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Doc#: 1100618010 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/06/2011 10:38 AM Pg: 1 of 13

This Instrument was prepared by and
when recorded return to:

Stacy K. Pike, Esq.
Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S
USE ONLY

BREOF RIVERSIDE REO LLC
"Assignor"

SOUTH RIVERSIDE RIGHTS LLC
"Assignee"

And

SUN LIFE ASSURANCE COMPANY OF CANADA (U.S.)
"Noteholder"

OMNIBUS AMENDMENT AND
ASSIGNMENT AND ASSUMPTION AGREEMENT

Dated December 29, 2010

300 South Riverside Plaza
420 West Van Buren
City of Chicago
County of Cook, Illinois

NLS 442263 cap 7/12

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OMNIBUS AMENDMENT AND ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS OMNIBUS AMENDMENT AND ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is entered into ^{as of} December 29, 2010, by and among BREF OF RIVERSIDE REO LLC, a limited liability company organized under the laws of the State of Delaware ("Assignor"), SOUTH RIVERSIDE RIGHTS LLC, a limited liability company organized under the laws of the State of Delaware ("Assignee"), and Sun Life Assurance Company of Canada (U.S.) (the "Noteholder").

RECITALS:

WHEREAS, pursuant to that certain Note Purchase Agreement dated as of October 25, 2006 between Assignor and the Noteholder (the "Note Purchase Agreement"), Assignor issued its (a) 5.729% Senior Secured Notes, Tranche A, due March 31, 2021 in the original aggregate principal amount of \$11,000,000 (the "Tranche A Notes"), and (y) 6.95945% Senior Secured Notes, Tranche B, due March 31, 2021 in the original aggregate principal amount of \$9,700,000 (the "Tranche B Notes" and, together with the Tranche A Notes, the "Notes"), to the Noteholder;

WHEREAS, the Notes are secured by that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of October 25, 2006 from Assignor to the Noteholder recorded October 26, 2006 as document 0629945039 with the Cook County, Illinois, Recorder of Deeds (the "Mortgage");

WHEREAS, as contemplated by that certain Agreement of Purchase and Sale dated June 8, 2010, as amended, between Assignor and Assignee (the "Purchase Agreement") and pursuant to that certain Special Warranty Deed ("Deed"), from Assignor to Assignee, covering that certain real property more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"), Assignor is concurrently, with the execution of this Agreement, conveying to Assignee all of its right, title and interest in and to said Property;

WHEREAS, Assignor (as successor-in-interest to Chicago Union Station Company), as landlord, and BREF OF BNK Chicago LLC, a limited liability company organized under the laws of the State of Delaware (as successor-in-interest to TJC Associates, Inc.), as tenant ("Existing Tenant"), are parties to that certain Lease dated April 8, 1980 (such lease, as heretofore amended and/or assigned and as it may hereinafter be amended, assigned, supplemented or modified, the "Lease");

WHEREAS, as contemplated by that certain Agreement of Purchase and Sale dated June 8, 2010 between Existing Tenant and South Riverside Building LLC, a limited liability company organized under the laws of the State of Delaware ("New Tenant"), Existing Tenant is concurrently, with the execution of this Agreement, conveying to New Tenant all of its right, title and interest in and to the Lease and the building located on the Property;

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Omnibus Amendment and Assignment and
Assumption Agreement

WHEREAS, the Noteholder has consented to the transfer of the Property pursuant to the Consent to Property Transfer dated as of December 29, 2010 (the "Consent");

WHEREAS, unless otherwise indicated, all capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Mortgage; and

WHEREAS, as a part of the conveyance of its interest in said Property to Assignee by Assignor, the parties are executing this Agreement.

NOW, THEREFORE, in consideration of the above premises, the mutual covenants hereinafter expressed, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. *Amendments to Operative Agreements.* (a) Each of the Operative Agreements (as defined in Section 1.3 of the Note Purchase Agreement) is hereby amended by (i) replacing each reference to "BREF RIVERSIDE REO LLC" with "SOUTH RIVERSIDE RIGHTS LLC" and (ii) by replacing the notice instructions for the Company with the following address: c/o The Mizrachi Group, LLC, 7700 Congress Avenue, Suite 3106, Boca Raton, Florida 33487, Attention: Joseph Mizrachi, Email: jmizrachi@aol.com, Fax: (561) 995-8116, with a copy to (x) David Werner Real Estate Investments, 1140 Avenue of the Americas, 15th Floor, New York, New York 10036, Attention: David Werner, Email: d.werner@dwrei.com, Fax: (212) 944-8109, and (y) Frenkel, Hershkowitz & Shafran LLP, 16 East 34th Street, New York, New York 10016, Attention: Joseph M. Hershkowitz, Esq., Email: jmh@fhslp.com, Fax: (212) 889-5072.

(b) The Mortgage is hereby amended by amending and restating clause (b) of Section 2.5 thereto as clauses (b), (c), (d) and (e) to read as follows:

"(b) As soon as available and in any event within ninety (90) days after the close of each fiscal quarter of the Company, copies of (i) an unaudited balance sheet of the Company as at the end of such quarter and (ii) an unaudited statement of operating income, retained earnings and cash flows of the Company for such quarter and the portion of the fiscal year ending with such quarter, in each case, in the format, and accompanied by a certificate of an officer of the Company, as required in clause (a) above with respect to the Company's annual financial statements.

(c) Within the time periods provided in clauses (a) and (b), respectively, annual and quarterly financial statements of the Tenant of the type described for the Company in clauses (a) and (b), respectively.

(d) Promptly upon receipt thereof (i) copies of all appraisals the Company receives related to the leasehold interest under the Lease and the buildings, structures and other improvements thereon and (ii) on a quarterly basis,

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Comprehensive Amendment and Assignment and Assumption Agreement

copies of rent rolls related to the buildings, structures and other improvements on such leasehold interest.

(e) Such additional information as the Mortgagee may reasonably request concerning the Company and the valuation of the leasehold interest under the Lease and the buildings, structures and other improvements thereon.”

(c) The Mortgage is hereby amended by adding a new Section 2.27 thereto to read as follows:

Section 2.27. The Company shall not (i) terminate that certain Easement and Operating Agreement, dated as of May 29, 2001, by and between Chicago Union Station Company, an Illinois corporation, and South Riverside Rights LLC (as successor in interest to CUSCO No. 1 LLC) (the “*REA*”) or (ii) amend or modify the REA in a manner that would materially and adversely impact the Mortgaged Property, the Lease, the leasehold interest thereunder or improvements thereon, without, in each instance, obtaining the prior written consent of the Mortgagee.

2. *Assignment of Operative Agreements.* Assignor hereby assigns, transfers and conveys to Assignee all of its right, title and interest, under, in and to and the obligations under the aforesaid Lease Note Purchase Agreement, Notes, Mortgage and all other Operative Agreements (as defined in Section 1.3 of the Note Purchase Agreement) (said Lease, Note Purchase Agreement, Notes, Mortgage and other Operative Agreements are herein referred to as the “*Assigned Documents*”), except for the obligations retained by Assignor as provided herein.

3. *Assignor Representations and Warranties.* Assignor hereby represents and warrants to the Noteholder that as of the date hereof:

- a. Each of the Assigned Documents is in full force and effect;
- b. No default by the Assignor under the Assigned Documents exists;
- c. Assignor has not received any written notice of a default that is currently outstanding from the Tenant (as defined in the Lease) under the Lease or any other party to the Assigned Documents;
- d. No circumstance or condition exists which with the giving of notice or the passage of time, or both, would constitute a default by the Assignor under the Assigned Documents;
- e. To Assignor’s actual knowledge after due inquiry, no default by the Tenant under the Lease exists as of the date hereof; and

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Omnibus Amendment and Assignment and
Assumption Agreement

f. To Assignor's actual knowledge after due inquiry, no circumstance or condition exists which with the giving of notice or the passage of time, or both, would constitute a default by the Tenant under the Lease.

4. *Assignee Acceptance of Assignment.* Assignee hereby agrees to and hereby accepts the foregoing assignment, and, in addition, expressly assumes and agrees to keep, perform and fulfill all of the terms, covenants, obligations and conditions required to be kept, performed and fulfilled from and after the date hereof by the Assignor under or with respect to the aforesaid Assigned Documents.

5. *Assignor and Assignee Representations and Warranties.* Assignor and Assignee each hereby represents and warrants to the other and to the Noteholder that each has full right and lawful authority to execute and deliver this Agreement and acknowledges and agrees that each of the Assignor, the Assignee and the Noteholder is an intended beneficiary under the representations, warranties and indemnities contained herein.

6. *Additional Operative Agreement.* From and after the execution and delivery hereof, this Agreement shall constitute an "Operative Agreement", but not an "Assigned Document".

7. *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

8. *Counterparts.* This Agreement may be executed in a number of identical counterparts. If so executed, each such counterpart is to be deemed an original for all purposes, and all such counterparts shall collectively constitute one agreement, but for the purpose of proving the existence of this Agreement it shall not be necessary to produce or account for more than one such counterpart except for the purpose of demonstrating that any party is a signatory thereto.

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

10. *Release.* Upon effectuation of the transfer of the Property contemplated hereby and upon satisfaction of all of the conditions set forth in Section 2.3(g) of the Mortgage and the Consent, the Assignor shall be relieved of all obligations under the Assigned Documents that accrue or arise thereafter, and shall remain liable for all obligations accruing or arising prior to such time.

11. *Replacement of Notes by Assignee.* To further evidence the assumption by the Assignee of the payment obligations of Assignor under the Notes, Assignee shall forthwith execute and deliver to the Noteholder replacement Notes ("*Replacement Notes*") for the original Notes held by such Noteholder, in the form of a single Note of

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Omnibus Amendment and Assignment and Assumption Agreement

each tranche (or such greater number of Notes in denominations of at least \$250,000 as such holder may request), to be dated the date on which the Mortgaged Property is transferred (the "*Transfer Date*"), and to bear interest from such date, and to be registered in such Noteholder's name (or in the name of its nominee), for delivery to such Noteholder against the return by it to the Assignee of the original Notes being replaced. Assignor, Assignee and the Noteholder agree that, with respect to interest that has accrued on the Notes from and including the most recent interest payment date to the Transfer Date (a) in the case of the Tranche A Notes, such interest shall be paid by wire transfer of immediately available funds to the Noteholder on the Transfer Date, and (b) in the case of the Tranche B Notes, such interest shall be capitalized and included in the outstanding principal amount reflected in the Tranche B Replacement Notes as of the Transfer Date. Assignor, Assignee and the Noteholder acknowledge that certain *de minimis* principal prepayments aggregating \$1,601.01 have heretofore been made on the Tranche A Notes, and such prepayments have been taken into account by Assignor and Assignee in calculating the consideration paid in connection with the transfer of the Mortgaged Property. Assignee and the Noteholder agree that, notwithstanding such prepayments and similar *de minimis* prepayments that may hereafter be made, no change shall be made to the stated principal amount of the Tranche A Notes or the amortization schedule therefor, and such prepayments shall, instead, be applied to reduce the principal payment due on the maturity date of the Tranche A Notes, unless and until a new amortization schedule is otherwise prepared in connection with a prepayment of the Notes pursuant to Section 2.12 of the Mortgage.

12. *Assignor/Assignee Rights and Obligations.* Solely as between Assignor and Assignee, nothing herein shall affect the various liabilities, rights and obligations of Assignor and Assignee, as between each other, as set forth in the Purchase Agreement and in the various closing documents executed and delivered pursuant to Article 11 of such Purchase Agreement. This Section 11 shall not in any way affect the obligations of Assignor or Assignee, as applicable, under the Note Purchase Agreement, the Notes, the Mortgage and the other Operative Agreements.

[Signatures on Following Page]

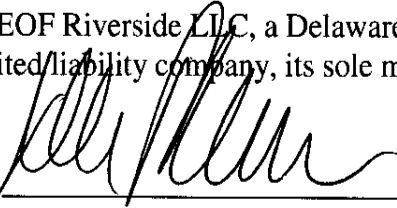
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Omnibus Amendment and Assignment and Assumption Agreement

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

BREOF RIVERSIDE REO LLC, a Delaware limited liability company

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

By:  _____
 Name: _____
 Title: _____

ASSIGNOR

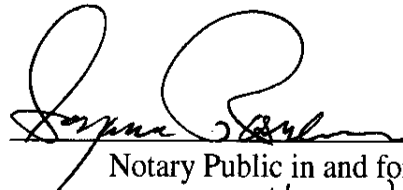
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ACKNOWLEDGMENT

STATE OF New York)
COUNTY OF New York)

This instrument was acknowledged before me on this the 28th day of December, 2010, by Michelle Bertiner, an Auth. Officer of BREOF Riverside LLC, a limited liability company organized under the laws of the State of Delaware on behalf of BREOF Riverside REO LLC, a Delaware limited liability company.


Notary Public in and for
The State of New York

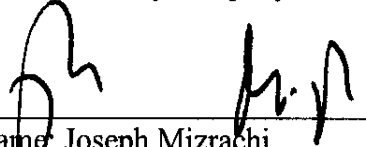
**SUZANNE ROSENBAUM
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01RO6198876
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES JANUARY 5, 2013**

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Omnibus Amendment and Assignment and
Assumption Agreement

SOUTH RIVERSIDE RIGHTS LLC, a Delaware
limited liability company

By  _____
Name: Joseph Mizrachi
Title: Authorized Signatory

ASSIGNEE

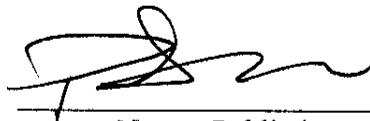
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ACKNOWLEDGMENT

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

This instrument was acknowledged before me on this the 24 day of December, 2010, by JOSEPH MIZRACHI, an Authorized Signatory of South Riverside Rights LLC, a limited partnership organized under the laws of the State of Delaware on behalf of said limited liability company.



Notary Public in and for
The State of New York

PHILLIP SOSNOW
Notary Public, State of New York
No. 02SO6203522
Qualified in Queens County
Commission Expires April 6, 2013

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Omnibus Amendment and Assignment and
Assumption Agreement

SUN LIFE ASSURANCE COMPANY OF CANADA
(U.S.)

By Arthur Baril
Name: Arthur Baril
Title: Senior Director

By Ann C. King
Name: Ann C. King
Title: Assistant Vice President and Senior
Counsel

NOTEHOLDER

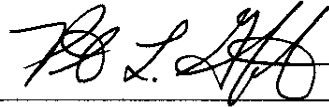
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COMMONWEALTH OF MASSACHUSETTS)
) ss:
 COUNTY OF NORFOLK)

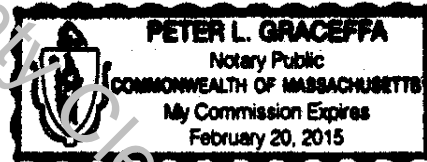
On this 27th day of December, 2010, before me, the undersigned notary public, personally appeared Arthur Baril and Ann C. King, the Senior Director and Assistant Vice President and Senior Counsel, respectively, of Sun Life Assurance Company of Canada (U.S.), a Delaware corporation, proved to me through satisfactory evidence of identification, which evidence was Personal Knowledge to be the persons whose names are signed on the preceding or attached document, and each acknowledged to me that he or she signed it voluntarily for its stated purpose.



Notary Public

My commission expires: 2/20/15

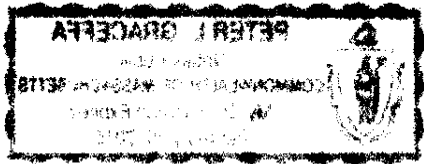
[AFFIX NOTARY SEAL]



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EXHIBIT A

PROPERTY DESCRIPTION

Legal Description:

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 8339751 (EXCEPTING THEREFROM THAT PART THEREOF LYING BELOW OR BENEATH THE AIR RIGHTS LIMITING PLANE OR ELEVATION SET FORTH IN APPENDIX "B" TO LEASE RECORDED 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 IMPROVEMENTS LOCATED THEREON), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AND OPERATING AGREEMENT RECORDED JUNE 1, 2001 AS DOCUMENT 0010466784 MADE BY CHICAGO UNION STATION COMPANY TO CUSCO NO. 1 LLC FOR AIR RIGHTS, INGRESS AND EGRESS, STRUCTURAL SUPPORT UTILITIES, ENCROACHMENT AND CONSTRUCTION OVER THE PROPERTY DESCRIBED THEREIN.

17-16-121-003-6001