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Doc#: 1025333023 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/10/2010 09:20 AM Pg: 1 of 11

**THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN
TO:**

Chuhak & Tecson, P.C.
Attention: Valerie J. Freireich
30 South Wacker Drive
Suite 2600
Chicago, Illinois 60606

Space Above This Line Reserved For Recorder's Use

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES ("Assignment") is made and delivered as of this 10th day of August, 2010, by Standard Bank and Trust Company, not individually but solely as Trustee under Trust Agreement dated June 23, 2010 and known as Trust Number 20861 ("Assignor"), to and for the benefit of Standard Bank and Trust Company, its successors and assigns ("Assignee").

RECITALS

A. Assignee has agreed to provide a construction loan to Four Partners Property, LLC, an Illinois Limited Liability Company ("Borrower"), which is the owner of the beneficial interest, directly or indirectly, in Assignor, in the original principal amount of One Million Six Hundred Sixty Thousand and 00/100 Dollars (\$1,660,000.00) ("Loan"). The Loan is evidenced by a Construction Note in the original principal amount of One Million Six Hundred Sixty Thousand and 00/100 Dollars (\$1,660,000.00) of even date herewith (as amended, restated or replaced from time to time, "Note") made by Borrower, payable to Assignee and due on April 5, 2011 ("Maturity Date"), except as may be accelerated pursuant to the terms hereof or of the Note. The Loan is also evidenced by that certain Construction Loan Agreement of even date herewith by and between Borrower and Assignee (as Lender) ("Loan Agreement"), which is incorporated herein by reference, together with all other Loan Documents (as defined in the Loan Agreement).

B. A condition precedent to the granting of the Loan, and pursuant to the terms of the Loan Agreement, the Assignor and Borrower (pursuant to its power of direction) have agreed to provide, *inter alia*, an assignment of rents and leases to certain Premises (hereinafter described and defined) as security for the Loan, Note, Loan Documents.

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor assigns, covenants, grants, conveys, represents, warrants and agrees as follows:

1. **Definitions.** Capitalized terms used herein without definition have the meanings given such terms in the Loan Agreement, which also contains rules of interpretation that apply to terms defined therein and herein, or in that certain Construction Mortgage of even date herewith from Assignor for the benefit of Assignee (as amended, modified, replaced or restated from time to time, the "Mortgage") given as security for the Loan.

2. **Grant of Security Interest.** Assignor hereby grants, transfers, sets over and assigns to Assignee, all of the right, title and interest of Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts and other receivables arising out of or from the land legally described in Exhibit A attached hereto and made a part hereof and all buildings and other improvements located thereon (such land and improvements being hereinafter referred to collectively as the "Premises"), including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (collectively, "Leases"), now or hereafter existing, of all or any part of the Premises including without limitation the lease between Assignor or Borrower as landlord and Four Partners Petroleum, Inc., an Illinois Corporation ("Petroleum"), as tenant together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is an absolute transfer and assignment of the foregoing interests to Assignee given to secure:

2.1 Payment by Borrower when due of (i) the indebtedness arising from the Loan evidenced by the Note, Loan Agreement or other Loan Documents and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing from time to time to Assignee by Borrower under or with respect to the Loan Documents; and (iii) all costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees; and

2.2 Observance and performance by Borrower of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower or any other Obligor to, in favor of or benefiting Assignee which are evidenced or secured by or otherwise provided in the Note, Loan Agreement, this Assignment or any of the other Loan Documents, together with all amendments, renewals and modifications thereof.

3. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that:

3.1 This Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

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3.2 Assignor or Borrower is the landlord under all of the Leases;

3.3 There is no other existing assignment of Assignor's entire or any part of its interest in or to any of the Leases, other than to Lender in connection with previous loans to Assignor or Borrower, or any of the rents, issues, income or profits assigned hereunder, nor has Assignor entered into any agreement to subordinate any of the Leases or Assignor's or Borrower's right to receive any of the rents, issues, income or profits assigned hereunder;

3.4 Assignor has not executed any instrument or performed any act which may prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation; and

3.5 There are no defaults by the landlord and, to Assignee's knowledge, there are no material defaults by tenants under any of the Leases.

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

4.1 Assignor shall not lease any portion of the Premises unless Assignor obtains Assignee's prior written consent to all aspects of each such lease.

4.2 Assignor 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 Assignor shall not do or suffer to be done anything to impair the security thereof. Assignor shall not (i) release the liability of any tenant under any of the Leases, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any of the Leases, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises.

4.3 Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits.

4.4 Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all of the Leases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents, and except for any assignment previously made to Lender in connection with prior loans to Assignor;

4.5 Assignor shall not modify the terms and provisions of any Lease, nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease, without Assignee's prior written consent; provided, however, that Assignor 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.

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4.6 Assignor shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises 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 Assignor and Assignee.

4.7 Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law.

4.8 Assignor shall not waive or excuse the obligation to pay rent under any Lease.

4.9 Assignor 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 Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear.

4.10 Assignor shall give prompt notice to Assignee of any notice of any default by the lessor under any Lease received from any tenant or guarantor thereunder.

4.11 Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and shall immediately notify Assignee of any material breach by the tenant or guarantor under any such Lease.

4.12 Assignor 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.

4.13 Assignor shall not execute hereafter any Lease unless there shall be included therein a provision providing that the tenant thereunder acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to Assignee as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash (with any applicable interest) by Assignee as security for tenant's performance under such Lease.

4.14 If any tenant under any Lease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor 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 Assignee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the

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order of Assignee any such check, the proceeds of which shall be applied in accordance with the provisions of Section 8 below.

4.15 Upon request of Assignee from time to time, Assignor shall deliver to Assignee a certified rent roll for the Premises as of the last day of such period in a form reasonably satisfactory to Assignee.

5. **Rights Prior to Default.** Unless or until an Event of Default (as defined in Section 6 below) shall occur, Assignor shall have the right to collect, at the time (but in no event more than one (1) month in advance) provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Upon the occurrence of an Event of Default, Assignor's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to Assignor. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

6. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (i) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any set forth in the Loan Agreement, or (ii) any other Event of Default described in the Note, the Loan Agreement, the Mortgage or any of the other Loan Documents.

7. **Rights and Remedies Upon Default.** In addition and not in limitation of remedies set forth in the Loan Agreement and other Loan Documents, at any time upon or following the occurrence of any Event of Default, Assignee, at its option, 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 Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor, Borrower or any Guarantor of the Note 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:

7.1 Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

7.2 Enter upon and take possession of the Premises, 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 Assignee 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 Assignee, 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 Assignee deems necessary or proper;

7.3 Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises 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

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the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee 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 Assignor shall facilitate in all reasonable ways Assignee'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 Assignee; and

7.4 Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate and shall be secured by this Assignment.

8. **Application of Proceeds.** All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises 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 Assignee shall elect in its sole and absolute discretion.

9. **Limitation of Assignee's Liability.** Assignee shall not be liable for any loss sustained by Assignor or Borrower resulting from Assignee's failure to let the Premises or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee 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 Assignor under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify, defend (using counsel satisfactory to Assignee) and hold Assignee harmless from and against any and all liability, loss or damage which Assignee 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 Assignee 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 Assignor be liable for any liability, loss or damage which Assignor incurs as a result of Assignee's gross negligence or willful misconduct. Should Assignee 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 Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises 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 Assignee of any of the rights set forth herein or in the Mortgage shall constitute or be construed as

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constituting Assignee as a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof or of the Mortgage.

10. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee 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 Assignee under the terms and provisions of such instruments, and Assignee 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. Assignee 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.

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

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

13. **Severability.** If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Assignee and Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

14. **Successors and Assigns.** This Assignment is binding upon Assignor and its legal representatives, successors and assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns.

15. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

16. **Duration.** This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

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17. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

18. **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 Assignor and Assignee, as the case may be, as specified in the Mortgage.

19. **Waiver of Trial by Jury.** ASSIGNOR AND ASSIGNEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (i) UNDER THIS ASSIGNMENT OR ANY LOAN DOCUMENTS OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR THE LOAN OR (ii) ARISING FROM ANY BANKING OR LENDING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. ASSIGNOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST ASSIGNEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

20. **Trustee Exculpation.** This Assignment is executed by the undersigned Assignor not personally but solely as trustee in the exercise of the power and authority conferred upon and vested in it as such trustee. It is expressly understood and agreed that nothing herein contained or contained in the Loan Documents shall be construed as creating any liability on trustee personally to pay any Liabilities or Obligations (as described in the Loan Agreement and other Loan Documents) or the Indebtedness or any interest that may accrue thereon, or any amounts whatsoever accruing under the Note or Loan Agreement, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Assignee and by every person now or thereafter claiming any right or security hereunder. So far as Assignor personally is concerned (but for no other purpose), the legal holder or holders of the Note, Loan Agreement and any Indebtedness and the owner or owners of any indebtedness accruing thereunder shall look solely to the Premises hereby conveyed for payment, and the enforcement of the lien hereby created shall be in the manner herein and in the Note and Loan Agreement provided. Notwithstanding anything to the contrary contained herein, Lender or other legal holder or holders of the Note, Loan Agreement and any Indebtedness, and the owner or owners of any indebtedness accruing hereunder, may proceed by action against any other security at any time given to secure payment, or by action to enforce the personal liability of the Borrower or any Guarantors and pursuant to all of the terms of applicable law and the Loan Documents.




[Remainder of Page Intentionally Left Blank, Signature Page Follows]

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JOINDER

The undersigned, the Borrower in the aforesaid Assignment, accepts, assumes, agrees to perform and adopts all of the duties, obligations, waivers, representations, releases and undertakings of Assignor in the above Assignment, and agrees to direct Assignor, when applicable, to perform any such acts (including execution of documents), as Lender may request at its discretion from time to time.

FOUR PARTNERS PROPERTY, LLC

By: 
By: 
By: 

Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION OF PROJECT LAND

PARCEL 1:

LOTS 4 TO 17 IN BLOCK 5 IN COLE AND COREY'S SUBDIVISION OF LOT 9 IN THE ASSESSOR'S DIVISION OF THE WEST HALF OF SECTION 33 AND THAT PART LYING EAST OF CHICAGO AND ROCK ISLAND AND PACIFIC RAILROAD OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN. IN

ALSO:

Cook County, Illinois

PARCEL 2:

LOTS 21, 22, 23 AND 24 IN THE SUBDIVISION OF BLOCK 4 IN COLE AND COREY'S SUBDIVISION OF LOT 9 IN THE ASSESSOR'S DIVISION OF THE WEST HALF OF SECTION 33 AND PART OF SECTION 33 LYING EAST OF THE CHICAGO ROCK ISLAND AND PACIFIC RAILROAD IN TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

PARCEL 3:

LOT 2 IN BLOCK 5 IN COLE AND COREY'S SUBDIVISION OF LOT 9 IN THE ASSESSOR'S DIVISION OF THE WEST HALF OF SECTION 33 AND THAT PART LYING EAST OF CHICAGO AND ROCK ISLAND AND PACIFIC RAILROAD OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN. IN

Cook County, Illinois

COMMON ADDRESS: 8614-54 S. Vincennes Avenue & 8543-49 S. Halsted Street, Chicago, IL

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