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Doc#: 1035544029 Fee: \$64.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/21/2010 12:21 PM Pg: 1 of 15

353 N. CLARK, L.P.,  
a Delaware limited partnership, as assignor

(Borrower)

to

GERMAN AMERICAN CAPITAL CORPORATION, as assignee

(Lender)

## ASSIGNMENT OF LEASES AND RENTS

Dated: As of December 15, 2010

Location: 353 N. Clark Street, Chicago, IL

County: Cook County, IL

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
Attention: Charles E. Schrank, Esq.

First American Title Order #

DCS 459712-T KZ 3 of 9



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## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "*Assignment*") is made as of the 15th day of December, 2010 by 353 N. CLARK, L.P., a Delaware limited partnership, as assignor, having its principal place of business at c/o Tishman Speyer, 45 Rockefeller Plaza, New York, New York 10111 ("*Borrower*"), to GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation as assignee, having an address at 60 Wall Street, 10th Floor, New York, New York 10005 (together with its successors and/or assigns, "*Lender*").

### WITNESSETH:

A. This Assignment is given in connection with a loan in the principal sum of TWO HUNDRED TWENTY MILLION AND NO 100 DOLLARS (\$220,000,000) (the "*Loan*") made by Lender to Borrower pursuant to that certain Loan Agreement dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "*Loan Agreement*"), and evidenced by that certain Promissory Note dated the date hereof made by Borrower to Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "*Note*"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. The Note is secured by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof made by Borrower for the benefit of Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "*Mortgage*"), encumbering, as a first mortgage lien thereon, the land more particularly described on Exhibit A annexed hereto and made a part hereof and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements, and improvements now or hereafter located thereon (collectively, the "*Property*").

C. Borrower has agreed to execute and deliver this Assignment to further secure the payment and performance of all of the Obligations under the Note, the Loan Agreement and the other Loan Documents.

D. This Assignment is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents is secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Assignment.

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Assignment:

### ARTICLE 1 ASSIGNMENT

**Section 1.1 Property Assigned.** Borrower hereby absolutely and unconditionally assigns and grants to Lender (subject, however, to the license back from Borrower to Lender

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pursuant to Section 2.1 below), the following property, rights, interests and estates, now owned or hereafter acquired by Borrower:

(a) Leases. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Property, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether 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**") (collectively, the "**Leases**"), together with any extension, renewal or replacement of same. This Assignment of existing and future Leases and other agreements being effective without any further or supplemental assignment documents.

(b) Rents. All Rents, which term shall include Rents paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code. Notwithstanding the foregoing, "Rents" shall not include amounts payable to the applicable tenant pursuant to the terms of Section 4 of the Jenner Fifth Amendment.

(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 (individually, a "**Lease Guaranty**", and collectively, the "**Lease Guaranties**") given by any guarantor in connection with any of the Leases or leasing commissions (individually, a "**Lease Guarantor**", and collectively, the "**Lease Guarantors**") to Borrower.

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

(f) Other. All rights, powers, privileges, options and other benefits of Borrower as the lessor under any of the Leases and the beneficiary under any of the Lease Guaranties, including, without limitation, the immediate and continuing right to make claims for, and to receive, collect and acknowledge 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 Debt or the Other Obligations), and to do all other things which Borrower or any lessor is or may become entitled to do under any of the Leases or Lease Guaranties.

(g) Entry. The right, subject to the provisions of the Loan Agreement and to the extent permitted by applicable law, 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.

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(h) Power of Attorney. Upon the occurrence and during the continuance 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 3.1 of this Assignment, and any or all other actions designated by Lender for the proper management and preservation of the Property.

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

## ARTICLE 2 TERMS OF ASSIGNMENT

**Section 2.1 Present Assignment and License Back**. It is intended by Borrower that this Assignment constitute a present, absolute assignment of the Leases, Rents, Lease Guaranties and Bankruptcy Claims, and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 2.1 and the terms of the Loan Agreement and the Cash Management Agreement, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents, as well as any sums due under the Lease Guaranties and to do all other things which Borrower or any lessor is entitled to do under the Leases or Lease Guaranties, subject to obligations under Section 6.1 of the Loan Agreement to cause all Rents to be deposited into the Clearing Account. Until deposited into the Clearing Account, Borrower shall hold the Rents, as well as all sums received pursuant to any Lease Guaranty, or a portion thereof sufficient to discharge all current sums due on the Obligations, in trust for the benefit of Lender for use in the payment of such sums.

**Section 2.2 Notice to Lessees**. Borrower hereby authorizes and directs the lessees named in the Leases, any other future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties, upon receipt from Lender of written notice to the effect that Lender is then the holder of this Assignment and that an Event of Default exists, and to continue doing so until otherwise notified by Lender.

**Section 2.3 Incorporation by Reference**. Subject to the provisions of Section 5.9 herein, all representations, warranties, covenants, conditions and agreements contained in the Loan Agreement and the other Loan Documents, as the same may be modified, renewed, substituted or extended from time to time, are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

## ARTICLE 3 REMEDIES

**Section 3.1 Remedies of Lender**. Upon the occurrence and during the continuance of an Event of Default, the license granted to Borrower in Section 2.1 of this Assignment shall automatically be revoked and Lender shall immediately be entitled to possession of all Rents and all sums due under any Lease Guaranties, whether or not Lender enters upon or takes control of the Property. In addition, upon the occurrence and during the continuance of an Event of Default, Lender may, at its option, and to the extent permitted by applicable law, without

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waiving any Event of Default, without regard to the adequacy of the security for the Obligations, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower and its agents and servants from the Property, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto, and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and, either with or without taking possession of the Property, in its own name, demand, sue for or otherwise collect and receive all Rents and all sums due under all Lease Guaranties, including, without limitation, those past due and unpaid (with all such Rents and all sums due under any Lease Guaranties to be deposited into the Clearing Account to the extent and as required by the terms of the Loan Agreement and the Clearing Account Agreement), with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as Lender may deem proper and may apply the Rents and sums received pursuant to any Lease Guaranties to the payment of the following in such order and proportion as Lender in its sole discretion may determine, to the extent permitted by applicable law: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, waters charges, sewer rents and any other liens, and premiums for all insurance which Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Obligations, together with all costs and reasonable attorneys' fees actually incurred by Lender. In addition, upon the occurrence and during the continuance of an Event of Default, Lender, at its option, may (1) complete any construction on the Property in such manner and form as Lender deems advisable, (2) exercise all rights and powers of Borrower, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties (with all such Rents and all sums due under any Lease Guaranties to be deposited into the Clearing Account to the extent and as required by the terms of the Loan Agreement and the Clearing Account Agreement), and/or (3) either (i) require Borrower to pay monthly in advance to Lender or to any receiver appointed to collect the Rents the fair and reasonable rental value for the use and occupancy of such part of the Property as may then be in the possession of Borrower, or (ii) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

**Section 3.2 Other Remedies.** Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Agreement, the Note, the Mortgage or the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Obligations and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the Obligations of Borrower under this Assignment, the Loan Agreement, the Note,

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the other Loan Documents or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Loan Agreement, the Note, the Mortgage or any of the other Loan Documents (*provided, however*, that the foregoing shall not be deemed a waiver of Borrower's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

**Section 3.3 Other Security.** Lender may (i) take or release other security for the payment of the Obligations, (ii) release any party primarily or secondarily liable therefor, and/or (iii) apply any other security held by it to the payment of the Obligations, in each instance, without prejudice to any of its rights under this Assignment.

**Section 3.4 Non-Waiver.** The exercise by Lender of the option granted it in Section 3.1 of this Assignment and the collection of the Rents and the sums due under the Lease Guaranties and the application thereof as provided in the Loan Documents shall not be considered a waiver of any default or Event of Default by Borrower under the Note, the Loan Agreement, the Mortgage, this Assignment or the other Loan Documents. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Loan Agreement, the Note or the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Loan Agreement, the Note or the other Loan Documents (except to the extent otherwise provided in such modification or supplement). Lender may resort for the payment and performance of the Obligations to any other security held by Lender in such order and manner as Lender, in its sole discretion, may elect. Except as otherwise expressly required under applicable law, Lender may take any action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

**Section 3.5 Bankruptcy.**

(a) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code. Any amounts received by Lender as damages arising out of a rejection of any Lease as aforesaid shall be applied first to all reasonable costs and expenses of Lender (including, without limitation, reasonable attorneys'



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fees and disbursements) actually incurred in connection with the exercise of any of its rights or remedies under this Section 3.5.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject such Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten (10) day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after Lender's notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

## ARTICLE 4

### NO LIABILITY, FURTHER ASSURANCES

**Section 4.1 No Liability of Lender** This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after the occurrence and during the continuance of an Event of Default or from any other act or omission of Lender in managing the Property after the occurrence and during the continuance of an Event of Default unless such loss is caused by the gross negligence, willful misconduct or bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment and Borrower shall indemnify Lender for, and hold Lender harmless from, (a) any and all liability, loss or damage which may or might be incurred under the Leases, any Lease Guaranties or under or by reason of this Assignment, and (b) any and all claims and demands whatsoever including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties; provided, however, that Borrower shall not be liable for any liability, loss, or damage to the extent same arises (x) by reason of gross negligence, willful misconduct, or bad faith of Lender or (y) after Lender or an agent or successor thereof or any holder of the Note or any receiver takes title to or possession of the Property, unless such liability, loss or damage are a result of the acts or omissions of the Borrower. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees and costs, shall be secured by this Assignment and by the Mortgage and the other Loan Documents and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do Lender may, at its option, declare the Obligations to be immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on

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the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including, without limitation, the presence of any Hazardous Substances (as defined in the Environmental Indemnity), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger, unless the same is caused by the gross negligence or willful misconduct of the Lender.

**Section 4.2 No Mortgage In Possession.** Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender (other than liability relating to the gross negligence or willful misconduct of Lender), all such liability being expressly waived and released by Borrower.

**Section 4.3 Further Assurances.** Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter to be assigned, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver, and, effective upon the occurrence and during the continuation of an Event of Default, hereby further authorizes Lender, to execute in the name of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases.

## ARTICLE 5 MISCELLANEOUS PROVISIONS

**Section 5.1 Conflict of Terms.** In case of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

**Section 5.2 No Oral Change.** This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party(ies) against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 5.3 General Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in the singular or plural form and the word "**Borrower**" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by the Loan



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Agreement," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels, incurred or paid by Lender in protecting its interest in the Property, the Leases and/or the Rents and/or in enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

**Section 5.4 Inapplicable Provisions.** If any provision of this Assignment is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Assignment, such provision shall be fully severable and this Assignment shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Assignment, and the remaining provisions of this Assignment shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Assignment, unless such continued effectiveness of this Assignment, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

**Section 5.5 Governing Law; Jurisdiction; Service of Process.** THIS ASSIGNMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN WERE DISBURSED FROM THE STATE OF NEW YORK, 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 NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAW OF THE STATE, COMMONWEALTH OR DISTRICT, AS APPLICABLE, IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, COMMONWEALTH OR DISTRICT, AS APPLICABLE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER. 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 AND THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF

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## THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

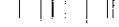
**Section 5.6 Termination of Assignment.** Upon the termination or reconveyance of the Mortgage, this Assignment shall become and be void and of no effect. Upon request of Borrower, Lender shall execute and deliver, at Borrower's sole cost and expense, such instrument effective to evidence the termination of this Assignment and the reassignment to Borrower of the rights, powers and authorities granted herein in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender containing standard provisions, if any, protecting the rights of the terminating lender and in accordance with the provisions of the Loan Documents.

**Section 5.7 Notices.** All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Loan Agreement.

**Section 5.8 WAIVER OF TRIAL BY JURY. BORROWER AND LENDER (BY ITS ACCEPTANCE OF THIS ASSIGNMENT) EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THIS ASSIGNMENT, THE NOTE, THE MORTGAGE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.**

**Section 5.9 Exculpation.** Notwithstanding anything to the contrary contained herein, the provisions of Section 11.22 of the Loan Agreement are hereby incorporated by reference into this Assignment to the same extent and with the same force as if fully set forth herein.

**Section 5.10 Successors and Assigns.** This Assignment shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and permitted assigns forever. Lender shall have the right to assign or transfer its rights under this Assignment in connection with any assignment of the Loan and the Loan Documents and such assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Assignment. Borrower shall not have the right to assign or transfer its rights or obligations under this Assignment without the prior written consent of Lender, except as expressly otherwise permitted under Section 8.1 of the Loan Agreement, and any attempted assignment without such consent, or which is not expressly permitted under Section 8.1 of the Loan Agreement, shall be null and void.



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**Section 5.11 Headings, Etc.** The headings and captions of the various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 5.12 Recitals.** The recitals hereof are a part hereof, form a basis for this Assignment and shall be considered *prima facie* evidence of the facts and documents referred to therein.

[NO FURTHER TEXT ON THIS PAGE]

Property of Cook County Clerk's Office



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## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Chicago, County of Cook, State of Illinois, described as follows:

#### PARCEL 1:

THAT PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF NORTH CLARK STREET (ALSO BEING THE WEST LINE OF LOT 5 IN SAID BLOCK 2) AND THE SOUTH LINE OF WEST KINZIE STREET (ALSO BEING THE NORTH LINE OF LOTS 5 THRU 8, BOTH INCLUSIVE, IN SAID BLOCK 2); THENCE EAST ALONG THE SOUTH LINE OF SAID WEST KINZIE STREET A DISTANCE OF 321.47 FEET TO THE WEST LINE OF NORTH DEARBORN STREET; THENCE SOUTH ALONG THE WEST LINE OF SAID NORTH DEARBORN STREET (ALSO BEING THE EAST LINE OF LOT 8 IN SAID BLOCK 2) A DISTANCE OF 178.60 FEET TO A POINT 311.60 FEET NORTH (AS MEASURED ALONG SAID WEST LINE OF NORTH DEARBORN STREET) OF THE CHICAGO RIVER, AS OCCUPIED; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 321.47 FEET TO A POINT ON THE EAST LINE OF SAID NORTH CLARK STREET 300.43 FEET NORTH (AS MEASURED ALONG SAID EAST LINE OF NORTH CLARK STREET) OF SAID CHICAGO RIVER, AS OCCUPIED; THENCE NORTH ALONG THE EAST LINE OF SAID NORTH CLARK STREET A DISTANCE OF 177.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY FIRST AMENDMENT TO EASEMENT AND OPERATING AGREEMENT DATED AUGUST 23, 1988 AND RECORDED AUGUST 24, 1988 AS DOCUMENT NUMBER 88384561 FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS ON, OVER, THROUGH AND ACROSS THE "HOTEL ROAD EASEMENT AREA" AND THE "PROJECT ROAD EASEMENT AREA" DESCRIBED AS FOLLOWS:

#### HOTEL ROAD EASEMENT AREA:

PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WEST KINZIE STREET (ALSO BEING THE NORTH LINE OF LOTS 5, 6, 7 AND 8 IN SAID BLOCK 2) AND THE EAST LINE OF NORTH CLARK STREET (ALSO BEING THE EAST LINE OF LOTS 4 AND 5 IN SAID BLOCK 2); THENCE SOUTH 0 DEGREES WEST ALONG SAID EAST LINE OF NORTH CLARK STREET A DISTANCE OF 177.86 FEET TO AN INTERSECTION WITH THE NORTH LINE OF

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TRACTS I AND II IN SAID BLOCK 2; THENCE SOUTH 90 DEGREES EAST ALONG SAID NORTH LINE OF TRACTS I AND II A DISTANCE OF 134.10 FEET TO AN INTERSECTION WITH THE LINE BETWEEN PARCELS 1 (BELOW +50.00 FEET CHICAGO CITY DATUM) OF SAID TRACTS I AND II AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 90 DEGREES EAST ALONG SAID NORTH LINE OF TRACTS I AND II A DISTANCE OF 187.57 FEET TO A POINT IN THE WEST LINE OF NORTH DEARBORN STREET (ALSO BEING THE EAST LINE OF LOTS I AND 8 IN SAID BLOCK 2) SAID POINT BEING 178.60 FEET SOUTH OF SAID SOUTH LINE OF WEST KINZIE STREET AS MEASURED ALONG THE WEST LINE OF NORTH DEARBORN STREET; THENCE SOUTH 0 DEGREES WEST ALONG SAID WEST LINE OF NORTH DEARBORN STREET A DISTANCE OF 26.32 FEET TO THE BACK OF A CURB OF AN ELEVATED DRIVEWAY; THENCE SOUTH 89 DEGREES 59 MINUTES 22 SECONDS WEST ALONG SAID BACK OF CURB A DISTANCE OF 68.78 FEET; THENCE NORTH 89 DEGREES 34 MINUTES 27 SECONDS WEST A DISTANCE OF 47.20 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 22 SECONDS WEST A DISTANCE OF 29.31 FEET; THENCE NORTH 75 DEGREES 07 MINUTES 03 SECONDS WEST A DISTANCE OF 43.45 FEET TO A POINT WHERE THE SAID LINE BETWEEN PARCEL 1 INTERSECTS THE BACK OF CURB OF SAID ELEVATED DRIVEWAY; THENCE NORTH 0 DEGREES EAST ALONG SAID LINE BETWEEN PARCEL 1 A DISTANCE OF 14.83 FEET TO THE POINT OF BEGINNING.

#### PROJECT ROAD EASEMENT AREA:

PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WEST KINZIE STREET (ALSO BEING THE NORTH LINE OF LOTS 5, 6, 7 AND 8 IN SAID BLOCK 2) AND THE EAST LINE OF NORTH CLARK STREET (ALSO BEING THE WEST LINE OF LOTS 4 AND 5 IN SAID BLOCK 2); THENCE SOUTH 0 DEGREES WEST ALONG THE EAST LINE OF NORTH CLARK STREET A DISTANCE OF 177.86 FEET TO AN INTERSECTION WITH THE NORTH LINE OF TRACTS I AND II IN SAID BLOCK 2 AND THE POINT OF BEGINNING; THENCE SOUTH 90 DEGREES EAST ALONG SAID NORTH LINE OF TRACTS I AND II A DISTANCE OF 134.10 FEET TO AN INTERSECTION WITH THE LINE BETWEEN PARCEL 1 (BELOW +50.00 FEET CHICAGO CITY DATUM) OF SAID TRACT I AND II; THENCE SOUTH 0 DEGREES WEST ALONG SAID LINE BETWEEN PARCEL 1 A DISTANCE OF 14.83 FEET TO A POINT OF INTERSECTION, NOT TANGENT WITH A CURVED LINE, SAID CURVED LINE BEING THE BACK OF A CURB OF AN ELEVATED DRIVEWAY; THENCE WESTERLY ALONG THE BACK OF CURB OF SAID DRIVEWAY BEING THE ARC OF A CIRCLE CONVEX NORTHERLY AND HAVING A RADIUS OF 15.00 FEET A DISTANCE OF 5.08 FEET TO A POINT OF TANGENCY; THENCE SOUTH 89 DEGREES 59 MINUTES 39 SECONDS WEST ALONG THE BACK OF CURB OF SAID DRIVEWAY AND TANGENT TO THE LAST DESCRIBED CURVED LINE A DISTANCE OF 129.11 FEET TO SAID EAST LINE OF NORTH CLARK STREET; THENCE NORTH 0 DEGREES EAST ALONG SAID EAST LINE OF NORTH CLARK STREET A DISTANCE OF 13.99 FEET TO THE POINT OF BEGINNING.



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PARCEL 3:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY AMENDMENT TO GRANT OF AUTOMOBILE ACCESS DATED MAY 18, 2009 AND RECORDED JULY 27, 2009 AS DOCUMENT NUMBER 0920833001 ("LOWER CARROLL ACCESS EASEMENT AGREEMENT") FOR VEHICULAR INGRESS AND EGRESS ON, OVER, THROUGH AND ACROSS THE "LOWER CARROLL EASEMENT AREA" (AS DEFINED IN THE AMENDMENT TO GRANT OF AUTOMOBILE ACCESS EASEMENT AND AS DEPICTED ON EXHIBIT C ATTACHED THERETO).

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY AMENDMENT TO PARKING AGREEMENT DATED MAY 18, 2009 AND RECORDED JULY 27, 2009 AS DOCUMENT NUMBER 0920833002 ("THE "AMENDMENT TO PARKING AGREEMENT") FOR USE OF THE "LOWER CARROLL PARKING SPACES AREA" (AS DEFINED IN THE AMENDMENT TO PARKING AGREEMENT AND AS DEPICTED ON EXHIBIT C ATTACHED THERETO AND AS SHOWN ON THE SURVEY) IN CONNECTION WITH THE REPAIR AND MAINTENANCE OF THE BUILDING LOCATED ON PARCEL 1.

Address: 353 North Clark Street, Chicago, IL  
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