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Doc#: 1027312027 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/30/2010 08:38 AM Pg: 1 of 12

8323038 P1 B. Schmitt
1 of 2

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Fox, Hefter, Swibel, Levin & Carroll, LLP
200 W. Madison Street, Suite 3000
Chicago, Illinois 60600
Attn: Joseph C. Huntzicker

(Space Above For Recorder's Use)

AMENDMENT TO OPEN-END MORTGAGE AND ABSOLUTE ASSIGNMENT OF LESSOR'S INTEREST IN LEASES AND RENTS

THIS AMENDMENT TO OPEN-END MORTGAGE AND ABSOLUTE ASSIGNMENT OF LESSOR'S INTEREST IN LEASES AND RENTS (this "**Amendment**") is made as of September 27, 2010, by and between 4220 KILDARE LLC, an Illinois limited liability company ("**Mortgagor**" or "**Assignor**"), having an office and place of business at 2340 River Road, Suite 310, Des Plaines, Illinois 60018, and WACHOVIA FINANCIAL SERVICES, INC., having an office and place of business at c/o Wells Fargo Bank, National Association, 123 North Wacker Drive, Suite 1900, Chicago, Illinois 60606 (together with its successors and assigns, the "**Bank**").

WITNESSETH:

A. Pursuant to the Loan Agreement dated as of June 28, 2006 (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**") between Lender and Mortgagor, Lender agreed to make a loan (the "**Original Loan**") to Mortgagor in the original principal amount of up to \$20,000,000 to Mortgagor.

B. The Original Loan is evidenced by the Promissory Note dated June 28, 2006 (as amended, restated, supplemented or otherwise modified from time to time, the "**2006 Note**") executed by Mortgagor in favor of Lender in the original principal amount of \$20,000,000.

C. Pursuant to the Modification of Loan Documents dated as of June 3, 2008 (as amended, restated, supplemented or otherwise modified from time to time, the "**First Amendment Agreement**") among Lender, Mortgagor and Guarantors, Lender agreed to make an additional loan (the "**Additional Loan**") to Mortgagor in the original principal amount of \$5,000,000 to Mortgagor.

D. The Additional Loan is evidenced by the Promissory Note dated June 3, 2008 (as amended, restated, supplemented or otherwise modified from time to time, the "**2008 Note**")

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executed by Mortgagor in favor of Lender in the original principal amount of \$5,000,000. The Original Loan and the Additional Loan are hereinafter collectively the "Loan".

E. The Loan is secured by, among other things, (i) the Open-End Mortgage and Security Agreement and Financing Statement dated as of June 28, 2006 by Mortgagor in favor of Bank (as amended, restated, supplemented or otherwise modified from time to time, the "Mortgage") and recorded with the Cook County Recorder as Document No. 0618843187 on July 7, 2006, and (ii) the Absolute Assignment of Lessor's Interests in Leases and Rents dated as of June 28, 2006 by Mortgagor in favor of Bank (as amended, restated, supplemented or otherwise modified from time to time, the "ALR") and recorded with the Cook County Recorder as Document No. 0618843188 on July 7, 2006. The Mortgage, ALR and certain other documents were amended by the Modification of Loan Documents dated as of June 3, 2008 by and among Mortgagor, Bank and certain other parties and recorded with the Cook County Recorder as Document No. 0816131017 on June 9, 2008.

F. Pursuant to the Third Amendment Agreement of even date herewith among Mortgagor, Bank and certain guarantors, the parties agreed to (i) extend the maturity date of the Loan to October 1, 2015, (ii) amend, restate and merge the 2008 Note into the 2006 Note, (iii) increase the principal amount of the Loan to THIRTY MILLION AND 00/100 DOLLARS (\$30,000,000) and amend the Note accordingly, and (iv) amend the Loan in certain other respects as more particularly described therein.

G. The Property is legally described in Exhibit A attached hereto and made part hereof.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid, the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Incorporation of Recitals.** The aforesaid recitals are hereby incorporated into this Amendment by reference as if fully set forth in this Section 1. Wherever the terms and conditions of this Amendment conflict with the terms and conditions of the Mortgage or the ALR, the terms and conditions of this Amendment shall control.

2. **Defined Terms.** Capitalized terms used and not otherwise defined herein shall have the respective meanings provided for in the Mortgage, as amended by this Amendment.

3. **Amendments to the Mortgage and ALR.** The Mortgage and the ALR each is hereby amended as follows:

a. All references in the Mortgage and the ALR to the amount of the Loan shall mean Thirty Million and 00/100 Dollars (\$30,000,000).

b. All references in the Mortgage and the ALR to the amount of the "Note" shall mean the 2006 Note as amended in the principal amount of Thirty Million and 00/100 Dollars (\$30,000,000).

c. In addition to all other Obligations, the Mortgage and the ALR shall secure the following: payment to Bank of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and Bank in connection with the Note.

d. In addition to all other Obligations, the Mortgage and the ALR shall secure the following: payment to Wells Fargo Bank, National Association ("Wells Fargo") or any affiliate of Bank or Wells Fargo of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of

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any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and Wells Fargo or any affiliate of Bank or Wells Fargo in connection with the Note. Wells Fargo hereby appoints Bank as its agent and attorney-in-fact to enforce the Mortgage and the ALR and to collect any amounts owing to Wells Fargo under this paragraph. Upon collection of any amounts owing to Wells Fargo under this paragraph, Bank shall promptly deliver the same to Wells Fargo. Mortgagor hereby expressly (1) acknowledges that the Mortgage and the ALR secure payment of the obligations of Mortgagor to Wells Fargo described in this paragraph and agrees that for purposes of collection of the obligations described in this paragraph the defined term "Bank" under the Mortgage and the ALR shall be deemed to include Wells Fargo, (2) consents to Wells Fargo appointing Bank as Wells Fargo's agent and attorney-in-fact as described in this paragraph and (3) consents to Bank, upon Bank's collection of any amounts owing to Wells Fargo under this paragraph, delivering the same to Wells Fargo.

The reference to "\$40,000,000" in the Paragraph of the Note entitled "Future Advances" is replaced with a reference to "\$60,000,000".

f. The Paragraph of the Mortgage entitled "Grant of Security Interest in Personal Property" is hereby amended by adding the following language:

"Mortgagor hereby grants and assigns to Bank a security interest, to secure payment and performance of all of the Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Land; together with all Payments and other rents and security deposits derived from the Land; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Land or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Land; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Land, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights, all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Land; all advance payments of insurance premiums made by Mortgagor with respect to the Land; all plans, drawings and specifications relating to the Land; all loan funds held by Bank, whether or not disbursed; all funds deposited with Bank pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Land or any portion thereof; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Bank to Mortgagor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and

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Bank in connection with the Note; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing. "Payments" means all amounts payable and all rights and benefits accruing to Mortgagor under the leases.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under the Illinois Uniform Commercial Code, as amended or recodified from time to time ("UCC")."

g. The reference to "75,000 square feet" in the Paragraph of the Mortgage entitled "Leases, Subleases and Easements" is hereby replaced with a reference to "100,000 square feet and having triple net rental rates below \$8.50 per square foot per year". The definition of "Major Lease" is hereby amended to mean any lease consisting of all or any portion of the Property consisting of more than 100,000 square feet and having triple net rental rates below \$8.50 per square foot per year.

h. The definition of "Major Lease" set forth in the Paragraph of the ALR entitled "Covenants" is hereby amended to mean any lease consisting of all or any portion of the Property consisting of more than 100,000 square feet and having triple net rental rates below \$8.50 per square foot per year.

i. The notice address of Bank under each of the Mortgage and the ALR is amended to be:

Wachovia Financial Services, Inc.
123 North Wacker Drive, Suite 1900
Chicago, Illinois 60606
Attention: Cynthia Erickson
Loan No. WB-10469 and WB-10470

With a copy to:

Wachovia Financial Services, Inc.
608 2ND Ave South, 11th Floor
Minneapolis, MN 55402
Attention: Patti Matthews
Loan No. WB-10469 and WB-10470

4. Miscellaneous.

(a) Captions. Section captions used in this Amendment are for convenience only, and shall not affect the construction of this Amendment.

(b) Governing Law. The parties to this Amendment agree that the rights and obligations of the parties under this Amendment shall be construed and interpreted in accordance with, and governed by, the internal laws of the State of Illinois.

(c) Counterparts. This Amendment may be executed in any number of counterparts and by the different parties on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Amendment.

(d) Successors and Assigns. This Amendment shall be binding upon and shall inure to the benefit of Mortgagor and Bank and their respective successors and assigns.

(e) References. Any reference to the Mortgage or the ALR contained in any notice, request, certificate, or other document executed concurrently with or after the execution and delivery of this Amendment shall be deemed to include this Amendment unless the context shall otherwise require.

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(f) Continued Effectiveness. Except as herein amended, the Mortgage and the ALR each shall remain unaltered and in full force and effect and the Mortgage and the ALR is hereby ratified in all respects.

(g) Construction. Mortgagor acknowledges that it has been represented by its own legal counsel in connection with this Amendment, that it has exercised independent judgment with respect to this Amendment, and that it has not relied on Bank's counsel for any advice with respect to this Amendment.

[The remainder of this page intentionally left blank.]

[Signature page follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment dated as of the day and year first above written.

MORTGAGOR:

4220 KILDARE LLC,
an Illinois limited liability company

By: 
Name: John M. Daley
Title: Manager

BANK:

WACHOVIA FINANCIAL SERVICES, INC.

By: _____
Name: _____
Title: _____

WELLS FARGO:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment dated as of the day and year first above written.

MORTGAGOR:

4220 KILDARE LLC,
an Illinois limited liability company

By: _____
Name: John M. Daley
Title: Manager

BANK:

WACHOVIA FINANCIAL SERVICES, INC.

By: _____
Name: Cynthia Erickson
Title: VP

WELLS FARGO:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name: Cynthia Erickson
Title: VP

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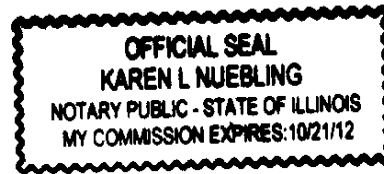
STATE OF IL)
) SS
COUNTY COOK)

I, KAREN NUEBLING a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT John M. Daley personally known to me and known by me to be a Manager of 4330 Kildare LLC, an Illinois limited liability company, in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21 day of SEPTEMBER, 2010.

Karen L. Nuebling
Notary Public

Commission Expires: 10/21/12



STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

Before me, _____, a Notary Public of the State and County aforesaid, personally appeared _____, with whom I am acquainted, and who, upon oath, acknowledged himself/herself to be the _____ of Wachovia Financial Services, Inc., and that he/she as such _____, being authorized so to do, executed the this instrument on behalf of said national association.

Given under my hand and official seal, this ___ day of _____, 2010.

NOTARY PUBLIC

My Commission Expires: _____

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STATE OF _____)
) SS
COUNTY _____)

I, _____, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT John M. Daley personally known to me and known by me to be a Manager of 4330 Kildare LLC, an Illinois limited liability company, in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ___ day of _____, 2010.

Notary Public

Commission Expires: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

Before me, Ruth Sindt, a Notary Public of the State and County aforesaid, personally appeared Cynthia Erickson with whom I am acquainted, and who, upon oath, acknowledged himself/herself to be the VP of Wachovia Financial Services, Inc., and that he/she as such VP, being authorized so to do, executed the this instrument on behalf of said national association.

Given under my hand and official seal, this 24th day of September, 2010.

Ruth Sindt

NOTARY PUBLIC

My Commission Expires: 11/6/12



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STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

Before me, Ruth Sindt, a Notary Public of the State and County aforesaid, personally appeared Cynthia Erickson, with whom I am acquainted, and who, upon oath, acknowledged himself/herself to be the VP of Wells Fargo Bank, National Association, and that he/she as such VP, being authorized so to do, executed the this instrument on behalf of said national association.

Given under my hand and official seal, this 24th day of September, 2010.

Ruth Sindt

NOTARY PUBLIC

My Commission Expires: 11/6/12



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EXHIBIT A

Legal Description of Property

A TRACT OF LAND BEING A PART OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF DISTRICT BOULEVARD, AND THE WESTERLY RIGHT OF WAY OF KILDARE BOULEVARD, THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID WESTERLY RIGHT OF WAY, A DISTANCE OF 667.66 FEET TO THE NORTHERLY RIGHT OF WAY OF 44TH STREET; THENCE NORTH 89 DEGREES, 39 MINUTES, 35 SECONDS WEST, ALONG SAID NORTHERLY RIGHT OF WAY, A DISTANCE OF 1607.26 FEET TO THE WESTERLY LINE OF THE LANDS CONVEYED BY THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY TO THE CRAWFORD REAL ESTATE DEVELOPMENT COMPANY, PER DOCUMENT NUMBER 17307420; THENCE NORTH 10 DEGREES 12 MINUTES, 59 SECONDS WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 678.43 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF DISTRICT BOULEVARD; THENCE SOUTH 89 DEGREES, 40 MINUTES, 59 SECONDS EAST, ALONG SAID SOUTHERLY RIGHT OF WAY, A DISTANCE OF 24.41 FEET; THENCE SOUTH 10 DEGREES, 12 MINUTES, 59 SECONDS EAST A DISTANCE OF 132.76 FEET TO THE BEGINNING OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 309.62 FEET AND A CHORD BEARING SOUTH 35 DEGREES 17 MINUTES, 35 SECONDS EAST; THENCE SOUTHEASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 59.17 FEET TO A POINT ON A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 302.00 FEET AND A CHORD BEARING SOUTH 54 DEGREES 57 MINUTES 01 SECONDS EAST; THENCE SOUTHEASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 151.27 FEET; THENCE SOUTH 67 DEGREES, 59 MINUTES, 30 SECONDS EAST, A DISTANCE OF 49.29 FEET TO THE BEGINNING OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 310.00 FEET AND A CHORD BEARING 79 DEGREES 02 MINUTES 55 SECONDS EAST, THENCE SOUTHEASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 171.83 FEET; THENCE SOUTH 89 DEGREES, 39 MINUTES, 35 SECONDS EAST A DISTANCE OF 93.50 FEET TO THE BEGINNING OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 556.00 FEET AND A CHORD BEARING NORTH 86 DEGREES, 43 MINUTES, 18 SECONDS EAST; THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 74.53 FEET; THENCE NORTH 81 DEGREES 42 MINUTES 03 SECONDS EAST A DISTANCE OF 70.83 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 287.37 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF DISTRICT BOULEVARD; THENCE SOUTH 89 DEGREES 40 MINUTES 59 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY A DISTANCE OF 1130.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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PARCEL IDENTIFYING NUMBERS:

19-03-101-009-0000
19-03-200-019-0000
19-03-400-091-0000
19-03-400-121-0000
19-03-400-151-0000
19-03-400-154-0000
19-03-400-189-0000
19-03-400-190-0000

Street Address: 4220 South Kildare, Chicago, Illinois

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