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Cook County Recorder of Deeds  
Date: 03/01/2006 01:53 PM Pg: 1 of 20

Property of Cook County Clerk's Office

**GALILEO MATTESON LLC**

to

**KEYBANK NATIONAL ASSOCIATION**

**ASSIGNMENT OF LEASES AND RENTS**

23

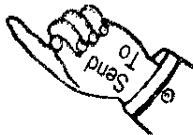
Dated: February 16, 2006

Location: 4156-4260 and 4300-4330 Lincoln Highway, Matteson, Illinois

RECORD AND RETURN TO:

KEYBANK NATIONAL ASSOCIATION  
911 Main Street  
Suite 1500  
Kansas City, Missouri 64105  
Attention: Carol Brownfield

Loan No. 10030171



First American Title Order # *NC5 102869*

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## ASSIGNMENT OF LEASES AND RENTS

**THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment")** is made as of February 16, 2006, by and between **GALILEO MATTESON LLC**, a Delaware limited liability company ("**Borrower**") and **KEYBANK NATIONAL ASSOCIATION**, a national banking association ("**Lender**").

### Recitals of Fact

The following recitals are a material part of this instrument:

A. Borrower desires to borrow from Lender the principal sum of \$16,800,000.00 (the "**Loan**") for the financing of certain property located in Cook County, Illinois, which is commonly known as the Marketplace of Matteson, legally described on **Exhibit "A"** attached hereto and by this reference made a part hereof (the real estate, together with all improvements thereon and personal property associated therewith, is hereinafter collectively called the "**Property**").

B. As security for the Loan, Borrower shall execute and deliver to Lender a first deed of trust, mortgage, or deed to secure debt (which is herein called the "**Security Instrument**") encumbering the Property. The Security Instrument, the Promissory Note evidencing the Loan ("**Note**") and all other documents and instruments existing now or after the date hereof that evidence, secure or otherwise relate to the Loan, including this Assignment, other assignments, security agreements, financing statements, guaranties, indemnity agreements (including environmental indemnity agreements), letters of credit, or escrow/holdback or similar agreements or arrangements, together with all amendments, modifications, substitutions or replacements thereof, are sometimes herein collectively referred to as the "**Loan Documents**" or individually as a "**Loan Document**." The Loan Documents are hereby incorporated by this reference as if fully set forth in this Assignment.

C. Borrower desires to assign to Lender the rents, leases and profits of and from the Property and the proceeds therefrom, as primary and not as secondary security for the payment of the Note and the Debt (as such term is hereinafter defined), and for the performance of the obligations in the Security Instrument and the other Loan Documents.

### Agreement

In consideration of the Loan from Lender to Borrower, which is of direct and substantial benefit to Borrower, the mutual covenants contained in this Assignment, and for other good and valuable considerations, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Assignment.** Borrower absolutely and unconditionally assigns, transfers, sets over and conveys to Lender the following, absolutely and not as additional security:

(a) **Leases and Other Agreements.** All existing and future written and oral leases, subleases, tenancies, subtenancies, licenses, contracts, contract rights, and occupancy and

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all other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property, now or hereafter made, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. § 101 *et seq.*, as the same may be amended from time to time (the "**Bankruptcy Code**"), together with any extension, renewal or replacement of the same (collectively the "**Leases**"); this Assignment of all such present and future leases and present and future agreements being effective without further or supplemental assignment.

(b) Rents. All rents, additional rents, revenues, payments (including payments in connection with the exercise of any purchase option or termination rights), income, issues and profits (including all oil and gas or other mineral royalties and bonuses), deposits, accounts and other benefits arising from the Leases or otherwise from the use, enjoyment and occupancy of the Property and any cash or security deposited in connection therewith, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**").

(c) Bankruptcy Claims. All claims and rights to the payment of damages and other claims arising from any rejection by a lessee of any Lease under the Bankruptcy Code (the "**Bankruptcy Claims**").

(d) Lease Guaranties. All claims and rights under any and all lease guaranties, letters of credit and any other credit support (individually, a "**Lease Guaranty**," and collectively, the "**Lease Guaranties**") given to Borrower by any guarantor in connection with any of the Leases (individually, a "**Lease Guarantor**," and collectively, the "**Lease Guarantors**").

(e) Proceeds. All proceeds from any sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(f) Other Rights of Lessor. All rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and apply all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(g) Entry and Possession. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents and enforce the Leases.

(h) Power of Attorney. Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

(i) Other Rights and Agreements. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (h) above, and all amendments, modifications, replacements, renewals, extensions, supplements, restatements and substitutions thereof.

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2. **Debt.** This Assignment secures payment of all indebtedness, liabilities and other obligations of Borrower to Lender, direct or indirect, absolute or contingent due or to become due, now existing or hereafter incurred, including (a) the payment of the indebtedness and obligations evidenced by or arising under the Loan Documents, (b) the payment of interest, default interest, late charges and other sums, as provided in the Note, the Security Instrument, or any other Loan Document; (c) Prepayment Consideration (as such term is defined in the Note), (d) the payment of all other monies agreed or provided to be paid in the Loan Documents; (e) the payment of all sums advanced pursuant to the Security Instrument or any other Loan Document to protect and preserve the Property and the lien and the security interest created by the Security Instrument or otherwise, including future advances made by Lender to or for the benefit of Borrower from time to time under the Note or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Lender, or otherwise, made for any purpose, and all interest accruing thereon, (f) the payment of all loans, debts, and advances by Lender, all liabilities, indemnities, damages and claims of any kind or nature (in contract, tort or otherwise), and costs and expenses (including attorneys' fees) incurred by Lender in connection with the Loan or any part thereof, or the servicing or administration thereof or the enforcement of Lender's remedies in the collection thereof any renewal, extension, modification, consolidation, change, substitution, replacement, restatement or increase of the Loan or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender and whether or not evidenced by additional promissory notes or other instruments, (g) the performance of all other obligations of Borrower contained in the Security Instrument, (h) the performance of each obligation of Borrower contained in the Note in addition to the payment of the Loan and of Borrower contained in any Loan Document, (i) the performance of each obligation of Borrower contained in any renewal, extension, modification, consolidation, change, substitution, replacement for, restatement or increase of all or any part of the Note, the Security Instrument or any other Loan Document, (j) all claims of Lender with respect to all proceeds, product, offspring, rents and profits of the Property that constitute cash collateral under Section 363 of the United States Bankruptcy Code, as amended from time to time, and (k) any sums advanced to Borrower in its capacity as debtor or debtor-in-possession, or to Borrower's bankruptcy trustee, after the commencement of any Bankruptcy Proceeding, or to any receiver in any receivership proceeding affecting Borrower or the Property (all of the above are hereinafter collectively the "**Debt**," which term shall also include any part or portion thereof). Nothing herein shall be construed to obligate Lender to make any renewals or additional loans or advances, including, without limitation, increasing the amount of the Note as referred to herein.

3. **Term.** This Assignment shall remain in effect until the Debt and all other obligations evidenced by the Note or advanced under the Loan Documents are paid in full, or this Assignment is voluntarily released by Lender. Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of Security Instrument duly executed by Lender, this Assignment shall become null and void and shall be of no further force and effect.

4. **Events of Default.** The occurrence of any of the following shall constitute an "**Event of Default**" under this Assignment: (a) the failure of Borrower to perform or to observe any agreement, covenant, or condition required under this Assignment, which failure is not cured within ten (10) days after written notice from Lender to Borrower (provided that Borrower shall not be entitled to a cure period hereunder if such breach or default is not capable of being cured as determined by Lender); (b) the breach by Borrower of any representation or warranty given or

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made hereunder by Borrower or in any writing furnished or to be furnished by Borrower under this Assignment; or (c) the occurrence of an Event of Default under any of the Loan Documents which has continued beyond any applicable cure period therefor.

5. **License to Borrower Prior to Default.** Notwithstanding that this Assignment is an absolute assignment of the Leases and Rents and not merely the collateral assignment of, or the grant of a lien or security interest in the Leases and Rents, Lender hereby grants to Borrower an exclusive license revocable upon occurrence of an Event of Default to possess, use and enjoy the Property and to collect and retain the Rents of and from the Property, unless and until an Event of Default occurs. Even prior to the occurrence of an Event of Default, no Rents or other payment in excess of one month in advance shall be collected or accepted by Borrower without the prior written consent of Lender.

6. **Lender's Remedies Upon Default.** Upon the occurrence of an Event of Default, Borrower's license to collect and retain the Rents under Section 5 above shall immediately terminate. Lender will have the right at its option to enforce and to exercise any or all of its rights under this Assignment or otherwise, but Borrower expressly agrees that Lender's exercise of any rights hereunder or Lender's affirmative act to collect the Rents or other income or to acquire possession of the Property shall not be a prerequisite or precondition to the full enforceability of Lender's rights hereunder.

6.1 In such event, and upon Lender's election, Borrower shall deliver to Lender all of the original Leases, and all modifications, extensions, renewals, amendments, and other agreements relating thereto and to the Property. Any oral Leases shall be described in a writing delivered by Borrower to Lender.

6.2 Lender, at its option, and without any notice whatsoever to Borrower, shall have the right and is hereby authorized to: (a) take possession and control of the Property; (b) manage and operate the Property; (c) preserve and maintain the Property; (d) make repairs and improvements to the Property which Lender at its sole discretion deems necessary; (e) collect all Rents from the Property; (f) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of the Leases; (g) in the name of either Borrower or Lender enter into real or personal property leases, subleases or tenancy agreements, or other contracts or agreements, with such third parties as Lender may at its sole discretion select, and upon such terms and conditions as Lender in its sole discretion may determine; (h) sue for unpaid rents, payments or proceeds in the name of Borrower or Lender; (i) maintain actions for possession of property or for rent; (j) compromise or give acquittance for rents, payments or proceeds that may become due; (k) maintain suits on contracts and agreements; (l) delegate any and all rights and powers given to Lender by this Assignment; (m) have a receiver appointed; and (n) use such measures, legal or equitable, as in its sole discretion may carry out and effectuate the provisions of this Assignment. All such actions shall be taken at the expense of the Borrower, who agrees to reimburse Lender for all amounts expended, together with interest thereon from the date of expenditure at the Default Rate stated in the Note, upon demand.

7. **Appointment.** Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described in this Assignment, with the same force and effect as if executed by the

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Borrower, and Borrower ratifies and confirms any and all acts done or omitted to be done by Lender, its agents, servants, employees or attorneys under the authority of such power of attorney.

8. **Instructions to Lessees.** This Assignment constitutes an irrevocable direction to and full authority from Borrower to any lessee, tenant, subtenant, occupant of premises, or other contracting party to pay directly to Lender, upon Lender's request, all Rents and other amounts which may be or become due to Borrower. No proof of the occurrence of an Event of Default shall be required. Any lessee, tenant, subtenant or other contracting party is hereby irrevocably authorized by Borrower to rely upon and comply with any notice or demand by the Lender for the payment to the Lender of any rental or other amounts which may be or become due under its Lease, or for the performance of any obligations under such Lease. Borrower irrevocably agrees that the lessee, tenant, subtenant, or other contracting party following such instructions from Lender shall not be liable to Borrower or any person claiming under Borrower, for making any payment or rendering any performance to Lender. The lessee, tenant, subtenant or other party to any Lease shall have no obligation or right to inquire whether any Event of Default has actually occurred or is then existing. By its execution of this Assignment, Borrower irrevocably makes and delivers the aforementioned instructions.

9. **Application of Income.** The Rents, payments, proceeds and income collected by Lender may be applied as follows, in whatever order Lender in its sole discretion may determine:

(a) To the payment of the operating expenses of the Property, including costs of management (which shall include reasonable compensation to the Lender and its agent or agents, if management be delegated to an agent or agents); improvements, alterations, replacements and repairs to the Property; placing the Property in such condition as will, in the judgment of Lender, make it readily rentable; premiums on fire, flood, tornado, casualty, liability or other insurance if Lender deems such insurance necessary; and any claims for damages arising out of the ownership or management of the Property.

(b) To the payment of the actual costs and expenses incurred by Lender in collecting such Rents, payments, proceeds and income, including commissions paid to secure tenants or lessees; reasonable attorneys' fees incurred in recovering the Property or any personal property from any lessee or other contracting party for any cause whatsoever and in the collection of unpaid Rents, payments, income or proceeds; and attorneys' fees incurred by Lender in connection with the enforcement of this Assignment or in protecting Lender or its interest in any of the collateral securing the Loan (including attorney's fees and litigation expenses related to or arising out of any lawsuit or proceeding brought by or against Lender in any court or other forum, including actions or proceedings brought by or on behalf of Borrower's bankruptcy estate or any guarantor or indemnitor).

(c) To the payment of taxes, special assessments and insurance premiums which become due and delinquent on the Property; all obligations contained in the Loan Documents; and any liens or encumbrances on the Property or any personal property of Borrower.

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(d) To the payment of bills for reasonable and necessary repairs and improvements on the Property.

(e) To the payment of any and all indebtedness, together with interest, evidenced by the Loan Documents, or any deficiency which may result from any foreclosure sale.

10. **Lien on Property.** If the Rents, payments, income and proceeds from the Property are insufficient to reimburse Lender for any expenses incurred by Lender pursuant to this Assignment, any unpaid disbursements shall be a lien on the Property with priority equal to the lien of the Security Instrument.

11. **Lender as Agent.** Lender is acting solely as agent of Borrower in taking any actions in connection with the Property. Lender assumes no liability in any other capacity. Lender shall not be obligated to perform any obligation or duty, or discharge any liability under any of the Leases under or by reason of this Assignment.

12. **Bankruptcy.**

12.1 If Lender determines at any time and from time to time that it is necessary or desirable to protect Lender's interest in the Loan and the Property, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

12.2 If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten (10) day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

13. **No Liability of Lender; Indemnification of Lender.**

13.1 Lender shall not in any way be liable to Borrower for any action or inaction of Lender, its employees or agents with respect to Lender's exercise of the powers granted Lender by this Assignment, including, without limitation, any liability relating to the renting or leasing of the Property after an Event of Default by Borrower, or damage to the

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Property (unless caused by the willful misconduct or gross negligence of Lender). Borrower expressly waives and releases Lender from all such liability.

13.2 Lender shall not be responsible for any failure to perform any covenants in any of the Leases, either before or after the exercise of any assignments or remedies contained in this Assignment. Lender shall not be responsible for the condition or operation of the Property or for any damage or harm to the Property or any additions, improvements, or fixtures to the Property. This Assignment shall not operate to place upon Lender any obligation for the control, care, management or repair of the Property, or for the discovery of or correction of any dangerous or defective condition on the Property, including without limitation any environmental matters described in the separate Environmental Indemnity Agreement, or any negligence in the management, upkeep, repair or control of the Property. Lender also shall not be liable to any person or entity for any accidents or other occurrences occurring on or with respect to any part of the Property, except for any such accidents or other occurrences resulting from the willful misconduct or grossly negligent actions of Lender.

13.3 Borrower shall save, defend, indemnify and hold Lender and its agents, employees, contractors, and managers harmless from and against any and all costs, expenses, liability, damages, claims or assertions that may be incurred by or made against Lender or any such persons or entities arising from or related to the Leases or Rents, or by reason of this Assignment, including without limitation any claims by reason of any alleged obligations and undertakings on Lender's part to perform or discharge any of the terms, covenants or agreements contained in the Leases, or any right to maintain, inspect, manage or otherwise exercise any control or supervision over the Property or the condition thereof, or any claims described in the preceding subsection of this Assignment, except for any claims resulting from the willful misconduct or grossly negligent actions of Lender. Should Lender incur any such liability, loss or damage, Borrower shall on demand pay to Lender any and all cost, expense, liability, or damage arising therefrom plus costs, expenses and attorneys' fees and expenses, with interest from the date the cost or loss is incurred, at the Default Rate stated in the Note, and all of the foregoing shall be secured by this Assignment and by the other Loan Documents.

14. **Remedies Cumulative.** The remedies provided in this Assignment and in the other Loan Documents are cumulative and not mutually exclusive. The remedies can be exercised successively or concurrently, as many times as and whenever the occasion may arise, and the exercise of any one or more remedies shall not be a waiver of or preclude the exercise of any one or more remedies at the same or any later time for the same or any later default.

15. **Continuing Effect.** No judgment or decree which may be entered on any Debt secured or intended to be secured by the Security Instrument or any other Loan Documents shall lessen the effect of this instrument, but this Assignment shall continue in full effect until the full payment and discharge of (a) the Debt secured by the Security Instrument or any other Loan Documents, and (b) all expenses incurred by Lender relating to the Property. This Assignment shall remain in full effect during the pendency of any foreclosure proceedings under any of the other Loan Documents, both before and after sale, until the issuance of a deed to the foreclosure sale purchaser.



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## 16. Further Assurances; Receivership and Other Proceedings.

16.1 Upon Lender's request, Borrower shall execute any documents or instruments Lender may request, for the purpose of providing further evidence of this Assignment, to carry out the intent and terms of this Assignment, to evidence other amounts that may become payable from Borrower to Lender as referred to in this Assignment, or to accomplish any other purpose deemed appropriate by Lender.

16.2 Borrower consents and authorizes any court of competent jurisdiction to issue, *ex parte* and without any notice to Borrower or its counsel (which notice is hereby waived), any orders that may be appropriate, in Lender's sole discretion, to enforce the terms of this Assignment or to grant Lender such powers and authority as Lender may need to enforce this Assignment, including without limitation the appointment of a receiver for the Property. No bond shall be required of Lender. The parties recognize and agree that time will be of the essence in any such proceeding. Such receiver shall be entitled without notice to take possession of and protect the Property, operate the same, collect the Rents therefrom, and otherwise exercise any rights or authority granted to Borrower in this Assignment or any other Loan Documents. Lender's right to the appointment of a receiver shall continue regardless of the value of the Property as security for the Debt or the solvency of any person or corporation liable for the payment of such amount. Notwithstanding the appointment of any receiver, liquidator or trustee for Borrower, or of any of its property, or of the Property, Lender shall be entitled to retain possession and control of all Property now or hereafter held under this Assignment and any other Loan Documents, including, but not limited to, the Rents.

## 17. Leasing of Property.

17.1 Borrower represents, warrants and covenants that (a) all the current Leases have been properly executed by fully authorized agents of the parties and are now and shall at all times during the life of this Assignment be valid and enforceable obligations of Borrower and the other contracting parties; (b) none of the Rents have been collected for more than one (1) month in advance; (c) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (d) any future leases or subleases between Borrower and third parties shall at all times during the life of this Assignment be the valid and enforceable obligations of Borrower and the other contracting parties; (e) Borrower shall not default under nor permit any default to occur under any of the Leases; (f) Borrower shall not knowingly or intentionally permit any occurrence or circumstances to arise which would give any third party any defense to, or counterclaim in, any action or proceeding to enforce rights under the Leases; (g) Borrower shall promptly notify Lender if any party to any of the Leases (other than a tenant under a lease for the occupancy of a single-family residential unit) materially defaults or claims a material default under any of the Leases, and send Lender copies of any (or summaries of any oral) relevant communications (other than communications with a tenant under a lease for the occupancy of a single-family residential unit); (h) Borrower has not executed or consented to any prior absolute or conditional assignments of any of the Leases or the Rents, and has entered into no modifications or amendments to the Leases except as set forth in the Rent Roll delivered to Lender, and will not (unless otherwise permitted under Section 17.2 hereof) do so throughout the term of this Assignment; (i) other than Leases for all or any part of the Property for residential purposes, for

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congregate care services or for mini-warehouse storage rentals (except for storage rentals of ten percent (10%) or more of the rentable square footage of such storage facility) (collectively, “**Residential Leases**”), true and correct copies of all leases in existence as of the date of this Assignment were delivered to Lender prior to the execution of this Assignment; and (j) the Leases will (except when they expire by passage of time or are rightfully and in accordance with this Assignment terminated by Borrower) remain in full force and effect with no disadvantageous change in their terms.

17.2 Without obtaining Lender’s prior written approval in each instance, Borrower shall not:

- (a) enter into, modify, alter or change in any material respect the terms of any Lease, nor extend, renew, cancel or terminate any Lease, nor enter into any new Lease affecting the Property;
- (b) consent to any assignment of or subletting by any tenant under any of the Leases (except in accordance with the terms of such tenant’s Lease), provided however, this clause shall not apply to any Residential Lease;
- (c) alter, modify, change, cancel or terminate any Lease Guaranty;
- (d) cancel, terminate or accept a surrender of any of the Leases, provided however, this clause shall not apply to any Residential Lease; or
- (e) transfer or permit a transfer of the Property or of any interest therein, even if such a transfer is permitted under the Security Instrument, if such transfer would effect a merger of the estates and rights of, or a termination or diminution of the obligations of, tenants under any of the Leases; or
- (f) modify, amend, supplement or replace the standard form of Lease that has been approved in writing by Lender as the standard form for such Property (the “**Standard Form Lease**”) without Lender’s prior written consent, which shall not unreasonably be withheld.

17.3 Notwithstanding the foregoing, Lender’s approval shall not be required for any Lease demising less than forty percent (40%) of the rentable area of the Property if:

- (a) such Lease is written on the Standard Form Lease with no material changes thereto;
- (b) all of the terms of such Lease equal or exceed the requirements set forth in the then applicable report of minimum acceptable lease terms provided by Borrower to Lender and approved by Lender in accordance with the terms and provisions of the Security Instrument;
- (c) such Lease is an arm’s length transaction with an unrelated third party tenant;

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(d) an executed copy of such Lease (other than Residential Leases, unless requested by Lender) shall be furnished to Lender within ten (10) days after its execution; and

(e) such Lease provides that, upon Borrower's request, the tenant thereunder shall subordinate such Lease to the Security Instrument and shall agree to attorn to Lender and such subordination and attornment shall be evidenced by a written agreement executed by such tenant in form and substance satisfactory to Lender;

Each request by Borrower for Lender's written approval under this Section 17 shall be made in accordance with Section 20 hereof.

18. **Legal Challenges.** Borrower shall appear for itself (and for Lender, if Lender so requests) in any action or proceeding affecting the Property, the Leases, the Rents or this Assignment, and shall at its own cost vigorously defend title to the Property and the enforceability of the Leases and this Assignment against all legal challenges. Where necessary or where requested by Lender, Borrower shall at its own cost institute any legal actions respecting the same. Borrower shall not challenge, and irrevocably waives any challenge to, the legality or enforceability of this Assignment and all provisions of this Assignment.

19. **Set-Off.** Upon default by Borrower under this Assignment, Lender (or the holder or owner of any Debt secured by this Assignment) shall immediately have the right, without further notice to Borrower, to set off against the Note and any other debts secured by this Assignment all debts of Lender (or such holder or owner) to Borrower, whether or not then due.

20. **Notices.** Any notice required or permitted to be given hereunder must be in writing and given (a) by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (b) by delivering the same in person to such party; (c) by transmitting a facsimile copy to the correct facsimile number of the intended recipient (with a second copy to be sent to the intended recipient by any other means permitted under this Section 20); or (d) by depositing the same into the custody of a nationally recognized overnight delivery service addressed to the party to be notified. In the event of mailing, notices shall be deemed effective three (3) days after posting; in the event of overnight delivery, notices shall be deemed effective on the next business day following deposit with the delivery service; in the event of personal service or facsimile transmissions, notices shall be deemed effective when delivered. A copy of any notice sent, transmitted or delivered to Lender shall also be delivered to Daniel Flanigan, Esq., Polsinell Shalton Welte Suelthaus, 700 W. 47th Street, Suite 1000, Kansas City, Missouri 64112, facsimile number: (816) 753-1536. For purposes of notice, the addresses of the parties shall be the same addresses as those identified and set forth in the Security Instrument. From time to time either party may designate another or additional addresses for all purposes of this Assignment by giving the other party no less than ten (10) days advance written notice of such change of address.

21. **Miscellaneous.** The following provisions are additional terms of this Assignment:

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21.1 Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor, and may apply any other security held by it to the reduction or satisfaction of the Debt, without prejudice to any of its rights under this Assignment.

21.2 No waiver by Lender of any default shall operate as a waiver of any other default or of the same default on a future occasion.

21.3 All rights and remedies of Lender are cumulative and may be exercised successively or concurrently, and shall inure to the benefit of Lender's successors and assigns.

21.4 Nothing herein shall be interpreted to make Lender a "mortgagee in possession" in the absence of Lender's taking of actual possession of the Property. Borrower hereby waives any claims against Lender by reason of Lender's exercise of any remedies hereunder.

21.5 All obligations of Borrower shall bind its heirs, executors, administrators, trustees, custodians, successors and assigns.

21.6 In case of any conflict between the terms of this Assignment and the terms of the Security Instrument, the terms of the Security Instrument shall prevail.

21.7 This Assignment, including but not limited to this Section, may only be modified or amended by written documents and no oral amendment, waiver, extension or other modification hereof shall be enforceable, and the parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Assignment; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Assignment; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Assignment.

21.8 This Assignment shall be governed by the law of the state where the real property collateral for the Loan is located without regard to the conflicts of law provisions thereof ("**Governing State**").

21.9 BORROWER HEREBY CONSENTS TO PERSONAL JURISDICTION IN THE GOVERNING STATE. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("**ACTION**") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. BORROWER HEREBY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS

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UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR PURPOSES OF ANY ACTION. Borrower hereby waives and agrees not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Assignment may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

21.10 The captions of the sections of this Assignment are inserted for convenience only and shall not be used in the interpretation or construction of any provisions hereof.

21.11 If any provision of this Assignment is held invalid or unenforceable, the holding shall affect only the provision in question and all other provisions of this Assignment shall remain in full force and effect.

21.12 This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterpart shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

## 22. Definitions; Rules of Construction.

22.1 Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Borrower" shall mean "individually and collectively, jointly and severally, each Borrower (if more than one) and any subsequent owner or owners of the Property or any part thereof or any interest therein and Borrower in its capacity as debtor-in-possession after the commencement of a proceeding under the United States Bankruptcy Code; "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender (a) in protecting its interest in the Property, the Leases and the Rents, (b) relating to or arising out of any lawsuit or proceeding brought by or against Lender in any court or other forum (including actions or proceedings brought by or on behalf of Borrower's bankruptcy estate or any guarantor or indemnitor), or (c) in enforcing its rights under this Assignment. Any capitalized term used herein that is defined in any other Loan Document and not otherwise defined herein shall have the same meaning when used in this Assignment.

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22.2 The following rules of construction shall be applicable for all purposes of this Assignment and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

- (a) the terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to”;
- (b) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa;
- (c) all captions to the Sections hereof are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Security Instrument;
- (d) the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”;
- (e) the words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Assignment refer to this Assignment as a whole and not to any particular provision or section of this Assignment;
- (f) an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by Lender;
- (g) no inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document; and
- (h) wherever Lender’s judgment, consent, approval or discretion is required under this Assignment for any matter or thing or Lender shall have an option, election, or right of determination or any other power to decide any matter relating to the terms and conditions of this Assignment, including any right to determine that something is satisfactory or not (“**Decision Power**”), such Decision Power shall be exercised in the sole and absolute discretion of Lender unless otherwise expressly stated to be reasonably exercised. Such Decision Power and each other power granted to Lender upon this Assignment or any other Loan Document may be exercised by Lender or by any authorized agent of Lender (including any servicer and/or attorney-in-fact), and Borrower hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent.

**23. Waiver of Trial by Jury. BORROWER AND LENDER EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS ASSIGNMENT, THE SECURITY INSTRUMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER**

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**AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER EACH ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH OTHER.**

24. **Local Law Provisions.** In the event of any inconsistencies between the terms and conditions of this Section and any other terms and conditions of this Assignment (other than the terms and conditions of Section 25), the terms and conditions of this Section shall be binding.

NONE.

25. **Additional Provisions.** In the event of any inconsistencies between the terms and conditions of this Section and any other terms and conditions of this Assignment, the terms and conditions of this Section shall be binding.

25.1 **Application of Income.** Section 9 is modified in the following manner:

(a) The seventh line of Section 9(b) is modified by inserting “reasonable” immediately before “attorney’s fees” inside the parenthetical.

(b) Section 9(b) is further modified by inserting the following at the end thereof: “, but excluding such costs incurred as a result of Lender’s gross negligence or willful misconduct”.

25.2 **Leasing of Property.** Section 17 is modified in the following manner:

(a) Section 17.1(a) is deleted and the following substituted therefor: “(a) all the current Leases have been properly executed by fully authorized agents of Borrower (or its predecessor-in-interest and assumed by Borrower) and, to the best of Borrower’s knowledge, the other parties thereto and are now and shall at all times during the life of this Assignment be valid and enforceable obligations of Borrower and, to the best of Borrower’s knowledge, the other contracting parties;”

(b) The opening sentence of Section 17.2 is modified by inserting the following immediately after “approval”: “, which approval shall not be unreasonable withheld,”.

(c) Notwithstanding any provision in Section 17.2(b), (c), or (d) to the contrary, Borrower may, in the ordinary course of business, terminate or cancel (i) Leases demising less than 10,000 square feet of net rentable area without Lender’s prior written approval provided that Borrower is acting in a commercially reasonable manner and is terminating or canceling such Lease for a reasonable business purpose that protects the ongoing cash flow of the Property, or (ii) any Lease that is in monetary or other material default in accordance with the terms of such Lease.

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(d) Notwithstanding any provision herein to the contrary, Borrower shall not cancel or terminate leases for more than 5% of the total net rentable area of the Property in the aggregate without Lender's consent, unless the space demised by the terminated or cancelled lease shall have been re-leased to Lender's satisfaction, to a tenant satisfactory to Lender, and on market terms as determined by Lender.

(e) Notwithstanding any provision in Section 17.3 to the contrary, Borrower may accept a standard form lease from a National Tenant (as hereinafter defined) which differs from the Standard Form Lease, without Lender's prior written approval, so long as (i) the space to be demised by said Lease is less than 10,000 square feet, and (ii) Borrower is acting in a commercially reasonable manner and is using such form of lease for a reasonable business purpose that protects the ongoing cash flow of the Property. The term "National Tenant" shall mean a tenant that, in a manner consistent with a first class shopping center, operates at least 20 high quality retail stores in at least five different states.

(f) Notwithstanding any provision in Section 17.3 to the contrary, Borrower may extend or renew existing Leases and alter or amend existing Leases, so long as such extension or renewal Lease contains terms and conditions no less favorable to Borrower or Lender as the existing Lease and any such alteration or amendment is not material or adversely affects Lender.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

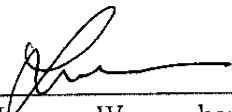


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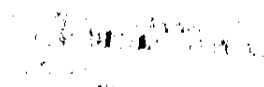
IN WITNESS WHEREOF, the parties hereto have executed this Assignment the day and year first above written.

**Borrower:**

**GALILEO MATTESON LLC,**  
a Delaware limited liability company

By:   
Name: Laryssa Wynnichenko  
Title: Authorized Person

Property of Cook County Clerk's Office

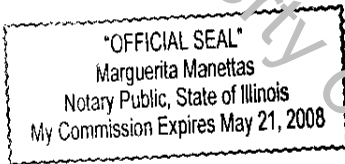


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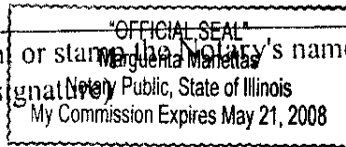
STATE OF Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 7<sup>th</sup> day of February, 2006, before me, M. Manettas a Notary Public in and for said state, personally appeared Laryssa Wynnychenko, who being by me duly sworn did say that she is the Authorized Person of **GALILEO MATTESON LLC**, a Delaware limited liability company, and that the within instrument was signed and sealed in behalf of said limited liability company by authority of its members, and acknowledged said instrument to be the free act and deed of said limited liability company for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.



M. Manettas  
Notary Public in and for Said County and State



(Type, print or stamp the Notary's name below his or her signature)

My Commission Expires:

US 21 2008

THIS INSTRUMENT PREPARED BY:

PATRICIA BROWN

POCS NEW SHALTON WELTE SUELTHAUS

700 WEST 47<sup>th</sup> STREET, SUITE 1000

KANSAS CITY, MISSOURI 64112

PHONE 816-753-1000

FAX 816-753-1536

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## EXHIBIT "A"

### (Legal Description)

PARCEL "A" (EXCEPT THE SOUTH 70.0 FEET OF THE NORTH 80.0 FEET OF THE EAST 55.0 FEET OF THE WEST 129.40 FEET THEREOF) AND THE EAST 161.74 FEET OF PARCEL "B", ALL IN MATTESON HIGHLANDS, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 6, 1962 AS DOCUMENT NUMBER 18525670, AS CORRECTED BY CERTIFICATE OF CORRECTION DATED JULY 17, 1962 AND RECORDED JULY 23, 1962 AS DOCUMENT NUMBER 18540252,

(EXCEPTING THEREFROM THAT PART OF PARCEL "A" AND THE EAST 161.74 FEET OF PARCEL "B" DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF PARCEL "B", SAID POINT BEING 161.74 FEET WEST OF THE NORTHEAST CORNER OF SAID PARCEL "B", THENCE SOUTH ALONG THE WEST LINE OF THE EAST 161.74 FEET OF SAID PARCEL "B", A DISTANCE OF 350 FEET TO A POINT; THENCE EAST ALONG A LINE 350 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF PARCELS "A" AND "B", A DISTANCE OF 208.90 FEET TO A POINT; THENCE NORTH ALONG A LINE 208.90 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE EAST 161.74 FEET OF PARCEL "B", TO A POINT OF INTERSECTION WITH THE NORTH LINE OF PARCEL "A"; THENCE WEST ALONG THE NORTH LINE OF PARCELS "A" AND "B" TO THE POINT OF BEGINNING,

ALSO EXCEPTING THEREFROM ALL THOSE PARTS THEREOF CONDEMNED IN CASE NO. 83L52241 AS PARCEL NOS. 9A AND 9B BEING DESCRIBED AS FOLLOWS:

#### EXCEPTION PARCEL 9A:

BEGINNING AT A POINT ON THE SOUTH LINE OF PARCEL "A" BEING 526.31 FEET WEST OF THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 22, AND 50 FEET NORTH OF THE SOUTH LINE OF SAID NORTHEAST 1/4; THENCE WEST ALONG THE SOUTH LINE OF PARCEL "A", A DISTANCE OF 80 FEET TO A POINT; THENCE NORTH AT RIGHT ANGLES, A DISTANCE OF 20 FEET TO A POINT; THENCE EAST AT RIGHT ANGLES, A DISTANCE OF 80 FEET TO A POINT; THENCE SOUTH AT RIGHT ANGLES, A DISTANCE OF 20 FEET TO THE POINT OF BEGINNING; AND

#### EXCEPTION PARCEL 9B:

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL "A" BEING 250 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST 1/4 OF SECTION 22 AND 50 FEET WEST OF THE EAST LINE OF SAID NORTHEAST 1/4; THENCE WEST ALONG A LINE 250 FEET NORTH OF THE SOUTH LINE OF SAID NORTHEAST 1/4, A DISTANCE OF 10.0 FEET; THENCE NORTHEASTERLY TO A POINT ON THE EAST LINE OF SAID PARCEL "A" (BEING THE WEST LINE OF CRAWFORD AVENUE) DISTANT 130.0 FEET NORTHERLY OF THE POINT OF BEGINNING; THENCE SOUTHERLY ALONG SAID EAST LINE 130.0 FEET TO THE POINT OF BEGINNING), IN COOK COUNTY, ILLINOIS

THE SUBJECT PROPERTY IS ALSO DESCRIBED AS:

THAT PART OF PARCELS "A" AND "B" IN MATTESON HIGHLANDS, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 6, 1962 AS DOCUMENT 18525870, AS CORRECTED BY CERTIFICATE OF CORRECTION DATED JULY 17, 1962

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AND RECORDED JULY 23, 1962 AS DOCUMENT 18540252, BEING BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SAID PARCEL "B" WITH A LINE 161.74 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID PARCEL "B"; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 481.22 FEET TO A LINE 350 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID PARCELS "A" AND "B"; THENCE SOUTH 89 DEGREES 54 MINUTES 15 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 208.90 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST PARALLEL WITH THE EAST LINE OF SAID PARCEL "B", 350.00 FEET TO THE NORTH LINE OF SAID PARCEL "A"; THENCE SOUTH 89 DEGREES 54 MINUTES 15 SECONDS EAST ALONG SAID NORTH LINE OF PARCEL "A", 1457.24 FEET TO THE NORTHEAST CORNER OF SAID PARCEL "A"; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SAID PARCEL "A", BEING ALSO THE WEST LINE OF CRAWFORD AVENUE, 514.10 FEET TO AN ANGLE POINT IN SAID LINE; THENCE; SOUTH 04 DEGREES 24 MINUTES 06 SECONDS WEST ALONG THE WEST LINE OF CRAWFORD AVENUE AS WIDENED, 130.29 FEET TO A SOUTH LINE OF SAID PARCEL "A"; THENCE NORTH 89 DEGREES 27 MINUTES 40 SECONDS WEST ALONG SAID SOUTH LINE OF PARCEL "A", 415.21 FEET TO A CORNER OF SAID PARCEL "A"; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG AN EAST LINE OF SAID PARCEL "A", 200.00 FEET TO THE MOST SOUTHERLY SOUTHEAST CORNER OF SAID PARCEL "A"; THENCE NORTH 89 DEGREES 27 MINUTES 40 SECONDS WEST ALONG THE SOUTH LINE OF SAID PARCEL "A", 51.10 FEET; THENCE NORTH 00 DEGREES 32 MINUTES 20 SECONDS EAST, 20.00 FEET, THENCE NORTH 89 DEGREES 27 MINUTES 40 SECONDS WEST, 80.00 FEET; THENCE SOUTH 00 DEGREES 32 MINUTES 20 SECONDS WEST, 20.00 FEET TO THE SOUTH LINE OF SAID PARCEL "A"; THENCE NORTH 89 DEGREES 27 MINUTES 40 SECONDS WEST ALONG THE SOUTH LINE OF SAID PARCEL "A", 1109.90 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM ALL THAT PART THEREOF DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE NORTH LINE OF SAID PARCEL "A", 74.40 FEET EAST OF THE NORTHWEST CORNER OF SAID PARCEL "A"; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST PARALLEL WITH THE WEST LINE OF SAID PARCEL "A", 10.00 FEET TO A POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST PARALLEL WITH THE WEST LINE OF SAID PARCEL "A", 70.00 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 15 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID PARCEL "A", 55.00 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST PARALLEL WITH THE WEST LINE OF SAID PARCEL "A", 70.00 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 15 SECONDS WEST PARALLEL WITH THE NORTH LINE OF SAID PARCEL "A", 55.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PIN(S) 31-22-200-016 (AFFECTS PART OF PARCEL A)

31-22-201-009 (AFFECTS PART OF PARCEL A)

31-22-201-014 (AFFECTS PARCEL B)