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Doc#: 0704542229 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 02/14/2007 01:25 PM Pg: 1 of 10

THIS INSTRUMENT WAS
PREPARED BY AND UPON
RECORDING RETURN TO:

Andrews Kurth LLP
1717 Main Street, Suite 3700
Dallas, Texas 75201
Attention: Jong S. Kim, Esq.

**CHICAGO TITLE LAND TRUST COMPANY, AS SUCCESSOR TRUSTEE TO
LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER TRUST
AGREEMENT DATED NOVEMBER 13, 1999 AND KNOWN AS TRUST NO. 109406-09** and not
(Borrower) personally

to

ROYAL BANK OF CANADA
(Lender)

ASSIGNMENT OF LEASES AND RENTS

Dated as of February 7, 2007

Property Location: 3210 W. 87th Street, Chicago, Illinois

Box 400-CTCC

8352957 D 2 SLG 389

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ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents (this "**Agreement**") is executed as of February 7, 2007, by CHICAGO TITLE LAND TRUST COMPANY, AS SUCCESSOR TRUSTEE TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 13, 1989 AND KNOWN AS TRUST NO. 109406-89, ^{personally} and not/ whose address for notice is c/o Westport Associates Limited Partnership, an Illinois limited partnership, and Venterra Associates No 11 LLC, an Illinois limited liability company, c/o Venterra Sales and Management Corp., 6571 N. Avondale Ave., Chicago, IL 60631-1521, Attention: Michael Rourke and Dennis Johnston ("**Borrower**"), to ROYAL BANK OF CANADA, a Canadian chartered bank, whose address for notice is c/o Midland Loan Services, Inc., 10851 Mastin, Suite 700, Overland Park, Kansas 66210, Attention: Director of Servicing ("**Lender**").

AGREEMENT:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. **Absolute Assignment.** Borrower unconditionally and absolutely assigns to Lender all of Borrower's right, title and interest in and to: (a) all leases, subleases, occupancy agreements, licenses, concessions, rental contracts and other agreements (written or oral) now or hereafter existing relating to the use or occupancy of the project located on the real property described in Exhibit A hereto (the "**Property**"), together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Borrower of any petition of relief under 11 U.S.C. § 101 et seq., as same may be amended from time to time [the "**Bankruptcy Code**"]), and all related security and other deposits (collectively, the "**Leases**"); (b) all rents, revenues, issues, profits, income and proceeds due or to become due from tenants of the Property, including rentals and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, rendering in, selling or otherwise enjoying the Property (collectively, the "**Rents**"); (c) all of Borrower's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code; and (d) any and all other rights of Borrower in and to the items set forth in subsections (a) through (c) above, and all amendments, modifications, replacements, renewals, proceeds and substitutions thereof. This Agreement is an absolute assignment to Lender and not an assignment as security for the performance of the obligations under the Loan Documents (defined below), or any other indebtedness, and such absolute assignment is presently and immediately effective.

2. **Rights of Lender.** Subject to the provisions of Section 6 below, Lender shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Lender and that all Rents are to be paid directly to Lender, whether or not Lender has commenced or completed foreclosure or taken possession of the Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim

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with respect to Rents and Leases; (d) enter upon, take possession of and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Borrower under the Leases and exercise any and all rights of Borrower therein contained to the full extent of Borrower's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Lender's request, Borrower shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Property. Borrower irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Borrower, to comply with all demands of Lender under this Agreement and to turn over to Lender on demand all Rents which it receives.

3. **No Obligation or Liability.** Notwithstanding Lender's rights hereunder, Lender shall not be obligated to perform, and Lender does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Agreement. Lender shall have no responsibility on account of this Agreement for the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default (as defined in the Security Instrument) or from any other act or omission of Lender in managing the Property after an Event of Default except to the extent such liability results solely from Lender's gross negligence or willful misconduct. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

4. **Right to Apply Rents.** Lender shall have the right, but not the obligation, to use and apply any Rents received hereunder in such order and such manner as Lender may determine for:

(a) **Enforcement or Defense.** The payment of costs and expenses of enforcing or defending the terms of this Agreement or the rights of Lender hereunder, and collecting any Rents;

(b) **Loan Payments.** Interest, principal or other amounts payable pursuant to (i) the Promissory Note of even date herewith in the stated principal amount of \$18,000,000.00, executed by Borrower, bearing interest and being payable to the order of Lender (the "**Note**"); (ii) the Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents, of even date, executed by Borrower for the benefit of Lender and relating to the Property (the "**Security Instrument**"); and all other documents and instruments evidencing, governing and securing the loan evidenced by the Note (the "**Loan**") and (iii) any and all modifications, amendments or extensions thereof or replacements or substitutions therefor (the Note, the Security Instrument, such other documents and instruments, and such modifications, amendments, extensions, replacements, and substitutions thereof being herein collectively called the "**Loan Documents**"); and

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(c) **Operating Expenses.** Payment of costs and expenses of the operation and maintenance of the Property, including (i) rentals and other charges payable by Borrower under any ground lease or other agreement affecting the Property; (ii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property; (iii) insurance premiums; (iv) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents; (v) wages and salaries of employees, commissions of agents and attorneys' fees and expenses; and (vi) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Property.

After the payment of all such costs and expenses and after Lender has established such reserves as it, in its sole and absolute discretion, deems necessary for the proper management of the Property, Lender shall apply all remaining Rents received by it to the reduction of the Loan.

5. **No Waiver.** The exercise or nonexercise by Lender of the rights granted in this Agreement or the collection and application of Rents by Lender or its agent shall not be a waiver of any default by Borrower under this Agreement or any other Loan Document. No action or failure to act by Lender with respect to any obligations of Borrower under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Lender's rights and privileges under this Agreement, or discharge, release or modify any of Borrower's duties or obligations hereunder.

6. **Revocable License.** Notwithstanding that this Agreement is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Lender grants to Borrower a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Such license shall be automatically revoked upon the occurrence of any Event of Default and Lender shall immediately be entitled to receive and apply all Rents, whether or not Lender enters upon and takes control of the Property; provided, however, that Lender may at any time, and from time to time, reinstate the revocable license. Prior to such revocation, Borrower shall apply any Rents which it receives to the payment of debt service on the Note and other payments due under the Loan Documents, taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Property, insurance premiums, operation and maintenance charges relating to the Property, and other obligations of lessor under the Leases before using such proceeds for any other purpose. Lender is hereby granted and assigned by Borrower the right, at its option, upon the revocation of the license granted herein to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Debt (as defined in the Security Instrument) in such priority and proportion as Lender, in its discretion, shall deem proper.

7. **Term.** This Agreement shall continue in full force and effect until (a) all amounts due under the Loan Documents are paid in full, and (b) all other obligations of Borrower under the Loan Documents are fully satisfied.

8. **Appointment.** Borrower irrevocably appoints Lender its true and lawful attorney in fact, which appointment is coupled with an interest, to exercise any or all of the rights or

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powers described herein with the same force and effect as if exercised by Borrower, and Borrower ratifies and confirms any and all acts done or omitted to be done by Lender, its agents, servants, employees or attorneys in, to or about the Property.

9. **Liability of Lender.** Lender shall not in any way be liable to Borrower for any action or inaction of Lender, its employees or agents under this Agreement.

10. **Indemnification.** Borrower shall indemnify, defend and hold harmless Lender from and against all liability, loss, damage, cost or expense which it may incur under this Agreement or under any of the Leases, including any claim against Lender by reason of any alleged obligation, undertaking, action, or inaction on its part to perform or discharge any terms, covenants or conditions of the Leases or with respect to Rents, and including attorneys' fees and expenses, but excluding any claim to the extent caused by Lender's gross negligence or willful misconduct. Any amount covered by this indemnity shall be payable on demand, and shall bear interest from the date of demand until the same is paid by Borrower to Lender at a rate equal to the Default Rate (as defined in the Note).

11. **Modification.** This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

12. **Bankruptcy.**

(a) Upon or at any time after the occurrence of a Event of Default, 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.

(b) If there shall be filed by or against Borrower or against Westport Associates Limited Partnership, an Illinois limited partnership ("*Westport*"), and Venterra Associates No. 11 LLC, an Illinois limited liability company ("*Venterra*"), the beneficiaries of Borrower (Westport and Venterra collectively referred to as "*Beneficiaries*") 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 or Beneficiaries 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 and/or Beneficiaries within such ten-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 and/or Beneficiaries the notice described in the preceding sentence, Borrower and/or Beneficiaries 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.

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13. **Authority.** Borrower represents and warrants that it has full power and authority to execute and deliver this Agreement and the execution and delivery of this Agreement has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Property.

14. **Liability.** If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

15. **Headings, Etc.** The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

16. **Notices.** Any notice required or permitted to be given under this Agreement shall be (a) in writing (b) sent in the manner set forth in the Note, and (c) effective in accordance with the terms of the Note.

17. **Successors and Assigns.** This Agreement shall inure to the benefit of Lender and its successors and assigns and shall be binding on Borrower and its successors and assigns.

18. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State where the Property is located and the applicable laws of the United States of America.

19. **Conflict.** If any conflict or inconsistency exists between the absolute assignment of the Rents and the Leases in this Agreement and the assignment of the Rents and Leases as security in the Security Instrument, the terms of this Agreement shall control.

20. **Limitation on Liability.** Borrower's and Beneficiaries' liability hereunder is subject to the limitation on liability provisions of Article 9 of the Note.

21. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

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This Agreement is executed by Chicago Title Land Trust Company, not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the obligations, duties, agreements, covenants and conditions to be performed by Chicago Title Land Trust Company under this Agreement are undertaken by it solely as Trustee, as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against Chicago Title Land Trust Company by reason of any of the terms, provisions, statements, obligations, duties, agreements, covenants and conditions contained in this Agreement. (For further Exculpatory Provision of Chicago Title Land Trust Company see attached rider)

EXECUTED as of the date first written above.

**CHICAGO TITLE LAND TRUST COMPANY,
AS SUCCESSOR TRUSTEE TO LASALLE
BANK NATIONAL ASSOCIATION, AS
TRUSTEE UNDER TRUST AGREEMENT
DATED NOVEMBER 13, 1989 AND KNOWN AS
TRUST NO. 109406-09 and not personally**

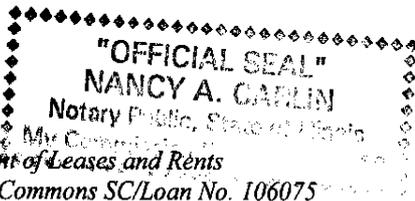
By: *Harriet Denisewicz*
Name: Harriet Denisewicz
Title: Trust Officer

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Harriet Denisewicz, being the Trust Officer of CHICAGO TITLE LAND TRUST COMPANY AS SUCCESSOR TRUSTEE TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 13, 1989 AND KNOWN AS TRUST NO. 109406-09, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said trust on behalf of said trust for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 7th day of February, 2007.

[SEAL]



Nancy A. Caplin
Notary Public
My Commission Expires: _____

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EXCULPATORY CLAUSE FOR CHICAGO TITLE LAND TRUST COMPANY, AS SUCCESSOR TRUSTEE UNDER TRUST AGREEMENT DATED November 13, 1989, AND KNOWN AS TRUST #109406-09 ATTACHED TO AND MADE A PART OF THAT ASSIGNMENT OF LEASES AND RENTS DATED FEBRUARY, 2007 IN FAVOR OF ROYAL BANK OF CANADA

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against CHICAGO TITLE LAND TRUST COMPANY, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

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Acknowledged and Agreed to with respect to Section 12 hereof:

BENEFICIARIES:

WESTPORT ASSOCIATES LIMITED PARTNERSHIP, an Illinois limited partnership

By: Westport Group Inc., an Illinois corporation
its general partner

By: [Signature]
Name: George W. Bawke
Title: President

VENTERRA ASSOCIATES NO 11 LLC,
an Illinois limited liability company

By: [Signature]
Name: George W. Bawke
Title: Manager

Property of Cook County Clerk's Office

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EXHIBIT A

Legal Description

PARCEL 1:

LOTS 1, 5 AND 6 IN WESTPORT COMMONS, BEING A SUBDIVISION OF THAT PART OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 35, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF A LINE 1204.31 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST 1/4 (EXCEPT THE NORTH 33 FEET THEREOF AND EXCEPT THOSE PORTIONS TAKEN FOR HIGHWAY PURPOSES IN SOUTH KEDZIE AVENUE AND WEST 87TH STREET) ALL IN COOK COUNTY, ILLINOIS, IN ACCORDANCE WITH THAT CERTAIN PLAT OF SUBDIVISION RECORDED MARCH 3, 1992 AS DOCUMENT 92131633 IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR INGRESS AND EGRESS FOR VEHICULAR, PEDESTRIAN, TRUCK DELIVERY, EMERGENCY TRAFFIC AND FOR PARKING AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS DATED MAY 21, 1992 AND RECORDED MAY 28, 1992 AS DOCUMENT 92370210 AS AMENDED BY FIRST AMENDMENT DATED JUNE 13, 1995 AND RECORDED DECEMBER 8, 1995 AS DOCUMENT 95854875.

TAX OR PROPERTY NOS.:

19-35-421-042-0000
19-35-421-046-0000
19-35-421-047-0000

PROPERTY ADDRESS:

3210 W. 87th Street, Chicago, Illinois