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Doc#: 0924433053 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 09/01/2009 10:33 AM Pg: 1 of 12

(Above space for recording information)

THIS INSTRUMENT PREPARED BY:) James A. Schraidt, Esq.
) Scott & Kraus, LLC
) 150 South Wacker Drive
) Suite 2900
) Chicago, Illinois 60606

MAIL THIS INSTRUMENT TO:) Charles R. Thomas
) Inland Bank and Trust
) 2805 Butterfield Road
) Suite 200
) Oak Brook, Illinois 60523

ASSIGNMENT OF LEASES, RENTS AND PROFITS

Dated as of August 28, 2009

THIS ASSIGNMENT OF LEASES, RENTS AND PROFITS is made and dated to be effective as of the 28th day of August, 2009.

85 ALGONQUIN L.L.C., a limited liability company duly formed and existing under the laws of the State of Illinois, and duly qualified to transact business and own and deal in real property in the State of Illinois whose address is in care of Hamilton Partners, Inc., 300 Park Boulevard, Suite 500, Itasca, Illinois 60143

(herein, whether one or more, and if more than one jointly and severally, for convenience referred to as the "Assignor") to the

INLAND BANK AND TRUST, an Illinois banking corporation, whose address is 2805 Butterfield Road, Suite 200, Oak Brook, Illinois 60523 (herein, together with its successors and assigns, including each and every holder from time to time of the Note hereinafter defined, called the "Mortgagee").

Handwritten initials/signature

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WITNESSETH:

WHEREAS, in order to secure an indebtedness in the amount of SIX MILLION FOUR HUNDRED FORTY THOUSAND AND NO/100S DOLLARS (\$6,440,000.00), Assignor has executed a Mortgage and Security Agreement (the "Mortgage"), of even date herewith, mortgaging to the Mortgagee the real estate in Cook County, Illinois described as set forth in Exhibit A attached hereto and made a part hereof (the "Mortgaged Premises").

AND WHEREAS, said Mortgagee is the Holder of said Mortgage and the Note secured thereby:

NOW THEREFORE, in order to further secure said indebtedness, and as a part of the consideration of said transaction, the Assignor hereby assigns, transfers and sets over unto said Mortgagee, its successors and assigns: (i) all of the rents now due or which may hereafter become due under or by virtue of any lease, either oral or written, or any letting of, or any agreement for the use and occupancy of all or any part of the Mortgaged Premises herein described, which may have been heretofore or may hereafter be made or agreed to by the Assignor (the "Leases"), or which may be made or agreed to by the Mortgagee under the powers granted to it in this instrument, and (ii) the Leases and all the avails thereunder, it being the intention hereby to establish an absolute transfer and assignment of all such rents, leases and agreements and all the avails thereunder unto the Mortgagee.

The foregoing assignment of rents, leases and avails thereunder is intended to be a present, absolute assignment from Assignor to Mortgagee and not merely the passing of a security interest. The foregoing notwithstanding, it is understood and agreed that the Mortgagee will not exercise its rights under this assignment until after default in any payment secured by the Mortgage or after a breach of any of Assignor's covenants and, in either case, expiration of applicable notice and cure periods under the Mortgage.

The undersigned Assignor covenants and agrees with Mortgagee:

- (a) That the Mortgaged Premises is presently leased as set forth in Exhibit B attached hereto and made a part hereof;
- (b) That the sole ownership of the entire landlord's interest in the Leases is vested in Assignor. Assignor has not and shall not (i) perform any act or execute any other instrument which might prevent Mortgagee from fully exercising its rights under this Assignment, (ii) execute any further assignment or pledge of the rents, income, profits or any of the Leases, (iii) accept payment of any installment of rent more than thirty (30) days before the due date thereof, or (iv) make any lease of the real estate except for actual occupancy by the tenant thereunder;
- (c) Other than as disclosed by Assignor to Mortgagee prior to the date hereof in writing, that there is no default now existing under any of the Leases and there exists no state of fact which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases; that Assignor will fulfill and perform each and every covenant and condition

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of each of the Leases by the landlord thereunder to be kept and performed, and, at the sole cost and expense of Assignor, enforce (short of termination of the Leases) the performance and observance of each and every covenant and condition of all such Leases by the tenants thereunder to be kept and performed;

- (d) That Assignor shall use its best efforts to give prompt notice to Mortgagee of each notice received by Assignor claiming that a default has occurred under any of the Leases on the part of the landlord, together with a complete copy of each such notice;
- (e) That each of the Leases shall be deemed to remain in full force and effect regardless of any merger of the interest of any landlord and any tenant under any of the Leases; and
- (f) That, without Mortgagee's prior written consent, Assignor will not suffer or permit any of the Leases to become subordinate to any lien other than the lien of the Mortgage, this Assignment and general real estate taxes not delinquent.

The Assignor does hereby irrevocably authorize the said Mortgagee to manage the Mortgaged Premises, and further authorize the said Mortgagee to let and re-let the Mortgaged Premises or any part thereof, according to its own discretion, and to bring or defend any suits in connection with said premises in its own name or in the names of the Assignor, as it may deem expedient, and to make such repairs to the Mortgaged Premises as it may deem proper or advisable, and to do anything in and about the Mortgaged Premises that the Assignor might do, hereby ratifying and confirming anything and everything that the said Mortgagee may do.

It is understood and agreed that the said Mortgagee shall have the power to use and apply said avails, issues and profits toward the payment of any present or future indebtedness or liability of the Assignor to the said Mortgagee, due or to become due, or that may hereafter be contracted, and also toward the payment of all expenses for the care and management of the Mortgaged Premises, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing the Mortgaged Premises and collecting rents and the expense for such attorneys, agents and servants as may reasonably be necessary.

It is further understood and agreed that in the event of the exercise of this assignment, the Assignor will, upon the demand of the Mortgagee, either surrender to Mortgagee possession of the Mortgaged Premises or pay rent for the portion of the Mortgaged Premises occupied by the Assignor at the prevailing rate per month for each square foot occupied. Failure on the part of the Assignor to promptly surrender possession or pay said rent on the first day of each and every month shall, in and of itself, constitute a forcible entry and detainer and the said Mortgagee may in its own name and without notice or demand, maintain an action of forcible entry and detainer and obtain possession of the Mortgaged Premises. This assignment shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto and shall be construed as a covenant running with the land, and shall continue in full force

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and effect until all of the indebtedness and liability of the Assignor to the said Mortgagee shall have been fully paid, at which time this assignment and authority shall terminate.

The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to discharge any obligation, duty or liability under any leases, nor shall this Assignment operate to place upon Mortgagee responsibility for the control, care, management or repair of the Mortgaged Premises or the carrying out of any of the terms and conditions of any leases; nor shall it operate to make the Mortgagee responsible or liable for any waste committed on the Mortgaged Premises by the lessee under any lease or any other party, or for any dangerous or defective condition of the Mortgaged Premises, or for any negligence in the management, upkeep, repair or control of the Mortgaged Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger.

The Assignor shall and does agree to indemnify and to hold Mortgagee harmless of and from any and all liability, loss, cost, damage or expense which it 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 it (except if caused by the gross negligence or willful misconduct of Mortgagee) by reason of any alleged obligations or undertakings on the part of Mortgagee to perform or discharge any of the terms or covenants set forth in any leases. Should the Mortgagee incur any such liability, loss, cost, damage or expense under any leases or under or by reason of this Assignment, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse the Mortgagee therefor immediately upon demand.

The failure of the said Mortgagee to exercise any right which it might exercise hereunder shall not be deemed a waiver by the said Mortgagee of its right of exercise thereafter.

This Assignment applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. Wherever the term "Mortgagee" is used herein, such term shall include all successors and assigns, including each and every subsequent holder or participant in the Note, of the Mortgagee who shall have and enjoy all of the rights, powers and benefits hereby conferred upon Mortgagee.

The recourse of Mortgagee with respect to the obligations evidenced hereby shall be solely to the Premises (as defined in the Mortgage). It is expressly understood and agreed that nothing contained herein shall be construed as creating any liability on Assignor personally to pay the Note or any interest that may accrue hereon, or any other indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein; all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right hereunder, and that so far as the Mortgagee personally is concerned, the legal holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the Premises for the payment thereof, by the enforcement of the lien created under any of the Loan Documents, in the manner herein and therein provided; provided, however, that subject to the limitation of recourse for liability to the Premises as set forth herein, nothing contained herein or in any Loan Document shall:

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- (a) limit Mortgagee's other rights and remedies against the Assignor hereunder or thereunder, either at law or in equity;
- (b) limit the enforceability of, or Mortgagee's recourse under, any indemnity, guaranty, master lease or similar instrument entered into in connection with the Loan (as defined in the Mortgage); or
- (c) relieve the Assignor from personal liability or responsibility for:
 - 1) waste with respect to the Property (as defined in the Mortgage), or any act or omission which materially reduces the value of the Property, committed by Assignor;
 - 2) any security deposits of tenants not turned over to Mortgagee upon foreclosure, or conveyance in lieu thereof;
 - 3) any insurance proceeds or condemnation awards received by Assignor and not turned over to Mortgagee or used for restoration or repair of the Property;
 - 4) any rents and other income from the Property received by the Assignor after a default under the Loan Documents and not otherwise applied to the current (not deferred) fixed and operating expenses of the Property or to the indebtedness under the Note; provided, however, the Assignor shall be personally liable for any such amounts paid as management, maintenance, repair or janitorial fees, costs, expenses or any other charges to a person or entity related to or affiliated with Assignor in excess of the market value of the services rendered by such affiliate;
 - 5) any taxes (accrued and/or payable), assessments, utility charges and/or insurance premiums with respect to the Property, or
 - 6) any sums expended by Mortgagee prior to foreclosure in fulfilling the obligations of Assignor, as lessor, under any leases of the Property.

Notwithstanding the foregoing, this agreement by Mortgagee not to pursue recourse liability SHALL BECOME NULL AND VOID and shall be of no further force and effect in the event:

- (a) that the Premises or any part thereof or any interest therein shall be further encumbered by a voluntary lien securing an obligation upon which the Assignor shall be personally liable for repayment; or
- (b) that there shall be any breach or violation of the due on sale or encumbrance sections of this Mortgage; or
- (c) of any fraud or intentional misrepresentation by Assignor in connection with the Premises, the Loan Documents, the Loan application, or any other aspect of the Loan; or

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(d) that Assignor executes an amendment or termination of any lease assigned to Mortgagee under the Loan Documents, without the prior written consent of Mortgagee, if such consent is required under the Loan Documents.

[Signature Page Immediately Following]

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

ASSIGNOR:

85 ALGONQUIN L.L.C., an Illinois
limited liability company

By: HP 85 ALGONQUIN L.L.C., an
Illinois limited liability company, its
Manager

By: 
Patrick J. McKillen, Managing Member

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ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
 COUNTY OF DUPAGE)

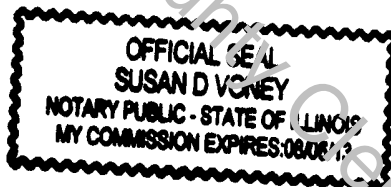
On this, the 26 day of August, 2009, before me, the undersigned, personally appeared Patrick J. McKillen, who acknowledged himself to be a Managing Member of HP 85 ALGONQUIN L.L.C., an Illinois limited liability company, Manager of 85 ALGONQUIN L.L.C., an Illinois limited liability company, and that he as such Managing Member being authorized to do so, executed the foregoing instrument for the purposes therein contained as the free and voluntary act of said limited liability company, as the Manager of the aforesaid limited liability company by signing the name of the limited liability, by himself as such Managing Member.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.

Susan D. Vorney

 Notary Public

My commission expires:



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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOT 2 IN ARLINGTON PLACE SUBDIVISION, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPT THAT PART TAKEN IN FEE SIMPLE TITLE BY THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF ILLINOIS IN CASE NUMBER 93L51190, AS FOLLOWS: THAT PART OF LOT 2 IN ARLINGTON PLACE SUBDIVISION, BEING A SUBDIVISION IN PART OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF, RECORDED NOVEMBER 29, 1979 AS DOCUMENT 25261219, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE ON AN ASSUMED BEARING OF SOUTH 32 DEGREES 56 MINUTES 06 SECONDS WEST ALONG THE EASTERLY LINE OF SAID LOT 2 A DISTANCE OF 14.43 FEET TO A POINT ON A 2551.07 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS NORTH 33 DEGREES, 27 MINUTES 05 SECONDS EAST FROM SAID POINT; THENCE NORTHWESTERLY ALONG SAID CURVE, RADIUS 2551.07 FEET, CENTRAL ANGLE 1 DEGREE 33 MINUTES 00 SECONDS 69.01 FEET TO THE WESTERLY LINE OF SAID LOT 2, BEING ALSO A POINT ON A 30.00 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS SOUTH 89 DEGREES 23 MINUTES 13 SECONDS WEST FROM SAID POINT; THENCE NORTHWESTERLY ALONG SAID CURVE, BEING ALSO THE SAID WESTERLY LINE OF LOT 2, RADIUS OF 30.00 FEET, CENTRAL ANGLE 55 DEGREES 09 MINUTES 09 SECONDS 28.83 FEET TO THE NORTHWEST CORNER OF SAID LOT 2, BEING ALSO A POINT ON A 2541.29 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS NORTH 34 DEGREES 19 MINUTES 04 SECONDS EAST FROM SAID POINT; THENCE SOUTHEASTERLY ALONG SAID CURVE, BEING ALSO THE NORTHERLY LINE OF SAID LOT 2, RADIUS 2541.29 FEET, CENTRAL ANGLE 2 DEGREES 06 MINUTES 11 SECONDS 93.28 FEET (93.29 FEET, RECORDED) TO THE POINT OF BEGINNING.

PARCEL 2:

RECIPROCAL EASEMENT FOR INGRESS AND EGRESS AS CREATED BY THAT CERTAIN AGREEMENT DATED AUGUST 2, 1979 AND RECORDED OCTOBER 1, 1979 AS DOCUMENT 25171074 AND REGISTERED WITH THE REGISTRAR OF TITLES ON OCTOBER 1, 1979 AS DOCUMENT LR3121973 AND AS AMENDED BY AGREEMENT DATED JANUARY 27, 1981 AND RECORDED JUNE 4, 1981 AS DOCUMENT 25893428 AND FILED AS DOCUMENT LR3218008.

PARCEL 3:

EASEMENT FOR CREATION AND MAINTENANCE OF A DETENTION/RETENTION POND CREATED BY THAT CERTAIN AGREEMENT DATED DECEMBER 1, 1979 AND

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RECORDED WITH THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS JANUARY 4, 1980 AS DOCUMENT 25306989 AND REGISTERED WITH THE REGISTRAR OF TITLES JANUARY 4, 1980 AS DOCUMENT LR3139276 AND AS AMENDED BY DOCUMENT RECORDED MARCH 7, 1983 AS DOCUMENT NUMBER 26527048, AND AS AMENDED BY DOCUMENT RECORDED MARCH 7, 1983 AS DOCUMENT NUMBER 26527048 AND FILED AS DOCUMENT NUMBER 3296792, PERTAINING TO LOT 1 AND LOT 2 IN ARLINGTON PLACE SUBDIVISION, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 08-16-200-102-0000

COMMONLY KNOWN AS: 85 WEST ALGONQUIN ROAD, ARLINGTON HEIGHTS, ILLINOIS 60005

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EXHIBIT B

EXISTING LEASES

<u>Tenant</u>	<u>Space</u>
Amadeus North America	230
Café Mackinac	140
Chicago Title Insurance Company	400
Chicago Title Land Trust	430
Dataco, LLC	360
DLZ f/k/a Brighton Engineering	220
ETO Precision of America	120
Executive Administration	550
Executive Administration	550
Gate Gourmet	500
Great Lakes Synergy	600
Heinz North America	210
J.M. Wilson Corp.	200
Kyodo Yushi USA	170
Marshall Dickler	420
Marubeni Transport	415
Maxam Assurance	130
Menke & Associates	560
Nationwide Hospitality, Inc.	160
Sharp Electronics	280
Uniglobe, Inc.	570

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Workcomp f/k/a Tesia	410
Odyssey Healthcare	100

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