



Doc#: 0719742115 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/18/2007 01:37 PM Pg: 1 of 14

Prepared by, recording
requested by, and when
recorded return to:

Derek L. Cottier
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

4/4
DZ CB
8383392

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES ("Assignment") is made as of July 10, 2007, by 300 W. ADAMS (CHICAGO), L.L.C., a Delaware limited liability company ("**Borrower**"), to and for the benefit of CSE MORTGAGE LLC, a Delaware limited liability company, its successors and assigns ("**Lender**").

RECITALS:

A. Lender has agreed to make a loan to Borrower in the stated principal amount of Thirty-One Million Two Hundred Ninety-two Thousand Nine Hundred Twenty-Nine and 00/100ths Dollars (\$31,292,929.00) (the "**Loan**") pursuant to that certain Loan Agreement of even date herewith by and between Borrower and Lender (said Loan Agreement and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "**Loan Agreement**").

B. The Loan is secured by, among other things, that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date of this Assignment, made by the Borrower for the benefit of the Lender (as amended, supplemented or otherwise modified from time to time, the "**Mortgage**"), which grants Lender a first priority security interest in the real and personal property commonly known as 300 West Adams Street, Chicago, Illinois. The Mortgage, the Loan Agreement, this Assignment and any of the other documents evidencing or securing the Loan are collectively referred to as the "**Loan Documents**".

C. As a condition precedent to, and in consideration of, the making of the Loan by Lender, Borrower has agreed to execute and deliver this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. Definitions; Incorporation by Reference. All capitalized terms which are not defined herein shall have the meanings ascribed thereto in the Loan Agreement. All representations, warranties, covenants, conditions and agreements contained in the Loan Agreement are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

Box 400-CTCC

14
8

UNOFFICIAL COPY

2. **Grant of Security Interest.** Borrower hereby absolutely and unconditionally grants, transfers, sets over and assigns to Lender the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower:

(a) **Leases.** All leases, licenses, concessions, tenancies, occupancy agreements and other agreements entered into by or on behalf of Borrower (or any predecessor of Borrower, to the extent Borrower or the Property (hereinafter defined) remain subject thereto), whether made 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**"), demising, leasing or granting rights of possession or use of all or any portion of the property more particularly described in Exhibit A annexed hereto and made a part hereof, now or hereafter existing, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "**Property**"), together with all modifications, extensions or renewals thereof now existing or hereafter permitted under the Loan Documents (collectively, the "**Leases**").

(b) **Rents.** All rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of its Affiliates, or any of their agents or employees, from any and all sources arising from or attributable to the Property and proceeds, if any, from business interruption or other loss of income insurance, 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 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.

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

(e) **Tenant Improvements.** All of Borrower's right, title and interest in any tenant improvements and fixtures located on the Property.

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

(g) **Other.** 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,

UNOFFICIAL COPY

receive, collect and receipt for 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 Indebtedness), 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.

(h) Entry. 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.

(i) Power of Attorney. Upon the occurrence of an Event of Default, Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Section 8 of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

(j) Other Rights and Agreements. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (i) above, and all amendments, modifications, replacements, renewals and substitutions thereof ((a) - (i) collectively, the "Collateral").

3. **Obligations Secured**. Borrower makes the foregoing grant and assignment for the purpose of securing the following in such order of priority as Lender may determine (the "Obligations"):

(a) Payment of Loan. Payment to Lender of all indebtedness evidenced by or arising under the Loan Agreement and each of the other Loan Documents, together with interest thereon, including sums added to the principal balance of the Loan in accordance with the terms thereof, and all prepayment, late charges or other charges or fees payable thereunder, and any and all modifications, extensions, renewals or substitutions thereof whether or not evidenced by a new or additional promissory note or notes (collectively, the "Indebtedness");

(b) Performance Under Loan Documents. Performance by Borrower and the Borrower Parties of their respective obligations (other than the payment of the Indebtedness) under the Loan Documents to which they are a party (the "Other Obligations").

4. **Representations and Warranties of Borrower**. Borrower represents and warrants to Lender that:

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

(b) Borrower is the lessor under all Leases;

(c) there is no other existing assignment of Borrower's entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has Borrower entered into any agreement to subordinate any of the Leases

UNOFFICIAL COPY

or Borrower's right to receive any of the rents, issues, income or profits assigned hereunder;

(d) Borrower has not executed any instrument or performed any act which may prevent Lender from operating under any of the terms and provisions hereof or which would limit Lender in such operation; and

(e) To Borrower's knowledge, there are no defaults by the landlord and, to Borrower's knowledge, there are no material defaults by tenants under any Leases, except rent delinquencies, if any, disclosed by the rent roll delivered by Borrower to Lender in connection with the closing of the Loan.

5. **Covenants of Borrower.** Borrower covenants and agrees that so long as this Assignment shall be in effect:

(a) Borrower shall not lease any portion of the Property except as expressly permitted under the terms of the Loan Agreement;

(b) Borrower shall not extend the term of any existing Lease unless such extension, if deemed a new Lease, is pursuant to a right of the tenant under such Lease or would be permitted under the terms of the Loan Agreement;

(c) Borrower shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and the Borrower shall not do or suffer to be done anything to impair the security thereof. Borrower shall not (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of Rent or making monetary advances and offsetting the same against future Rent, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Property;

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

(e) Borrower shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder;

(f) Except as permitted in the Loan Agreement, Borrower shall not modify the terms and provisions of any Lease, nor shall the Borrower cancel or terminate any Lease, without the Lender's prior written consent; provided, however, that the Borrower may cancel or terminate any Lease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Lease;

UNOFFICIAL COPY

(g) Borrower shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the Property demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Lease for the early termination or surrender thereof shall be paid jointly to the Borrower and the Lender;

(h) Borrower shall not alter, modify or change the terms of any Lease Guaranty with respect to a Lease of over 10,000 square feet, or cancel or terminate any Lease Guaranty or do or permit to be done anything which would terminate any Lease Guaranty as a matter of law except in connection with a termination or expiration of such Lease;

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

(j) Borrower shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of the Lender, including court costs and attorneys' fees (for both in-house and outside counsel), in any such action or proceeding in which the Lender may appear;

(k) Borrower shall give prompt notice to the Lender of any notice of any default by the lessor under any Lease received from any tenant or guarantor thereunder;

(l) Borrower shall enforce the observance and performance of each material covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and shall immediately notify the Lender of any material breach by the tenant or guarantor under any such Lease;

(m) Borrower shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(n) Borrower shall not execute hereafter any Lease unless there shall be included therein a provision providing that the tenant thereunder agrees not to look to the Lender as Lender, Lender in possession or successor in title to the Property for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by the Lender as security for tenant's performance under such Lease; and

(o) If any tenant under any Lease is or becomes the subject of any proceeding under the Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Borrower covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Lender; any check in payment of damages for termination or rejection of any such Lease will be made payable both to

UNOFFICIAL COPY

Borrower and Lender; and that, upon the request of the Lender, it will duly endorse to the order of the Lender any such check, the proceeds of which shall be applied in accordance with the provisions of Section 9 below.

6. **Rights Prior to Default.** Prior to the occurrence of an Event of Default (as hereafter defined), Lender hereby grants Borrower a license to collect, at the time (but in no event more than thirty days in advance) provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same and exercise all rights and remedies of the landlord under the Leases. Upon the occurrence of an Event of Default, Borrower's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to Borrower. Lender shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

7. **Events of Default.** Any one or more of the following events shall constitute an "Event of Default" under this Assignment:

(a) (i) any monthly installment of interest due under the Loan Agreement is not paid within five (5) days of the date when due, or (ii) any payment of principal due under the Loan Agreement or the payment due on the Maturity Date or the Extended Maturity Date (if applicable) is not paid when due, or (iii) any other portion of the Indebtedness, or any other amount required to be paid by Borrower to Lender, is not paid within five (5) days of the date when due, or, if no due date is stated, within five (5) days of written demand;

(b) Borrower fails to perform or cease to be performed any obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower contained in this Assignment and not specifically identified as an Event of Default in Section 8.1 of the Loan Agreement or in any other Loan Document; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Project, and the priority, validity and enforceability of the liens created by this Assignment or any of the other Loan Documents and the value of the Project are not impaired, threatened or jeopardized, then Borrower shall have a period ("**Cure Period**") of thirty (30) days after Borrower obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if Borrower commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate.

(c) An Event of Default (as defined therein) occurs under any other Loan Document.

Notwithstanding anything to the contrary in this Assignment, in any instance where this Assignment provides for a consequence or right of action upon the "occurrence of an Event of Default," or words of similar import, the consequence or right of action shall cease, with respect to any given Event of Default, in the event Lender shall waive such Event of Default in writing.

UNOFFICIAL COPY

8. **Rights and Remedies Upon Default.** At any time upon or following the occurrence of any Event of Default, Lender, at its option and to the fullest extent permitted under applicable law, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Borrower, without regard to the adequacy of the security for the obligations secured hereby, without releasing Borrower or any guarantor of the Loan from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

(a) Declare the Indebtedness immediately due and payable;

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

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

(d) Make any payment or do any act required herein of Borrower, but not performed within any applicable notice or cure period, in such manner and to such extent as Lender may deem necessary, and any amount so paid by Lender shall become immediately due and payable by Borrower with interest thereon until paid at the Default Rate and shall be secured by this Assignment.

9. **Application of Proceeds.** All sums collected and received by Lender out of the rents, issues, income and profits of the Property following the occurrence of any one or more Events of Default shall be applied in accordance with the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15 1101 et seq., Illinois Compiled Statutes) and, unless otherwise specified in such act, in such order as Lender shall elect in its sole and absolute discretion.

10. **Limitation of Lender's Liability.** Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property or from any other act or

UNOFFICIAL COPY

omission of Lender in managing, operating or maintaining the Property following the occurrence of an Event of Default. Lender shall not be obligated to observe, perform or discharge, nor does Lender hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Borrower under or by reason of this Assignment. Borrower shall and does hereby agree to indemnify, defend (using counsel satisfactory to Lender) and hold Lender harmless from and against any and all liability, loss or damage which Lender may 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 Lender by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Borrower be liable for any liability, loss or damage which Borrower incurs as a result of Lender's gross negligence or willful misconduct. Should Lender incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Borrower with interest thereon until paid at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Lender for the care, control, management or repair of the Property or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Lender responsible or liable for any waste committed upon the Property by any tenant, occupant or other party, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Lender of any of the rights set forth herein or in the Mortgage, shall constitute or be construed as constituting Lender a "Lender in possession" of the Property, in the absence of the taking of actual possession of the Property by Lender pursuant to the provisions hereof or of the Mortgage.

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

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

UNOFFICIAL COPY

13. **Security Deposits.** Borrower acknowledges that Lender has not received for its own account any security deposited by any tenant pursuant to the terms of the Leases and that Lender assumes no responsibility or liability for any security so deposited.

14. **Time of the Essence.** Time is of the essence with respect to this Assignment and the other Loan Documents, and each representation, warranty, covenant and condition hereunder and thereunder.

15. **Successors and Assigns; Lender as Agent.** This Assignment and all provisions hereof shall be binding upon and enforceable against the Borrower and its assigns and other successors. This Assignment and all provisions hereof shall inure to the benefit of the Lender, its successors and assigns and any holder or holders, from time to time, of the Obligations, or any interest therein. Notwithstanding anything to the contrary in this Assignment, if the Obligations are held by more than one holder, the parties agree that CSE Mortgage LLC shall act as collateral agent for the pro rata benefit of such holders.

16. **Amendments.** This Assignment may be amended at any time and from time to time only by an amendment in writing executed by Lender and Borrower.

17. **Rules of Construction.** When the identity of the parties or other circumstances make appropriate, the neuter gender shall include the feminine and masculine, and the singular number shall include the plural. Specific enumeration of rights, powers and remedies of Lender and of acts which they may do and of acts Borrower must do or not do shall not exclude or limit the general. The headings of each Section are for information and convenience and do not limit or construe the contents of any provision hereof. The provisions of this Assignment shall be construed as a whole according to their common meaning, not strictly for or against any party and consistent with the provisions herein contained, in order to achieve the objectives and purposes of these grants. The use in this Assignment (including any Exhibit hereto) of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter; the use herein of the words "costs" or "expenses" shall include the cost of title evidence and reasonable fees and costs of attorneys for Lender (both in house and outside counsel); and the use herein of the word "prompt", or "immediately" in any form, or words of similar import, when used with reference to any notice required to be given or act to be undertaken by Borrower shall mean notice given or act performed not later than five (5) business days after the occurrence of the specified event for which notice or action is required, unless another time period is made expressly applicable. If Borrower is composed of more than one person or entity, then the obligations of Borrower under this Assignment, the Loan Agreement and under the other Loan Documents are joint and several; and each covenant, warranty, representation and agreement of Borrower hereunder and thereunder shall be deemed made by each such person or entity comprising Borrower, both individually and collectively.

18. **Severability.** If any term of this Assignment, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to

UNOFFICIAL COPY

which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

19. **Governing Law.** THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF MARYLAND BY LENDER, AND MADE BY LENDER IN THE STATE OF MARYLAND, AND THE PROCEEDS OF THE LOAN SHALL BE DISBURSED FROM THE STATE OF MARYLAND, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS ASSIGNMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA; PROVIDED, HOWEVER, THAT AT ALL TIMES THE PROVISIONS HEREIN FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE OF ILLINOIS. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS ASSIGNMENT.

20. **Commingling of Funds.** No sums collected or retained by Lender shall be deemed to be held in trust; and Lender may commingle any and all such funds or proceeds with its general assets and shall not be liable for the payment of any interest or other return thereon, except to the minimum extent required by law.

21. **Late Charges; Default Rate; Prepayment.** The Loan Agreement contains provisions imposing a late charge and past due rate of interest if payments are not timely made, and prepayment restrictions and premiums as more particularly described in the Loan Agreement.

22. **Termination of Assignment.** Upon payment in full of the Indebtedness and the delivery and recording of a satisfaction or discharge of the Mortgage duly executed by Lender, this Assignment shall become null and void and shall be of no further force and effect. Upon request from Borrower, Lender will execute a termination of this Assignment in recordable form and otherwise in a form reasonably acceptable to Lender, at Borrower's sole cost and expense, in order to evidence such termination in the public records.

23. **Venue.** Borrower hereby irrevocably submits generally and unconditionally to the non-exclusive jurisdiction of any local court, or any United States federal court, sitting in or having jurisdiction for the County of Montgomery, State of Maryland, over any suit, action or proceeding arising out of or relating to this Assignment. Borrower hereby irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Borrower hereby agrees and consents that, in addition to any methods of service of process

UNOFFICIAL COPY

provided for under applicable law, all services of process in any such suit, action or proceeding in any local court, or any United States federal court, sitting in or having jurisdiction for the County of Montgomery, State of Maryland, may be made, unless prohibited by applicable law, by certified or registered mail, return receipt requested, directed to Borrower at its address stated in the Mortgage, and service so made shall be complete five (5) business days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Borrower in any other court or jurisdiction.

24. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of Borrower and Lender, as the case may be, as specified in the Mortgage.

25. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS ASSIGNMENT, THE LOAN, OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF LENDER OR BORROWER OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOAN OR THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS ASSIGNMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS ASSIGNMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN TO BORROWER.

26. **Counterparts.** This Assignment may be executed in any number of counterparts, all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. **Receipt of an executed signature page to this Assignment by facsimile or other electronic transmission shall constitute effective delivery thereof.**

27. **Note or Notes.** Section 2.14 of the Loan Agreement provides that, at the request of Lender, Borrower shall issue one or more promissory notes (any such notes, and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefore, are collectively referred to herein as "Notes") to evidence the Indebtedness. In the event any such Notes are hereinafter made by Borrower and delivered to Lender, all references herein to the Indebtedness shall be deemed to refer to the indebtedness and/or other obligations evidenced by the Note(s) and/or the Loan Agreement. Any Note shall be deemed a Loan Document hereunder.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

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

BORROWER:

300 W. ADAMS (CHICAGO), L.L.C., a Delaware limited liability company

By: 300 W. Adams (Intermediate), L.L.C., a Delaware limited liability company

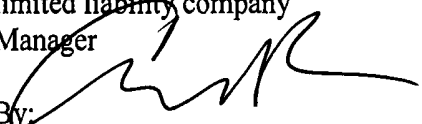
Its: Sole Member

By: 300 W. Adams (Parent), L.L.C., a Delaware limited liability company

Its: Manager

By:

Its:


Authorized Signatory

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew Gloor, the Authorized Signatory of 300 W. Adams (Parent), L.L.C., A Delaware limited liability company ("Parent"), the manager of 300 W. Adams (Intermediate), L.L.C., a Delaware limited liability company ("Intermediate"), the sole member of 300 W. ADAMS (CHICAGO), L.L.C., a Delaware limited liability company ("Company"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Signatory appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10 day of July, 2007.

Becky J. Morgan
Notary Public

My Commission Expires: 3/28/2010



UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

THAT PART OF LOTS 5, 6 AND 7 IN BLOCK 82, IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT:

COMMENCING AT A POINT IN THE SOUTH LINE OF SAID LOT 5 AT WHICH SAID SOUTH LINE INTERSECTS THE WEST LINE OF FRANKLIN STREET; RUNNING THENCE NORTH ALONG SAID WEST LINE OF FRANKLIN STREET TO THE NORTH LINE OF SAID LOT 5, RUNNING THENCE WEST ALONG THE NORTH LINE OF LOTS 5, 6, AND 7 IN SAID BLOCK 82, 150 FEET; RUNNING THENCE SOUTH AND PARALLEL WITH THE WEST LINE OF SAID FRANKLIN STREET TO THE SOUTH LINE OF LOT 7 AFORESAID; RUNNING THENCE EAST ALONG THE SOUTH LINE OF SAID LOTS 7, 6 AND 5, 150 FEET TO THE PLACE OF BEGINNING.

PIN: 17-16-208-015-0000

ADDRESS: 300 W. ADAMS, CHICAGO, ILLINOIS