

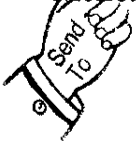


*Prepared by and*

AFTER RECORDING RETURN TO:

Doc#: 0712234105 Fee: \$38.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/02/2007 02:05 PM Pg: 1 of 8

David J. McPherson, Esquire  
Troutman Sanders LLP  
1660 International Drive  
Suite 600, Tysons Corner  
McLean, Virginia 22102



ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents (the "Assignment") is made as of the 30th day of April, 2007, by 343 SOUTH DEARBORN I, L.L.C., an Illinois limited liability company (the "Assignor") to PRUDENTIAL MULTIFAMILY MORTGAGE, INC., a Delaware corporation, its successor, assignees, and transferees (the "Assignee").

Assignee requires that Assignor execute this Assignment in connection with a loan in the amount of \$25,800,000.00 (the "Loan") from Assignee to Borrower (as defined below) as evidenced by the Note (as defined below). Assignee is the managing member of the Borrower and will receive a direct financial benefit as a result of the Loan.

1. **DEFINITIONS.** Capitalized terms used in this Assignment and not otherwise defined shall have the meanings assigned to them in the Instrument (as hereinafter defined). The following terms, when used in this Assignment, shall have the following meanings:

(a) "Borrower" shall mean, 343 SOUTH DEARBORN II, L.L.C., an Illinois limited liability company, together with its successors and assigns.

(b) "Event of Default" means the occurrence of any event listed in Section 22 of the Instrument (as hereinafter defined).

(c) "Impositions" and "Imposition Deposits" shall have the meaning as defined in Section 7(a) of the Instrument.

(d) "Indebtedness" means the principal of, interest on, and all other amounts due at any time under, the Note (as hereinafter defined), the Instrument or any other Loan Documents (as hereinafter defined), including prepayment premiums, late charges, default interest.

(e) "Improvements" means the buildings, structures, improvements and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions which may now or hereafter constitute the project commonly known as "The Fisher Building".

(f) "Instrument" means that certain Multifamily Mortgage, Assignments of Rents and Security Agreement of even date herewith executed by Borrower in favor of Lender and encumbering the Mortgaged Property (including the Land).

(g) "Land" means the land described in Exhibit A.

(h) "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or

*July*  
*DEC*  
*ALC 290131*  
*Order #*

# UNOFFICIAL COPY

affecting the Mortgaged Property (as hereinafter defined) or any portion of the Mortgaged Property, extensions or renewals thereof, including both residential and commercial agreements, executed by Borrower or Assignor pursuant to the terms of the Master Lease Agreement (the "Operating Lease") dated as of December 27, 2001, by and between Assignor, as "Tenant" thereunder, and Borrower, as "Landlord" thereunder.

(i) **"Loan Documents"** means the Note, the Instrument, this Assignment, all guaranties and any other documents now or in the future executed by Borrower, Assignor or any other person or entity in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(j) **"Mortgaged Property"** shall have the meaning as defined in Section 1(s) of the Instrument.

(k) **"Note"** means that certain Multifamily Note in the original principal amount of \$25,800,000.00 executed by Borrower in favor of Lender, and more fully described in the Instrument.

(l) **"Rents"** means all rents revenues and other income (whether from residential or non-residential space) derived from the Leases whether now due, past due, or to become due and deposits forfeited by tenants.

(m) **"Taxes"** shall have the meaning as defined in Section 1(y) of the Instrument.

## 2. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; ASSIGNEE IN POSSESSION.

(a) As consideration for the material financial benefit to be derived by Assignor from the Indebtedness, to the extent permitted by applicable law, Assignor absolutely and unconditionally assigns and transfers to Assignee all Rents. To the extent permitted by applicable law, it is the intention of Assignor to establish a present, absolute and irrevocable transfer and assignment to Assignee of all Rents and to authorize and empower Assignee to collect and receive all Rents without the necessity of further action on the part of Assignor. Promptly upon request by Assignee, Assignor agrees to execute and deliver such further assignments as Assignee may from time to time require. To the extent permitted by applicable law, Assignor and Assignee intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction (as that term is defined in Section 30[a] of the Instrument), then it is the intention of the Assignor that in this circumstance this Assignment create and perfect a lien on Rents in favor of Assignee, which lien shall be effective as of the date of this Assignment.

(b) After the occurrence of an Event of Default, Assignor authorizes Assignee to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Assignee. However, until the occurrence of an Event of Default, Assignee hereby grants to Assignor a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Assignee and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has

# UNOFFICIAL COPY

occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Assignor free and clear of, and released from, Assignee's rights with respect to Rents under this Assignment. From and after the occurrence of an Event of Default, and without the necessity of Assignee entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Assignor's license to collect Rents shall automatically terminate and Assignee shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Assignor shall pay to Assignee upon demand all Rents to which Assignee is entitled. At any time on or after the date of Assignee's demand for Rents, Assignee may give, and Assignor hereby irrevocably authorizes Assignee to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Assignee, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Assignor any amounts which are actually paid to Assignee in response to such a notice. Any such notice by Assignee shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Assignor shall not interfere with and shall cooperate with Assignee's collection of such Rents.

(c) Assignor represents and warrants to Assignee that Assignor has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note), that Assignor has not performed, and Assignor covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Assignee from exercising its rights under this Section 2, and that at the time of execution of this Assignment there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Assignor shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Assignee may, regardless of the adequacy of Assignee's security or the solvency of Assignor and even in the absence of waste, to the extent permitted by applicable law, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Assignee in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 2(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Assignee in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Assignee's security, without regard to Assignor's solvency and without the necessity of giving prior notice (oral or written) to Assignor, Assignee may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Assignee elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Assignor, by its execution of this Assignment, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Assignee or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Assignee's entering upon and taking possession and control of the Mortgaged Property, Assignor shall, to the extent permitted by applicable law, surrender possession of the Mortgaged Property to Assignee or the receiver, as the case may be, and shall deliver to Assignee or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Assignee takes possession and control of the Mortgaged Property, Assignee may exclude Assignor and its representatives from the Mortgaged Property. Assignor acknowledges and agrees that the exercise by Assignee of any of the rights conferred under this

# UNOFFICIAL COPY

Section 2 shall not be construed to make Assignee a mortgagee-in-possession of the Mortgaged Property so long as Assignee has not itself entered into actual possession of the Land and Improvements.

(e) If Assignee enters the Mortgaged Property, Assignee shall be liable to account only to Assignor and only for those Rents actually received. Assignee shall not be liable to Assignor, anyone claiming under or through Assignor or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Assignee under this Section 2, and Assignor hereby releases and discharges Assignee from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Assignee for such purposes shall become an additional part of the Indebtedness, as provided in Section 12 of the Instrument.

(g) Any entering upon and taking of control of the Mortgaged Property by Assignee or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Assignee under applicable law or provided for in this Assignment or in the Instrument.

### **3. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.**

(a) As consideration for the material financial benefit to be derived by Assignor from the Indebtedness, to the extent permitted by applicable law, Assignor absolutely and unconditionally assigns and transfers to Assignee all of Assignor's right, title and interest in, to and under the Leases, including Assignor's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. To the extent permitted by applicable law, it is the intention of Assignor to establish a present, absolute and irrevocable transfer and assignment to Assignee of all of Assignor's right, title and interest in, to and under the Leases. To the extent permitted by applicable law, Assignor and Assignee intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then it is the intention of the Assignor that in this circumstance this Assignment create and perfect a lien on the Leases in favor of Assignee, which lien shall be effective as of the date of this Assignment.

(b) Until Assignee gives notice to Assignor of Assignee's exercise of its rights under this Section 3, Assignor shall have all rights, power and authority granted to Assignor under any Lease (except as otherwise limited by this Section or any other provision of this Assignment), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Assignor pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Assignor shall comply with and observe Assignor's obligations under all Leases, including Assignor's obligations pertaining to the maintenance and disposition of tenant security deposits. Notwithstanding any provision herein to the contrary, Borrower and Assignor shall not amend, modify, terminate, surrender, assign or transfer the Operating Lease or take any action that would result in the failure of the Operating Lease to satisfy the provisions of Section 8.20 of the Redevelopment Agreement (as defined in the Instrument).

(c) Assignor acknowledges and agrees that the exercise by Assignee, either directly or by a receiver, of any of the rights conferred under this Section 3 shall not be construed to make Assignee a mortgagee-in-possession of the Mortgaged Property so long as Assignee has



# UNOFFICIAL COPY

not itself entered into actual possession of the Land and the Improvements. The acceptance by Assignee of the assignment of the Leases pursuant to Section 3(a) shall not at any time or in any event obligate Assignee to take any action under this Assignment or to expend any money or to incur any expenses. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Assignee's actual entry into and taking possession of the Mortgaged Property, Assignee shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Assignment by Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Assignor, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Assignee to Assignor of Assignee's exercise of Assignee's rights under this Section 3 at any time after the occurrence of an Event of Default, and without the necessity of Assignee entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Assignee immediately shall have, to the extent permitted by applicable law, all rights, powers and authority granted to Assignor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Assignor shall, promptly upon Assignee's request, deliver to Assignee an executed copy of each non-residential Lease then in effect. All Leases for non-residential space shall be on forms approved by Assignee.

(f) Assignor shall not modify the terms of, or extend or terminate, any Lease (including, without limitation, the Operating Lease) for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Assignee. Assignor shall, without request by Assignee, deliver an executed copy of each non-residential Lease to Assignee promptly after such Lease is signed. All non-residential Leases (including, without limitation, the Operating Lease and renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument (unless waived in writing by Assignee); (2) the tenant shall attorn to Assignee and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Assignee in any manner; (3) the tenant agrees to execute such further evidences of attornment as Assignee or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; and (5) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Assignee, pay all Rents payable under the Lease to Assignee.

#### 4. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Assignment shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**"), and applicable federal law.

(b) Assignor agrees that any controversy arising under or in relation to this Assignment shall be litigated exclusively in the Property Jurisdiction and Assignor irrevocably consents to service, jurisdiction, and venue of such course for any such litigation and waives any other venue to which Assignor might be entitled by virtue of domicile, habitual residence or otherwise.

# UNOFFICIAL COPY

**5. SUCCESSORS AND ASSIGNS.** This Assignment shall be binding upon Assignor and Assignee and their respective successors, transferees and assigns, and shall incur to the benefit of and may be enforced by Assignee, and its successors, transferees and assigns. Assignor shall not assign any of its rights and obligations under this Assignment without the prior written consent of Assignee.

**6. ENTIRE AGREEMENT; AMENDMENTS AND WAIVERS.** This Assignment contains the complete and entire understanding of the parties as to its subject matter. No amendment to this Assignment will be valid unless it is made in writing and executed by the parties to this Assignment. No specific waiver or forbearance for any breach of any of the terms of this Assignment shall be considered as a general waiver of that or any other term of this Assignment.

**7. RELATIONSHIP OF PARTIES.** Nothing contained in this Assignment shall constitute Assignee as a joint venturer, partner or agent of Assignor, or render Assignee liable for any debts, obligations, acts, omissions or representations of Assignor except as provided herein.

**8. ENFORCEABILITY.** The determination of invalidity, illegality, or unenforceability of any provision of this Assignment, pursuant to judicial decree, shall not affect the validity or enforceability of any other provision of this Assignment, each of which shall remain in full force and effect.

**9. ASSIGNMENT TO FANNIE MAE.** If Assignee assigns its rights under this Assignment to Fannie Mae, all references in this Assignment to Assignee shall be deemed to be references to Fannie Mae.

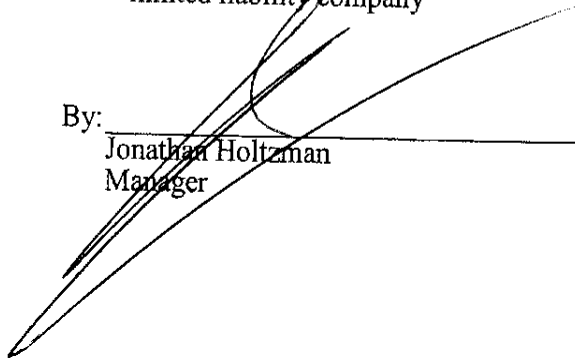
IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the day and year first above written.

# UNOFFICIAL COPY

**ASSIGNOR:**

**343 SOUTH DEARBORN I, L.L.C.**, an Illinois  
limited liability company

By: \_\_\_\_\_  
Jonathan Holtzman  
Manager



STATE OF IL )  
CITY/COUNTY OF Cook ) to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of April, 2007 by Jonathan Holtzman, Manager of 343 South Dearborn I, L.L.C., an Illinois limited liability company, on behalf of the limited liability company.

(NOTARIAL SEAL)

\_\_\_\_\_  
Karen A. Toth  
Notary Public

My commission expires: 4-15-11



# UNOFFICIAL COPY

## EXHIBIT A

LOTS 18, 19 AND 24 (EXCEPT THAT PART OF SAID LOTS TAKEN FOR DEARBORN STREET) IN GEORGE W. SNOW'S SUBDIVISION OF BLOCK 139 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Street Address: 343 South Dearborn Street

PIN # 1716234005  
1716234006

Property of Cook County Clerk's Office