessor under the terms of the Existing Leases and that Assignee assumes no responsibility or liability for any security so deposited.

11. Severability. The invalidity or unenforceability of any particular provision of this Assignment shall not affect the other provisions, and this Assignment shall be construed in all

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respects as if such invalid or unenforceable provision had not been contained herein.

12. Benefit. This Assignment is binding upon each Assignor (jointly and severally, if more than one), and his, her or its respective members, joint venturers, if any, heirs, legatees, legal representatives, administrators, successors and permitted assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns, including without limitation, the holder from time to time of the Note.

13. Written Modifications. This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

14. Duration. This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the Loan Documents.

15. Governing Law. This Assignment shall be governed by and construed in accordance with the substantive laws of the State of Illinois.

16. Notices. All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Loan Agreement.

[Signature page follows.]

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EXHIBIT A

LEGAL DESCRIPTION

LOT 1 OF CHILDRENS' MUSEUM RESUBDIVISION, BEING A RESUBDIVISION OF BLOCK 1 OF CAMPBELL'S 1ST ADDITION TO OAK LAWN AND PART OF BLOCK 6 OF CAMPBELL'S 1ST ADDITION TO OAK LAWN IN THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office