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This instrument was prepared by:

DLA Piper LLP (US)  
203 N. LaSalle St., Suite 1900  
Chicago, Illinois 60601  
Attention: Edward Goldman, Esq.

Doc#: 1100618009 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/06/2011 10:38 AM Pg: 1 of 8

After recording return to:

Frenkel, Hershkowitz & Shafran LLP  
16 East 34<sup>th</sup> Street  
New York, New York 10016  
Attention: Joseph M. Hershkowitz, Esq.

*This space reserved for Recorder's use only.*

## ASSIGNMENT AND ASSUMPTION OF AIR RIGHTS LEASE

**THIS ASSIGNMENT AND ASSUMPTION OF AIR RIGHTS LEASE** (this "Assignment") is made and entered into as of December 26, 2010, by and between **BREOF RIVERSIDE REO LLC**, a Delaware limited liability company ("Assignor"), and **SOUTH RIVERSIDE RIGHTS LLC**, a Delaware limited liability company ("Assignee").

### Recital.

A. Assignor, as seller, and Assignee, as buyer, entered into that certain Agreement of Purchase and Sale dated as of June 8, 2010, as amended (the "Agreement"), pursuant to which Assignor agreed to sell to Assignee, and Assignee agreed to acquire from Assignor, among other things, Assignor's fee interest in the air rights parcel legally described on **Exhibit A** attached hereto (the "Property").

B. As part of the acquisition transaction contemplated by the Agreement, Assignor has agreed to assign to Assignee, and Assignee has agreed to assume, any and all rights and responsibilities under the Air Rights Lease (as such term is defined in the Agreement), a description of which is attached hereto as **Exhibit B** and incorporated herein by this reference (herein, the "Air Rights Lease").

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Transfer and Assignment by Assignor.** Assignor hereby transfers and assigns to Assignee all of Assignor's right, title and interest in and under the Air Rights Lease.

2. **Assumption by Assignee.** Assignee hereby accepts the foregoing assignment and assumes and agrees to perform all of the duties, obligations, liabilities, commitments and covenants of Assignor accruing from and after the date hereof with respect to or arising under the Air Rights Lease; provided that Assignee further agrees to perform all of the duties, obligations, liabilities, commitments and covenants under the Air Rights Lease relating to the physical or environmental condition of Property regardless of whether such duties, obligations, liabilities, commitments or covenants arose or accrued (or

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arise or accrue) prior to, on or after Closing (as defined in the Agreement) and regardless of whether such conditions exist or come into existence prior to, on or after Closing (as defined in the Agreement).

3. **Indemnification by Assignor.** Assignor hereby agrees to indemnify, defend and hold harmless Assignee, and its partners, officers, directors, members, shareholders, affiliates, managers, employees and agents, from, of and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to the breach by Assignor of any of the obligations, terms or covenants of Assignor under or pursuant to the Air Rights Lease, which obligations, terms or covenants accrued prior to the date hereof; provided, however, that Assignor shall have no obligation hereunder to so indemnify, defend or hold harmless the aforementioned parties with respect to breaches by Assignor of obligations, terms or covenants under or pursuant to the Air Rights Lease that relate to the physical or environmental condition of the Property, regardless of whether such obligations, terms or covenants arose or accrued (or arise or accrue) prior to, on or after Closing and regardless of whether such conditions exist or come into existence prior to, on or after Closing. The indemnification obligation contained in this Section 3 shall be subject to the limitations on liabilities and other provisions contained in the Agreement relating to the Assignor's liability.

4. **Indemnification by Assignee.** Assignee hereby agrees to indemnify, defend and hold harmless Assignor, and its partners, officers, directors, members, shareholders, affiliates, managers, employees and agents, from, of and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to (i) the breach by Assignor or Assignee of those obligations, terms or covenants under or pursuant to the Air Rights Lease which relate to the physical or environmental condition of the Property, irrespective of whether same arose or accrued (or arises or accrues) prior to, on or after the Closing (provided that such indemnity, defense and hold harmless obligations under this clause (i) shall not apply with respect to (a) any third party claims arising from Assignor's acts or omissions occurring during any such period prior to the Closing, or (b) with respect to any third party claims arising out of or relating to the physical or environmental condition of the Property which existed prior to Closing, but only to the extent that the indemnity, defense and hold harmless obligations with respect to such matters under this clause (b) are expressly covered by insurance which is or had been maintained by Assignor or any predecessor in title and for which Assignor has the continuing right to pursue a direct claim thereunder, and without any obligation of Assignor, whatsoever, to maintain any such insurance at any time after Closing (it being further understood that Assignee's indemnity and hold harmless obligations in clause (b) above shall not apply unless and until any direct claims by Assignor against any applicable insurer as described in this sentence have been exhausted)), and (ii) the breach by Assignee of any of the other obligations, terms or covenants of Assignor under or pursuant to the Air Rights Lease, which other obligations, terms or covenants accrue from and after the date hereof. The indemnification obligation contained in this Section 4 shall be subject to all applicable limitations on liabilities and other provisions contained in the Agreement relating to Assignee's liability.

5. **Further Assurances.** The parties hereto covenant and agree to execute such further instruments and take such further action as may be reasonably required by either party to fully effectuate the terms and provisions of this Assignment and the transactions contemplated herein.

6. **Survival of Provisions.** The covenants and obligations contained in this Assignment shall survive the consummation of the closing of the transactions contemplated by the Agreement and this Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

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7. **Attorneys' Fees and Costs.** If either party commences an action for the judicial interpretation, reformation, enforcement or rescission hereof, the prevailing party will be entitled to a judgment against the other party for an amount equal to reasonable attorneys' fees and court and other costs incurred.

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

9. **Counterparts.** This Assignment may be executed in counterparts which, when integrated, shall constitute one original of this Assignment.

10. **Conflict.** In the event of any conflict or inconsistency between the terms hereof and the terms of the Agreement, the terms of the Agreement shall govern and control. Without limitation of the foregoing, all limitations on liability expressly set forth in the Agreement shall apply to this Assignment and the liabilities of the parties hereunder.

11. **No Representation.** Except as expressly set forth in the Agreement, it is hereby acknowledged that Assignor makes no representation or warranty of any kind or nature relative to the Air Rights Lease being assigned hereunder. Without limitation of any representations or warranties expressly set forth in the Agreement, this Assignment constitutes a quitclaim assignment only, and is intended to assign and transfer only such rights which Assignor may have with respect to the Air Rights Lease.

[SIGNATURES ON FOLLOWING PAGE]

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**IN WITNESS WHEREOF**, the parties hereto have caused this Assignment to be executed by their duly authorized officers on the date first written above.

**ASSIGNOR:**

**BREOF RIVERSIDE REO LLC**, a Delaware limited liability company

By: **BREOF RIVERSIDE LLC**, a Delaware limited liability company, its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF New York )  
                                  ) SS.  
COUNTY OF New York )

I, Suzanne Rosenbaum, a Notary Public in and for the County in the State aforesaid, **DO HEREBY CERTIFY** that Steven Sanchez, who is personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act.

GIVEN under my hand and notarial seal this 20<sup>th</sup> day of December, 2010.  
Suzanne Rosenbaum  
Notary Public

SUZANNE ROSENBAUM  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01RO6198876  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES JANUARY 5, 2013

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*[Assignee's signature page to Assignment and Assumption of Air Rights Lease]*

**ASSIGNEE:**

**SOUTH RIVERSIDE RIGHTS LLC,**  
a Delaware limited liability company

By: *David Winer*  
Name: *David Winer*  
Title: *Marketing Director*

STATE OF NY )  
  ) SS.  
COUNTY OF NY )

I, Fanny Handel a Notary Public in and for the County in the State aforesaid, **DO HEREBY CERTIFY** that David Winer, who is personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act.

**GIVEN** under my hand and notarial seal this 28<sup>th</sup> day of Dec., 2010.

Notary Public

*Fanny Handel*

**Fanny Handel**  
Notary Public, State of New York  
No. 01HA452126  
Qualified in Queens County  
Commission Expires January 31, 2014

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## EXHIBIT A TO ASSIGNMENT AND ASSUMPTION OF AIR RIGHTS LEASE

### LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

LOT 7 (EXCEPT THE WEST 122.53 FEET THEREOF) IN RAILROAD COMPANIES' RESUBDIVISION OF BLOCKS 62 TO 76, BOTH INCLUSIVE, BLOCK 78, PARTS OF BLOCKS 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 29, 1924 IN BOOK 188 ON PAGES 11 TO 28, BOTH INCLUSIVE, AS DOCUMENT NUMBER 5339751 (EXCEPTING THEREFROM THAT PART THEREOF LYING BELOW OR BENEATH THE AIR RIGHTS LIMITING PLANE OR ELEVATION SET FORTH IN APPENDIX "B" TO LEASE RECORDED OCTOBER 2, 1980 AS DOCUMENT 25607453 AND WHICH IS INDICATED IN SAID APPENDIX "B" TO BE 32 FEET 10 INCHES ABOVE CHICAGO CITY DATUM, AND ALSO EXCEPTING THEREFROM THE BUILDING AND OTHER IMPROVEMENTS LOCATED THEREON), IN COOK COUNTY, ILLINOIS.

PIN: 17-16-121-003-6001

ADDRESS: 300 South Riverside  
Chicago, Illinois

Also known as:  
420 West Van Buren  
Chicago, Illinois

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## EXHIBIT B TO ASSIGNMENT AND ASSUMPTION OF AIR RIGHTS LEASE

### DESCRIPTION OF AIR RIGHTS LEASE

Lease dated as of April 8, 1980 between Chicago Union Station Company ("**Original Lessor**") and TJC Associates, Inc. ("**Original Lessee**"), recorded as Document No. 25607453, as amended by:

- (i) Assignment of Lease effective as of July 1, 1980, recorded as part of Document No. 25607453 between Original Lessee as assignor and TJC Associates, an Illinois limited partnership ("**First Assignee**");
- (ii) Assignment of Lease dated as of October 9, 1980, recorded as Document No. 25641901 between First Assignee and Gateway IV Joint Venture, an Illinois general partnership ("**Second Assignee**");
- (iii) Amendment of Lease dated as of December 24, 1980 between Original Lessor and Second Assignee recorded in the Recorder's Office as Document No. 25767019;
- (iv) Second Amendment to Lease dated as of April 7, 1988 between Original Lessor and Second Assignee, recorded as Document No. 86200211;
- (v) Third Amendment to Lease dated as of September 14, 1990 between Original Lessor and Second Assignee, recorded as Document No. 90483165;
- (vi) Assignment of Ground Lease dated as of September 30, 1992 between Second Assignee, as assignor and Harris Trust and Savings Bank Trust, not personally but as Trustee under Trust Agreement dated September 14, 1992 and known as No. 95044 ("**Third Assignee**"), as assignee, recorded as Document No. 92723834;
- (vii) Fourth Amendment to Lease dated as of December 1, 1994 between Original Lessor and Cole Taylor Bank as Successor Trustee to Third Assignee, recorded as Document No. 95012641;
- (viii) Assignment and Assumption of Air Rights Lease dated as of September 28, 1995 between Third Assignee and American National Bank and Trust Company of Chicago, not personally but as trustee under Trust Agreement dated June 15, 1995 and known as Trust No. 120500-01 ("**Fourth Assignee**"), recorded as Document No. 95669326;
- (ix) Fifth Amendment to Lease dated as of September 25, 1995 between Original Lessor and Fourth Assignee, recorded, as Document No. 95669327;
- (x) Assignment of Lessor's Interest in Lease dated as of May 29, 2001 between Original Lessor, as assignor, and CUSCO No. 1 LLC, an Illinois limited liability company ("**Second Lessor**"), as assignee, recorded as Document No. 0010466783;
- (xi) Trustee's Deed dated September 15, 2005 and recorded as Document No. 0527935451 pursuant to which the Fourth Assignee's leasehold interest in the Air Rights Parcel and fee interest in the improvements located in the Air Rights Parcel was transferred and conveyed to Lessee; and
- (xii) Assignment and Assumption of Air Rights Lease dated as of September 15, 2005 between Fourth Assignee, as assignor and Banc One Building Corporation, an Illinois corporation ("**Fifth Assignee**"), as assignee, recorded as Document No. 0609015164.



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(xiii) Assignment and Assumption of Lease dated May 11, 2006 between Second Lessor, as assignor, and BREF Riverside REO, LLC, as assignee, recorded as Document No. 0613645178.

(xiv) Illinois Ground Lease Assignment dated September 27, 2006 between Fifth Assignee and JPMorgan Chase Bank, National Association, a national banking association, as assignor, and BREF BNK Chicago LLC, as assignee, recorded as Document No. 0627745077.

(xv) Amendment to Lease dated September 27, 2006 between BREF Riverside REO, LLC, as lessor, and BREF BNK Chicago LLC, as lessee, recorded as Document No. 0628618082.

Property of Cook County Clerk's Office