

UNOFFICIAL COPY

WHEN RECORDED RETURN TO:
Symetra Life Insurance Company
Mortgage Loan Department
PO Box 84066
Seattle, WA 98124-8466
Loan No. 3094



Doc#: 1213904105 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/18/2012 01:30 PM Pg: 1 of 8

8881428

Property of Cook County Clerk's Office

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS is made as of the 7th day of May, 2012, by 3701 W. 128TH LLC, an Illinois limited liability company ("Assignor"), whose address is 2340 River Road, Des Plaines, IL 60018 in favor of SYMETRA LIFE INSURANCE COMPANY, a Washington corporation ("Assignee"), whose address is PO Box 84066, Seattle, WA 98124-8466, Attention: Mortgage Loan Department.

FOR VALUE RECEIVED, Assignor does hereby assign to Assignee any and all of Assignor's interest in existing and future leases, subleases, agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the premises located on the real property legally described in **Exhibit A** hereto in the County of Cook, State of Illinois (the "**Premises**"), and any and all guaranties, extensions, renewals and replacements of any of the foregoing. All such leases, subleases, agreements and tenancies upon the Premises are hereinafter collectively referred to as the "**Leases**";

TOGETHER with any guaranties of performance by tenants under the Leases and any security deposits, letters of credit and letter of credit rights securing the performance by a tenant of its obligations under its Lease;

TOGETHER with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, deposits, royalties, bonuses, benefits, payments in lieu of rents, awards in condemnation, issues and profits arising from, or payments otherwise payable to Assignor under, the Leases (hereinafter the "**Rents**") now due or which may become due or to which Assignor may now or shall hereafter (including those Rents coming due during any redemption period) become entitled or may demand or claim, issuing from or out of the Premises or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, and all proceeds payable under any policy of insurance covering loss of Rents resulting from untenability caused by destruction or damage to the Premises, and the proceeds from the sale or other disposition of the Leases and the Rents, together with any and all rights and claims of any kind which Assignor may have against any tenant under the Leases or any subtenants or occupants of the Premises, excepting therefrom, any sums which by the express provisions of any of the Leases are payable directly to any governmental authority or to any other person, firm or corporation other than the landlord under the Lease.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, until termination of this Assignment.

333-CT

S Y
P 8
S N
SC Y
INT ON

UNOFFICIAL COPY

FOR THE PURPOSE OF SECURING the payment of the indebtedness evidenced by a certain Real Estate Note made by Assignor, payable to the order of Assignee in the amount of FIVE MILLION AND NO/100 U.S. DOLLARS (\$5,000,000.00), dated of even date herewith, including any extensions, modifications and renewals thereof and any supplemental instrument, agreement or note increasing such indebtedness (the "Note"), as well as the payment, observance, performance and discharge of all other obligations, covenants, conditions and warranties contained in the Deed of Trust, Deed to Secure Debt or Mortgage of even date herewith, made by Assignor to or for the benefit of Assignee and encumbering the Premises (the "Security Instrument"), and in any extensions, modifications, supplements and consolidations thereof.

TO MAINTAIN AND PROTECT THE SECURITY OF THIS ASSIGNMENT, TO SECURE THE FULL AND TIMELY PERFORMANCE BY ASSIGNOR OF EACH OBLIGATION, COVENANT AND AGREEMENT OF ASSIGNOR UNDER THIS ASSIGNMENT AND THE NOTE AND SECURITY INSTRUMENT, AND AS ADDITIONAL CONSIDERATION FOR THE INDEBTEDNESS AND OBLIGATIONS EVIDENCED BY THE NOTE, ASSIGNOR REPRESENTS, WARRANTS AND COVENANTS AS FOLLOWS:

1. **Assignor's Representations and Warranties.** Assignor represents and warrants to Assignee that:
 - (a) it has good title to the Leases and Rents and the lawful right to assign the same, and no other person or entity has any right, title, or interest therein;
 - (b) Assignor has duly and punctually performed all the terms, covenants, conditions and warranties of the Leases on Assignor's part to be kept, observed and performed;
 - (c) All of the Leases identified by Assignor to Assignee in any certified rent roll provided by Assignor (the "Current Leases") are valid and enforceable according to their terms, are unmodified except as disclosed in writing to Assignee, and are in full force and effect;
 - (d) The tenants under the Current Leases are in possession and paying rent as provided therein;
 - (e) Assignor has not sold, assigned, transferred, mortgaged or pledged the Rents from the Premises, whether now due or hereafter to become due, to any party other than Assignee;
 - (f) Assignor has not collected any of the Rents due and issuing from the Premises more than one month in advance of their due date, and payment of the same has not otherwise been waived, released, discounted, set off, or otherwise discharged or compromised; and
 - (g) to Assignor's actual good faith knowledge, no defaults have occurred and are continuing under the Current Leases.

2. **Assignor's Covenants.** Assignor covenants and agrees:
 - (a) to observe, perform and discharge, duly and punctually, all the material obligations, terms, covenants, conditions and warranties of all existing and future Leases affecting the Premises, on the part of Assignor to be kept, observed and performed, and to give prompt notice to Assignee of (i) any failure on the part of Assignor to observe, perform and discharge any material obligation to be performed by Assignor, and (ii) receipt by Assignor of any notice, demand or other document from any tenant or subtenant under the Leases claiming any default by the Assignor under the Leases;
 - (b) to enforce in a commercially reasonable manner, or secure in the name of Assignee, the performance in all material respects of each and every obligation, term, covenant, condition and agreement in the Leases by any tenant to be performed, and to notify Assignee of the occurrence of any default under the Leases which, if not cured, could permit the tenant to terminate the Lease or abate the payment of Rent;
 - (c) to neither create nor permit any lien, charge or encumbrance upon the Rents, the proceeds thereof or its interest as lessor of the Leases except the lien of the Security Instrument;
 - (d) to notify Assignee in writing prior to becoming the beneficiary under any letter of credit supporting any of the Leases, and to take all actions, and execute all documents, necessary

UNOFFICIAL COPY

- or appropriate to give Assignee control (as defined in the Uniform Commercial Code, as enacted by the state where the Premises are located) of such letter of credit and all letter of credit rights thereunder and, if required by Assignee, to make Assignee the transferee beneficiary of such letter of credit; and
- (e) to maintain all security deposits collected from tenants with respect to their Leases in accordance with all applicable legal requirements.
3. **Prior Approval for Assignor Actions.** Without the prior written consent of the Assignee, Assignor agrees that it will not:
- (a) receive or collect any Rents from any present or future tenant of the Premises for a period of more than one (1) month in advance of the date on which such payment is due, or pledge, transfer, mortgage, or otherwise encumber or assign future payments of Rents to anyone other than Assignee;
 - (b) enter into a new lease that covers fifty percent (50%) or more of the net rentable area of the Property;
 - (c) with respect to any Material Lease (defined below), waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any tenant under any such Lease or a guarantor under a lease guaranty, of and from any obligations, covenants, conditions and agreements by tenant to be kept, observed and performed, including the obligation to pay the Rents in the manner and at the place and time specified therein;
 - (d) with respect to any Material Lease, consent to any surrender of any such Lease or cancel or terminate any such Lease except in accordance with the terms of the Lease providing for termination in the event of default by a tenant, or permit any of the aforementioned, or release any lease guarantor from its guaranty, or commence an action of ejectment or any summary proceedings for dispossession of the tenant under any of the Leases, or exercise any right of recapture provided in any such Lease; and
 - (e) with respect to any Material Lease, amend the Lease for a shorter term or lesser Rents, reschedule the payment of Rents, change any renewal option, change the allowable uses of the leased premises, change the assignment and subletting provisions, or release any tenant from any obligation to insure, maintain or repair the Premises or from any other financial obligation of the tenant under such Lease.

For purposes hereof, a "Material Lease" is a lease with a total term (including renewal options) of five years or more, or that covers twenty percent (20%) or more of the net rentable area of the Premises.

4. **Absolute Assignment; Revocable License to Collect Rents.** Assignor intends that this Assignment constitute a present, absolute and unconditional assignment of the Leases and Rents and not an assignment for security. As long as no event of default by Assignor has occurred and is continuing after any applicable notice and cure period in the payment of any indebtedness secured hereby or in the observance and performance by Assignor of any other obligation, term, covenant, condition or warranty herein or in the Note and Security Instrument or contained in the Leases, Assignor shall have a revocable license granted by Assignee (but limited as provided in the following paragraph) to collect, but not prior to accrual, all of the Rents arising from or out of the Leases, or any renewals, extensions, and replacements thereof, or from or out of the Premises or any part thereof; and Assignor shall receive such Rents and shall hold them as a trust fund to be applied, and Assignor hereby covenants to so apply them, *first* to the payment of taxes and assessments upon the Premises before penalty or interest is due thereon; *second* to the cost of insurance, maintenance and repairs required by the terms of the Security Instrument; *third* to the satisfaction of all obligations specifically set forth in the Leases; and *fourth* to the payment of interest and principal

UNOFFICIAL COPY

becoming due on the Note and Security Instrument, before using any part of the Rents for any other purposes.

5. **Default and Remedies; Termination of License.** Upon or at any time after default in the (i) payment of any indebtedness secured hereby, or (ii) observance or performance by Assignor of any obligation, term, covenant, condition or warranty herein, in the Note or in the Security Instrument, and in either such case, following the expiration of any applicable notice and cure period specified in the Note or the Security Instrument, or if any representation or warranty of Assignor herein shall be found to be untrue in any material respect at the time it was made, then Assignee, at its option and without further notice, shall have the complete right, power and authority hereunder to exercise and enforce any or all of the following rights and remedies at any time:
- (a) to revoke the license granted to Assignor to collect the Rents without taking possession, and to demand, collect, receive, sue for, attach and levy against the Rents in Assignee's own name; to give proper receipts, releases and acquittances therefor; and after deducting all necessary and proper costs and expenses of operation and collection as determined by Assignee, including reasonable attorneys' fees, to apply the net proceeds thereof, together with any funds of Assignor deposited with Assignee, upon any indebtedness secured hereby and in such order as Assignee may determine;
 - (b) to declare all sums secured hereby immediately due and payable and, at its option, exercise all or any of the rights and remedies contained in the Note and Security Instrument;
 - (c) without regard to the adequacy of the security or the solvency of Assignor, with or without any action or proceeding through any person or by agent or trustee under the Security Instrument (to the extent permitted by applicable law), or by a receiver to be appointed by a court, and without regard to Assignor's possession (but subject to the terms of any applicable leases), to enter upon, take possession of, manage and operate the Premises or any part thereof; make, modify, enforce, cancel or accept surrender of any Leases now or hereafter in effect on the Premises or any part thereof; remove and evict any tenant; increase or decrease Rents; decorate, clean and repair; and otherwise do any act or incur any costs or expenses as Assignee shall deem proper to protect the security hereof as fully and to the same extent as Assignor could do if in possession; and in such event, to apply the Rents so collected in such order as Assignee shall deem proper to the operation and management of the Premises, including the payment of reasonable management, brokerage and attorneys' fees, payment of the indebtedness under the Note and Security Instrument, and payment to a reserve fund for replacements, which funds shall not bear interest; and
 - (d) require Assignor to transfer all security deposits to Assignee, together with all records evidencing such deposits;

provided, however, that the acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking possession of the Premises by Assignee, be deemed or construed to constitute Assignee a "Mortgagee in Possession", nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases or to the Premises, or to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases, or to assume any obligations or responsibility for any security deposits or other deposits delivered to Assignor by any tenant and not assigned and delivered to Assignee; nor shall Assignee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Premises; and provided further, that the collection and application of the Rents and/or the entry upon and taking possession of the Premises shall not cure or waive any default; or waive, modify or affect any notice of default required under the Note and Security Instrument; or invalidate any act done pursuant to such notice. The rights and

UNOFFICIAL COPY

powers conferred on Assignee hereunder are cumulative of and not in lieu of any other rights and powers otherwise granted Assignee. In the event applicable law requires Assignee to take actual possession of the Premises (or take some action equivalent thereto, such as securing the appointment of a receiver) in order to perfect or activate its rights and remedies, Assignor hereby waives the benefits of such law and agrees that such law shall be satisfied solely by (i) written notice to Assignor that Assignee intends to enforce its rights in and to the Leases and the Rents assigned hereby, and (ii) written notice to any or all of the tenants under the Leases requiring tenants to commence making payments under the Leases directly to Assignee.

6. **Indemnification.** Assignor agrees to indemnify, defend and hold Assignee harmless from any and all liability, loss, injury, damage or expense which Assignee may incur under or by reason or in defense of any and all losses, damages, claims, expenses, causes of action and demands whatsoever which may be asserted against Assignee arising out of the Leases (a "**Lease Claim**"), including, but not limited to, any claims by any tenants of credit for rental for any period under any Leases more than one (1) month in advance of the due date thereof paid to and received by Assignor, but not delivered to Assignee and any Lease Claim arising from any other actions by Assignor that require the consent of Assignee under Section 3 hereof where such action was undertaken without such consent. This indemnification shall survive foreclosure and a deed in lieu of foreclosure. Should Assignee incur any such liability, loss, injury, damage, or expense, the amount thereof (including reasonable attorneys' fees) with interest thereon at the default rate specified in the Note (but not to exceed the highest rate permitted by applicable law), shall be payable by Assignor immediately without demand, and shall be secured as a lien hereby and by the Security Instrument. This indemnification shall not apply to the extent the Lease Claim results from the intentional misconduct or gross negligence of Assignee.
7. **Records.** Until the indebtedness secured hereby shall have been paid in full, Assignor shall deliver to Assignee, upon request, executed copies of (i) any renewals of existing Leases and (ii) all future Leases, upon all or any part of the Premises, and transfer and assigns such Leases upon the same terms and conditions as herein contained. Assignor hereby covenants and agrees to make, execute and deliver unto Assignee upon demand and at any time any and all assignments and other records and instruments, including, but not limited to, rent rolls and books of account sufficient for the purpose that Assignee may deem to be advisable for carrying out the purposes and intent of this Agreement.
8. **Reports and Statements.** Assignor will deliver to Assignee, upon Assignee's request, operating statements and occupancy reports (including a rent roll) for the Premises in a form and for periods satisfactory to Assignee certified as correct by the chief financial officer of Assignor, or if there is no such officer, a manager, general partner or corporate treasurer other officer as approved by Assignee. Assignor shall permit Assignee to examine all books and records of Assignor pertaining to the Premises and deliver to Assignee upon request all financial statements, credit reports and other documents in the possession of Assignor relating to the financial condition of any tenant of the Premises and any guarantor of the Loan, including rental, income and expense statements pertaining to the Premises and tax returns and audits. Notwithstanding the foregoing, as long as no default has occurred under the Note and Security Instrument beyond the expiration of any applicable notice and cure period, Assignee shall not request copies of or access to such statements, books and records more often than once for each of Assignor's fiscal quarters.
9. **No Waiver.** The failure of Assignee to avail itself of any of the terms, covenants, and conditions of this Assignment for any period of time or at any time shall not be construed or deemed to be a waiver of any such right, and nothing herein contained nor anything done or omitted to be done by Assignee pursuant hereto shall be deemed a waiver by Assignee of any of its rights and remedies

UNOFFICIAL COPY

under the Note and Security Instrument or under the laws of the state in which the Premises are situated. The rights of Assignee to collect the indebtedness secured hereby, to enforce any of the security therefor, or to enforce any other right or remedy hereunder, may be exercised by Assignee either prior to, simultaneously with, or subsequent to, any other action taken hereunder and shall not be deemed an election of remedies.

10. **Primary Security.** This Assignment of Leases and Rents is primary in nature to the obligation evidenced and secured by the Note, the Security Instrument and any other document given to secure the indebtedness. Assignor further agrees that Assignee may enforce this Assignment without first resorting to or exhausting any other security or collateral, or exercising any other rights or remedies against any parties obligated on any documents evidencing or securing the Loan; however, nothing herein contained shall prevent Assignee from suing on the Note, foreclosing the Security Instrument or exercising any other right under any other document securing the Note.
11. **No Merger.** So long as any of the indebtedness secured hereby and by the Note and Security Instrument shall remain unpaid, unless Assignee shall otherwise consent in writing, the fee title and the leasehold estates created by the Leases upon the Premises shall not merge, but shall always be kept separate and distinct, notwithstanding the union of the leasehold estates and the fee interest in the Premises in the same person by purchase or otherwise or by operation of law.
12. **Termination of Assignment.** Upon payment in full of all of the indebtedness evidenced by the Note and secured by the Security Instrument, this Assignment shall be void and of no effect. No judgment or decree entered as to the indebtedness shall operate to abrogate or lessen the effect of this Assignment until such indebtedness has actually been paid. The affidavit, certificate, letter or statement of any officer of Assignee showing any part of the indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment. Any person, firm or corporation may and is hereby authorized to rely on such affidavit, certificate, letter or statement. A demand by Assignee shall be sufficient direction to a tenant to make future payments of Rents to Assignee without the necessity for further consent by or notice to Assignor.
13. **Notice.** All notices, demands or documents of any kind which Assignee may be required or may desire to serve upon Assignor shall be given as provided in the Security Instrument.
14. **Assignment Binds Successors; Joint and Several Liability.** The terms, covenants, conditions and warranties contained in this Assignment and the powers granted hereby shall run with the land and shall inure to the benefit of and bind all parties hereto and their respective heirs, successors and assigns; all tenants and their subtenants and assigns; and all subsequent owners of the Premises and subsequent holders of the Note and Security Instrument. This instrument shall be the joint and several obligation of all parties comprising Assignor, if more than one.
15. **Location of Performance.** Assignor expressly agrees that this Assignment is performable in the county where the Premises are located, waives the right to be sued elsewhere, and agrees and consents to the jurisdiction of any court of competent jurisdiction located in that county.
16. **Severability.** If any provision of this Assignment or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
17. **Entire Agreement.** This document together with the Security Instrument contains the entire agreement between the parties concerning the assignment of Rents and Leases. No variations,

UNOFFICIAL COPY

modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

- 18. **Governing Law.** The parties agree that the law of the State wherein the Premises are located shall govern the performance and enforcement of this Assignment.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date shown above.

ASSIGNOR:

3701 W. 128TH LLC, an Illinois limited liability company

By: [Signature]
Scott D. McKibben, Manager

(signatures must be acknowledged)

This Instrument Prepared by:
Casey Bradley
Symetra Life Insurance Company
Mortgage Loan Department
PO Box 84066
Seattle, WA 98124-8466

STATE OF ILLINOIS)
) ss.
COUNTY OF Cook)

I, Kimberly R Cherry, a Notary Public in and for said county in the state aforesaid, do certify that **SCOTT D. MCKIBBEN**, personally known to me to be the Manager of 3701 W. 128th LLC, an Illinois limited liability company, and personally known to be the same person who name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as the Manager of 3701 W. 128th LLC, an Illinois limited liability company, as his voluntary act and deed and the voluntary act and deed of the limited liability company for the uses and purposes therein mentioned. Witness my hand and official stamp or notarial seal, this 7th day of MAY, 2012.

[Signature]
Notary Public
Residing at: 1045 Davis Dr. Bensenville, IL
My Commission expires: 10/21/12



UNOFFICIAL COPY

EXHIBIT A

(Legal Description of Property)

Land and improvements situated in Cook County, Illinois:

PARCEL 1:

THE NORTH 364 FEET OF THE FOLOWING, TAKEN AS A TRACT:

LOT 9, EXCEPT THE WEST 67.58 FEET THEREOF AND LOTS 10, 11 AND 12 IN BLUE ISLAND GARDENS SUBDIVISION OF THE FOLLOWING DESCRIBED TRACT:

THE NORTHWEST QUARTER (EXCEPT THE EAST 20 ACRES THEREOF AND EXCEPT THE WEST 1/11 FEET OF THAT PART OF SAID NORTHWEST QUARTER LYING WEST OF SAID EAST 20 ACRES), IN SECTION 35, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 3 IN ALSIP INDUSTRIAL PARK UNIT 2 BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF THE NORTH WEST 1/4 OF SECTION 35, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

A PARCEL OF LAND IN PART OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 3 IN ALSIP INDUSTRIAL PARK UNIT 2, BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 35, ACCORDING TO THE PLAT THEREOF RECORD APRIL 19, 1968 AS DOCUMENT 20464384; THENCE NORTH 00 DEGREES 00 MINUTES WEST ON AN ASSUMED BEARING ALONG THE WEST LINE OF SAID LOT 3, A DISTANCE OF 441.63 FEET TO THE NORTHWEST CORNER OF SAID LOT 3, SAID POINT ALSO BEING ON THE SOUTH LINE OF WEST 128TH PLACE IN SAID ALSIP INDUSTRIAL PARK UNIT 2; THENCE NORTH 89 DEGREES 27 MINUTES 40 SECONDS WEST ALONG SAID SOUTH LINE OF WEST 128TH PLACE, A DISTANCE OF 6.97 FEET; THENCE SOUTH 11 DEGREES 17 MINUTES 20 SECONDS WEST, A DISTANCE OF 158.51 FEET TO A POINT 38.00 FEET OF THE WEST LINE OF SAID LOT 3; THENCE SOUTH 00 DEGREES 00 MINUTES EAST ALONG A LINE PARALLEL WITH AND 38.00 FEET WEST OF THE WEST LINE OF SAID LOT 3, A DISTANCE OF 285.92 FEET TO THE SOUTH LINE OF SAID LOT 3 EXTENDED WEST (ALSO BEING THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 35); THENCE SOUTH 89 DEGREES 29 MINUTES 30 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 3 EXTENDED WEST, A DISTANCE OF 38.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PROPERTY TAX INDEX # 24-35-100-036-0000; 24-35-100-091-0000; 24-35-101-034-0000; 24-35-101-036-0000; 24-35-101-038-0000; 24-35-101-040-0000.