

# UNOFFICIAL COPY



Doc#: 0625710111 Fee: \$46.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/14/2006 02:55 PM Pg: 1 of 12

This instrument was prepared by and after recording return to:

**KATTEN MUCHIN ROSENMAN LLP**  
525 West Monroe Street  
Chicago, Illinois 60661-3693  
Attention: Gary J. Fox

Loan Number: 16-712

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS, made as of this 14<sup>th</sup> day of September, 2006, by TR 120 S. LASALLE CORP., a Delaware corporation (herein called the "Assignor"), to AXA EQUITABLE LIFE INSURANCE COMPANY, a New York corporation having an office at 1290 Avenue of the Americas, New York, New York 10104 (herein called "Assignee").

### WITNESSETH:

FOR VALUE RECEIVED, the Assignor hereby presently, absolutely and irrevocably grants, transfers, and assigns to the Assignee, its successors and assigns, without the necessity of Assignee taking possession of the premises, all of the right, title and interest of the Assignor in and to all those certain leases, licenses and other occupancy or use agreements with modifications, if any, existing now or at any time hereafter affecting the premises (the "Premises") described in that certain mortgage, deed of trust or other security instrument of even date herewith made by the Assignor to the Assignee (the "Mortgage"), together with any renewals and extensions of any thereof and any guarantees of the lessee's obligations under any thereof (collectively, "Leases");

TOGETHER WITH all of the rents, royalties, profits, revenues, income and proceeds therefrom now due, or which may become due, or to which the Assignor may now or hereafter become entitled, or may demand or claim, including additional, percentage, participation and other rentals, fees and deposits, arising or issuing from or out of the Leases, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of their obligations thereunder ("Security Deposits"), any premium or other consideration payable by any tenant for or upon the cancellation of a Lease, or arising or issuing from or out of the Premises or any part thereof or interest therein, together with any and all rights which the Assignor may have with respect to rent insurance proceeds, and settlements, judgments and bankruptcy claims with respect to unpaid rents (collectively, "Rents");

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**TOGETHER WITH** all of the right, power and authority of the Assignor, in accordance with the terms of the Leases, or as may be otherwise agreed by tenants, to alter, modify or change the terms, covenants and conditions of any of the Leases or to surrender, cancel or terminate the same or to accept any surrender, cancellation or termination of same or to compromise or settle any rights or claims for unpaid Rent under the same;

**TOGETHER WITH** all of the credits, security deposits, options, rights, powers and privileges of Assignor under all of the Leases, whether now or hereafter existing;

For the purpose of securing (a) payment of all sums now or at any time hereafter due the Assignee (the "Indebtedness") and secured by the Mortgage (which together with all other documents delivered in connection with closing the loan are referred to as the "Loan Documents") and (b) due, prompt and complete performance and discharge of each obligation, covenant, condition, warranty, representation and agreement of the Assignor contained herein or in the Mortgage or any other Loan Document.

The rights assigned to Assignee hereunder shall extend also to the period from and after the filing of any suit to foreclose the lien of the mortgage or the commencement of any other enforcement remedy provided for in the Mortgage, and such rights shall survive and shall not merge into any judgment.

**THE ASSIGNEE AGREES that:**

A. So long as no Event of Default under the provisions of the Mortgage shall exist and continue, the Assignee hereby grants to the Assignor a revocable license to manage and operate the Premises and collect, receive and apply (but no more than one (1) month prior to accrual) all Rents, subject to the provisions of the Loan Documents, and Paragraphs 5 and 6 hereof. The Assignor shall receive and hold the Rents to be applied, and the Assignor hereby covenants so to apply the Rents to the Indebtedness, all before using any part of the Rents for any other purpose after the occurrence of such Event of Default, and prior to the occurrence of such Event of Default, to apply the Rents in accordance with the requirements of Paragraph 5 hereof.

B. Upon the payment in full of the Indebtedness, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Mortgage without the recording of another Mortgage in favor of the Assignee affecting the Premises, this Assignment shall become and be void and of no effect.

**THE ASSIGNOR AGREES, JOINTLY AND SEVERALLY IF THERE BE MORE THAN ONE ASSIGNOR, that:**

1. The Assignor will fulfill or perform each and every condition and covenant of each Lease by lessor to be fulfilled or performed, will give prompt notice to the Assignee of any notice of default by the Assignor under any Lease received by the Assignor together with a complete copy of any such notice, at the sole cost and expense of the Assignor will enforce, short of termination of the Lease, the performance or observance of each and every covenant and condition of each Lease by the lessee to be performed or observed, will not receive the Rents thereunder for more than thirty (30) days prior to accrual, will not do or permit to be done

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anything to impair the security of the Assignee under this Assignment, will not execute, without the Assignee's prior written consent any other assignment of the landlord's interest in any of the Leases, or execute any future Major Lease (as such term is hereinafter defined), and will not subordinate the Leases to any mortgage or other encumbrance or permit, allow or suffer any such subordination without the Assignee's prior written consent. Furthermore, subject to the provisions of Paragraph 2 hereof, the Assignor will not modify nor in any way alter the terms of any Lease, will not terminate the term of any Lease nor accept a surrender thereof unless required to do so by the terms of the Lease, or unless any such Lease termination is specifically permitted by Section 2.11(h) of the Mortgage, and will not waive nor release the lessee (or guarantor) from any obligations or conditions by the lessee (or guarantor) to be performed or settle or compromise any right or claim for unpaid Rents, whether in connection with litigation, bankruptcy or otherwise. "Major Lease" shall mean any Lease demising more than One Floor of the improvements located on Premises (including all space, if any, covered by any options granted the lessee to rent additional space in the future).

2. The rights assigned hereunder include, without limitation, all the Assignor's right and power to (i) receive and collect the Rents, or to anticipate Rents for more than thirty (30) days prior to accrual under any Lease and (ii) modify any Lease or to terminate the term or to accept a surrender thereof or to waive, or release the lessee from, the performance or observance by the lessee of any obligation or condition thereof or settle or compromise any right or claim for unpaid Rents, whether in connection with litigation, bankruptcy or otherwise; provided, however, so long as no Event of Default under the provisions of the Mortgage shall exist and continue, clause (ii) shall only apply to Major Leases, but the Assignor, as regards Leases which are not Major Leases, shall not take any action which would result in any such Lease not meeting the requirements of the second sentence of Subsection 2.11(a) of the Mortgage.

3. At the Assignor's sole cost and expense, the Assignor will appear in and defend any action growing out of or in any manner connected with any Lease or the obligations or liabilities of the lessor, lessee or any guarantor thereunder, and the Assignee, if made a party to any such action, may employ counsel and incur and pay necessary costs and expenses and attorneys' fees, and all such sums, with interest at the rate applicable from and after maturity under the note secured by the Mortgage, shall immediately be due from the Assignor and secured hereby and by the Mortgage.

4. During the existence of a default under the Loan Documents, should the Assignor fail to make any payment or do any act as herein provided, then the Assignee, but without obligation so to do and without notice to or demand on the Assignor and without releasing the Assignor from any obligation herein, may make or do the same, including specifically, without limiting its general powers, appearing in and defending any action purporting to affect the security hereof or the rights or powers of the Assignee and performing any obligation of the lessor contained in any Lease, and, in exercising any such powers, paying necessary costs and expenses, employing counsel and incurring and paying attorneys' fees; and the Assignor will pay immediately upon demand all sums expended by the Assignee under the authority hereof, together with interest thereon at the rate applicable from and after maturity under the note secured by the Mortgage, and the same shall be added to the Indebtedness and shall be secured hereby and by the Mortgage.

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5. (a) The Assignor's license to collect and retain Rents is subject to the condition that, and the Assignor hereby specifically covenants that (i) all Rents from the Premises shall be applied to payment of expenses and maintenance of the Premises, real estate taxes (including the funding of any customary reserves regarding the payment of same pending the next installment due date, debt service payments, and other expenditures required by the Loan Documents, which for the purpose hereof are allocable to such Rents on an accrual basis and (ii) distributions or other payments of any nature (including without limitation, payment of loans and fees) will be made to or on behalf of partners, members, stockholders or other owners of any interest in the Assignor or the Premises or their affiliates only from that portion of Rents which is in excess of the amount necessary to fully comply with clause (i) above and any distributions or payments made in violation hereof shall be held in trust by the recipient for the benefit of the Assignee.

(b) During the existence of an Event of Default, under no circumstances are unforfeited Security Deposits to be distributed to or on behalf of partners, stockholders or other owners of any interest in the Assignor or the Premises. At the election of the Assignee, if required by applicable law, the cash portion of Security Deposits shall be segregated in an account with a bank or other financial institution satisfactory to the Assignee and the Assignor will deliver to the Assignee a perfected security interest in such account, in form satisfactory to the Assignee. Whether or not there is any segregation thereof, Security Deposits shall be properly applied and upon foreclosure or deed in lieu thereof, the Assignor shall deliver to the Assignee any Security Deposits under its control.

6. (a) Anything herein to the contrary notwithstanding, the Assignor's license to collect and retain Rents shall not apply to amounts exceeding \$500,000 in the aggregate arising from one event or source of payment received by or which are payable to the Assignor (i) as consideration for termination of a Major Lease or modification of material obligations under a Major Lease, (ii) in settlement or satisfaction of any claim for unpaid Rents under a Major Lease for a period of more than thirty (30) days or for a failure to perform other obligations under a Major Lease, whether as a result of settlement, litigation, bankruptcy or otherwise, and (iii) as a prepayment of Rents for a period of more than thirty (30) days in advance under a Major Lease (collectively, "Lump Sum Rent"). Until such time as the Lump Sum Rent shall be placed into escrow as hereinafter described or otherwise paid to the Assignee, such sum shall be held by the Assignor in trust for the benefit of the Assignee.

(b) At the election of the Assignee, but subject to Section 2.25 of the Mortgage, the Lump Sum Rent shall be placed into an escrow account with a bank and pursuant to an escrow agreement satisfactory to the Assignee, which account shall be under the control of the Assignee and shall be additional security for repayment of the Indebtedness. Provided no Event of Default under the Mortgage shall have occurred and be continuing, the Assignor shall be entitled to draw (i) immediately from Lump Sum Rent paid as compensation for a particular Major Lease termination ("Specific Compensation Proceeds"), whether pursuant to an agreement with or as a result of a default by the tenant under such Major Lease, that portion which constitutes past due rent or past due additional rent under such Major Lease as of the date of the deposit of such Specific Compensation Proceeds into escrow, together with an amount equal to any legal fees and expenses actually incurred by Assignor in connection with securing such Specific Compensation Proceeds, (ii) the remaining undisbursed portion of such Specific Compensation

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Proceeds, to the extent one or more replacement Leases have been executed and each tenant thereunder has taken possession and delivered an estoppel certificate acceptable to Assignee, which singly or in the aggregate demise space at least equal to the premises demised under the terminated Major Lease, are for a term at least equal to the remaining term of the terminated Major Lease, for rent in the reasonable judgment of Assignee substantially equivalent to that payable pursuant to the terminated Major Lease and to one or more unaffiliated tenants, who in the reasonable judgment of Assignee, have a creditworthiness equal to or better than that of the tenant under the terminated Major Lease, (iii) monthly from Specific Compensation Proceeds (A) an amount which, when added to amounts received under any replacement Lease or Leases, equals the Rents provided for under such terminated Major Lease, until Assignor shall have received a draw under clause (ii) as pertains to such terminated Major Lease and (B) amounts to the extent they are payable for leasing commissions, tenant improvement and other reasonable out of pocket costs incurred in connection with securing a replacement Lease or Leases for the terminated Major Lease and (iv) monthly from the remaining balance of the escrow, amounts for reasonable and necessary expenses, real estate taxes and debt service payments pertaining to the Premises, but only to the extent the cash flow generated by the Premises, including amounts received under clause (iii)(A) above, is insufficient to pay the same. After the occurrence and during the continuance of an Event of Default under the Mortgage, the Assignee shall have the right to apply all or any part of the funds remaining in the escrow to any sums then due and payable to the Assignee by acceleration or otherwise in such order as the Assignee may elect. Upon termination of this Assignment in connection with a repayment of the Indebtedness, any Lump Sum Rent then held in escrow by Assignee shall be paid to Assignor.

(c) The provisions of this Paragraph 6 shall be inapplicable, including the escrow requirements of Subparagraph 6(b) hereof, if at the time the Lump Sum Rent becomes available, the Premises generates a Debt Service Coverage Ratio in excess of 1.25:1, excluding rents from any lease giving rise to the Lump Sum Rent, as determined by Assignee, using the provisions of Rider 4 of the Mortgage for purposes of computing the same, with such calculations to be made after reducing the outstanding principal balance of the Note by the then current balance of Reserve A (as such term is defined in the Mortgage) and recalculating the Debt Service Coverage Ratio based on such adjusted outstanding principal balance.

7. The whole of the Indebtedness shall become due (a) upon the election by the Assignee to accelerate the maturity of the Indebtedness pursuant to the provisions of the Mortgage, or (b) at the option of the Assignee, after any default by the Assignor hereunder and the continuance of such default for ten (10) days after written notice and demand.

8. Upon the occurrence of an Event of Default under the provisions of the Mortgage, the Assignor's license to collect Rents shall terminate, without notice, and the Assignee shall have the sole and absolute right in its own name, without the necessity of taking possession of the Premises or seeking the appointment of a receiver by a court, to collect and receive all Rents, including those past due and unpaid, or sue tenants for same, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon the Indebtedness in such order as the Assignee may determine. At the Assignee's option, the Assignee may also: enter upon, take possession of, and operate the Premises; make, enforce, modify, and accept the surrender of Leases; obtain and evict tenants; fix or modify Rents; and do any acts which the Assignee deems proper to protect the security hereof until the Indebtedness is paid in full. The

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collection of the Rents and the application thereof as aforesaid, shall not release the Assignor from any obligation hereunder or under the Loan Documents, or cure or waive any default or waive, modify or affect any notice of default under the Mortgage or invalidate any act done pursuant to such notice.

9. (a) The Assignor expressly agrees and confirms that, unless expressly provided to the contrary in any particular instance, any and all rights of the Assignee to give or withhold any consent, approval or other authorization requested by the Assignor with respect to this Assignment, to make any election or exercise any option granted herein, to make any decision or determination with respect thereto, to modify or amend this Assignment or waive any obligation of the Assignor hereunder or grant any extension of time for performance of the same or to take or omit to take any other action of any kind whatsoever, the Assignee shall, to the maximum extent permitted by law, have the right in each instance to take such action or to omit to take such action in its sole and absolute discretion, whether or not the applicable provision of this Assignment expressly so provides.

(b) Whenever the Assignor shall request that the Assignee take any action envisioned by clause (a) above, the Assignor shall pay such reasonable servicing fees as the Assignee shall establish at any time and from time to time for performing such services for its borrowers and all costs and expenses, including reasonable attorneys' fees, incurred by the Assignee in reviewing and/or processing the Assignor's request, whether or not the Assignee shall grant such request. All such servicing fees and costs and expenses shall be due and payable by the Assignor to the Assignee on demand.

10. The Assignee shall not be obligated to perform or discharge any obligation under any Lease, or under or by reason of this Assignment, and the Assignor hereby agrees to indemnify the Assignee against and hold the Assignee harmless from and against any and all liability, claim, loss, charge, damage or demand which the Assignee 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 the Assignee by reason of any alleged obligation or undertaking on the part of the Assignee to perform or discharge any of the terms of any Lease, except as incurred because of the bad faith or willful misconduct of the Assignee; should the Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate applicable from and after maturity under the note secured by the Mortgage, shall be secured hereby and by the Mortgage, and the Assignor shall reimburse the Assignee therefor immediately upon demand.

11. This Assignment shall inure to the benefit of the successors and assigns of the Assignee and shall bind the Assignor's legal representatives, successors and assigns.

12. This Assignment and the provisions hereof may not be waived, changed or discharged orally, but only by an agreement in writing signed by the Assignee, and any oral waiver, change or discharge of any provision of this Assignment shall be without authority and of no force and effect. Any waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.

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13. A determination that any provision of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Assignment to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

14. This Assignment shall be construed according to and governed by the laws of the State in which the Premises are located.

15. (a) All notices shall be in writing, shall be addressed to the intended recipient at the address of such party set forth on Schedule A hereto and shall be either delivered to such party by express air courier service, delivery charges prepaid and receipt acknowledged in writing, or mailed to such party by certified mail, return receipt requested, postage prepaid. Either party hereto may at any time and from time to time by notice given as herein provided change the address to which future notices to such party are to be given.

(b) Any party hereto giving a notice to the other pursuant hereto shall simultaneously give a true and complete copy of such notice to each of the persons designated by the intended recipient thereof on Schedule A attached hereto to receive such copies. Each such copy shall be addressed to the intended recipient at the address of such person set forth on Schedule A and shall be given by express air courier or certified mail in the same manner provided above for the giving of notices. Either party hereto may at any time and from time to time by notice given as herein provided change the identity or address of the persons designated to receive such copies or designate additional persons to receive such copies. In no event, however, shall the Assignee be obligated to give copies of any notice to the Assignor to more than two persons at any time.

(c) No notice given by any party hereto shall be of any force or effect unless such notice is given in accordance with all of the provisions hereof.

(d) All notices shall be deemed to have been given and received (1) if delivered to an air courier service, one (1) day after delivery of such notice to such service or (2) if deposited in the United States mail, three (3) days after mailing; provided, however, that, when any notice must be given under any provision of a Loan Document on or before a certain date or within a certain period or number of days, such notice shall be deemed to have been given, solely for such purpose, on the date the same was delivered to such air courier or deposited in the United States mails.

16. The Assignor's personal liability under this Assignment is limited by the provisions of Section 3.09 (Limited Right of Recourse) of the Mortgage.

17. THE ASSIGNOR HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS EACH TENANT NAMED IN THE LEASES, UPON RECEIPT FROM THE ASSIGNEE OF A WRITTEN NOTICE TO THE EFFECT THAT AN EVENT OF DEFAULT EXISTS UNDER THIS ASSIGNMENT OR ANY OF THE OTHER LOAN DOCUMENTS, TO PAY ALL RENTS ARISING OR ACCRUING UNDER SAID TENANT'S LEASE TO THE ASSIGNEE AND TO CONTINUE SO TO DO UNTIL OTHERWISE DIRECTED BY THE ASSIGNEE. THE ASSIGNOR COVENANTS AND AGREES, FOR THE BENEFIT OF EACH TENANT,

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THAT ANY RENT SO PAID TO THE ASSIGNEE SHALL FULLY DISCHARGE ALL OBLIGATIONS SUCH TENANT MAY HAVE TO THE ASSIGNOR IN RESPECT OF SUCH PAYMENT, AS FULLY AND COMPLETELY AS IF SUCH PAYMENT HAD BEEN MADE TO THE ASSIGNOR.

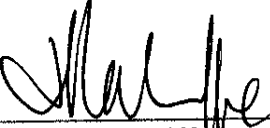
18. THE ASSIGNOR, AND ASSIGNEE BY ITS ACCEPTANCE HEREOF, AGREE THAT IN CONNECTION WITH ANY LITIGATION, ACTION, CLAIM, SUIT OR PROCEEDING, AT LAW OR IN EQUITY, ARISING OUT OF, PERTAINING TO OR IN ANY WAY ASSOCIATED WITH THE NOTE, THE MORTGAGE, THIS ASSIGNMENT, OR ANY OF THE OTHER LOAN DOCUMENTS, THE RELATIONSHIP OF THE PARTIES HERETO AS ASSIGNEE AND ASSIGNOR, THE PREMISES OR THE ACTIONS OF THE PARTIES HERETO IN CONNECTION WITH ANY OF THE FOREGOING, THE PARTIES (i) WAIVE ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY TRIAL BY JURY AND THE RIGHT TO CLAIM OR RECEIVE CONSEQUENTIAL (THAT IS, SPECIAL OR INDIRECT) OR PUNITIVE DAMAGES, (ii) AGREE THE SUBSTANTIVE LAW OF THE STATE OF ILLINOIS SHALL GOVERN AND (iii) AGREE SUCH WILL BE LITIGATED IN THE COURTS LOCATED IN THE STATE OF ILLINOIS AND CONSENT AND SUBMIT TO THE JURISDICTION OF SUCH COURTS, AGREE TO INSTITUTE ANY SUCH LITIGATION IN SUCH COURTS, CONSENT TO SERVICE OF PROCESS BY MAIL AND WAIVE ANY RIGHT EACH MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN SUCH COURTS ARISING OUT OF THE MATTERS DESCRIBED ABOVE.



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

**TR 120 S. LASALLE CORP.,**  
a Delaware corporation

By:   
Name: Jenifer Ratcliffe  
Title: President  
Date: 9/14/06

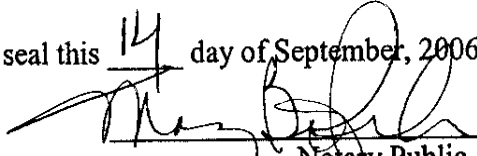
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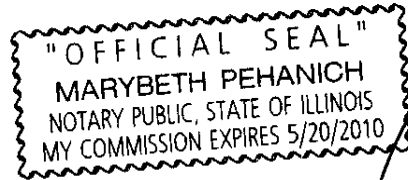
STATE OF IL )  
 ) to wit:  
COUNTY OF COOK )

I, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that, Jenifer Ratcliffe, the President of TR 120 S. LaSalle Corp., who executed the foregoing Assignment of Leases and Rents, bearing date on the \_\_\_\_ day of September, 2006, personally appeared before me in said jurisdiction and acknowledged the same to be her act and deed as of the \_\_\_\_ day of September, 2006.

GIVEN under my hand and official seal this 14 day of September, 2006.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 5/20/10



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## SCHEDULE A

1. Notices to Assignor are to be addressed as follows:

TR 120 S. LaSalle Corp.  
c/o Lincoln Property Company  
120 North LaSalle Street  
Suite 1750  
Chicago, Illinois 60602  
Attn: Jenifer Ratchliffe

2. Copies of Notices to Assignor are to be given to the following persons:

Holland & Knight LLP  
131 South Dearborn St.  
30<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attn: James T. Mayer

3. Notices to Assignee are to be addressed as follows:

AXA Equitable Life Insurance Company  
1290 Avenue of the Americas, 12th Floor  
New York, New York 10104  
Attention: Real Estate Legal Department  
(Loan No. 16-712)

4. Copies of Notices to Assignee are to be given to the following persons:

Quadrant Real Estate Advisors LLC  
12735 Morris Road, Suite 100  
Alpharetta, GA 30004  
Attention: Quadrant-Asset Management  
(Loan No. 16-712)

and

Capmark Services, Inc.  
3 Ravinia Drive, Suite 200  
Atlanta, GA 30346  
Attention: Shared Services Group  
(Loan #16-712)

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and

Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, Illinois 60661  
Attn: Ira J. Swidler

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