

# UNOFFICIAL COPY

Loan No. 1011058



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Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 12/26/2013 01:54 PM Pg: 1 of 17

THIS DOCUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:

Land Services USA, Inc  
10 North Church Street, Suite 307  
West Chester, PA 19380  
610.429.3145

EAST AMERICAN TITLE

ORDER #

**ABSOLUTE ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS  
(MELROSE PARK, ILLINOIS)**

By

**KTRULL V LLC,**  
as the Assignor

in favor of

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
in its capacity as administrative agent  
for the benefit of all of the "Lenders" from time to time under the  
hereinafter defined "Credit Agreement",  
as the Assignee

Dated: December 20, 2013

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## ABSOLUTE ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS (MELROSE PARK, ILLINOIS)

**THIS ABSOLUTE ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS (MELROSE PARK, ILLINOIS)** (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as this "Assignment"), is entered into this 20<sup>th</sup> day of December, 2013, by **KTR ILL V LLC**, a Delaware limited liability company (hereinafter referred to as "Assignor"), whose address for notice hereunder is c/o KTR Capital Partners LP, Five Tower Bridge, 300 Barr Harbor Drive, Suite 150, Conshohocken, Pennsylvania 19428 in favor of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, in its capacity as administrative agent for the benefit of all of the "Lenders" from time to time under the hereinafter defined "Credit Agreement" (hereinafter referred to as "Assignee"), whose address for notice hereunder is 123 South Broad Street, 9<sup>th</sup> Floor, MAC No. Y1379-097, Philadelphia, Pennsylvania 19109, with a copy of all notices or correspondence to 123 South Broad Street, 9<sup>th</sup> Floor, MAC No. Y1379-097, Philadelphia, Pennsylvania 19109, Attention: Loan Administration Manager.

### WITNESSETH:

#### Article 1 DEFINITIONS

1.1 **Definitions.** As used herein, the following terms shall have the following meanings, and all capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in that certain Credit Agreement dated of even date herewith, executed by and among (i) KTR ILL VI, a Delaware limited liability company; (ii) KTR DUPAGE LLC, a Delaware limited liability company; (iii) KTR OHARE TWO LLC, a Delaware limited liability company; (iv) KTR CHIL LAKE LLC, a Delaware limited liability company; (v) KTR VALLEY III LLC, a Delaware limited liability company; (vi) KTR MC H LLC, a Delaware limited liability company; (vii) KTR CLA III LLC, a Delaware limited liability company; (viii) KTR SOUTH BAY VII LLC, a Delaware limited liability company; (ix) KTR CLA IV LLC, a Delaware limited liability company; (x) KTR BAY EAST IV LLC, a Delaware limited liability company; and (xi) the Assignor (hereinafter collectively referred to as the "Co-Borrowers"), the Assignee, and the "Lenders" (as such term is defined therein) which are party thereto from time to time (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Credit Agreement") with respect to, *inter alia*, that certain multi-draw commercial mortgage term loan in the aggregate principal amount of up to One Hundred Fifteen Million and 00/100 (\$115,000,000.00) Dollars:

(a) **Event of Default:** Any happening or occurrence described in Article 6 hereinbelow.

(b) **Fixtures:** All materials, supplies, equipment, apparatus and other items now owned or hereafter acquired by Assignor and now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land including, but not limited to, any and all partitions, generators, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerators, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities, whether or not situated in easements, together with all accessions, replacements,

[ASSIGNMENT OF LEASES (MELROSE PARK, ILLINOIS)]

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betterments and substitutions for any of the foregoing, and the proceeds thereof.

(c) **Improvements:** All site improvements and other improvements located on the Land, whether now or in the future, and all related facilities and amenities (including all site work, utilities, infrastructure, paving, striping, signage, curb and gutter, landscaping and improvements).

(d) **Land:** The real estate or interest therein described in Exhibit "A" attached hereto and incorporated herein by this reference, all fixtures or other improvements situated thereon and all rights, titles and interests appurtenant thereto.

(e) **Leases:** Any and all (whether now existing or hereafter entered into): (i) leases, subleases to the extent of Assignor's interest therein, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use or enjoy all or any portion of, the Mortgaged Premises, together with any guaranties thereof and all security and other deposits made in connection therewith and all renewals, modifications, amendments, supplements and replacements thereto or thereof, and (ii) other agreements to which Assignor is a party, such as architect's contracts, engineers' contracts, utility contracts, maintenance agreements and service contracts, which in any way relate to the use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Premises (hereinafter the agreements described in this clause (ii) shall be collectively referred to as the "Service Agreements").

(f) **Lessee:** Any and all tenants, subtenants, guarantors and any other party which is (i) obligated to pay rent to Assignor pursuant to the Leases and/or (ii) occupying space in the Improvements.

(g) **Mortgaged Premises:** The Land, Improvements, Fixtures, Personalty and Rents, together with:

(i) all rights, privileges, tenements, hereditaments, royalties, minerals, oil and gas rights, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all rights, title, and interests, if any, of Assignor in and to any streets, ways, alleys, strips, or gores of land adjoining the Land or any part thereof; and

(ii) all betterments, improvements, additions, alterations, appurtenances, substitutions, replacements, and revisions thereof and thereto and all reversions and remainders therein; and

(iii) all of Assignor's rights, title, and interests in and to any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, or Personalty, including, but not limited to, those for any vacation of, or change in grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and

(iv) all of Assignor's rights, title, and interests in and to any proceeds of insurance required or maintained pursuant to the terms of Paragraph 4.7 of that certain Mortgage, Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated of even date herewith, executed by Assignor in favor of Assignee (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Mortgage"); and

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(v) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the "Obligations" (as such term is defined in the Mortgage) or any "Specified Derivatives Obligations" (as such term is defined in the Credit Agreement).

As used in this Assignment, the term "Mortgaged Premises" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

(h) **Personalty**: All of the rights, title, and interests of Assignor in and to all furniture, furnishings, equipment, machinery, building supplies and materials, goods, general intangibles, money, insurance proceeds, accounts, contract rights, books and records, vehicles, trademarks, trade names, logos, inventory, all refundable, returnable or reimbursable fees, deposits, or other funds or evidences of credit or indebtedness deposited by or on behalf of Assignor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and all other personal property (other than the Fixtures) of any kind or character as defined in and subject to the provisions of the UCC, now or hereafter located or to be located upon, within or about the Land and improvements or which are or may be used in or related to the planning, development, financing, or operation of all or any portion of the Mortgaged Premises together with all accessories, additions, replacements and substitutions thereto or therefor and the proceeds thereof.

(i) **Rents**: All of the rents, receipts, revenues, issues and profits now due or which may become due or to which Assignor may now or hereafter shall become entitled (whether upon the expiration of any applicable period of redemption or otherwise) or may demand or claim, arising or issuing from or out of using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Leases, or from or out of the Mortgaged Premises or any part thereof, including, without limiting the generality of the foregoing, minimum rents, additional rents, percentage rents, parking maintenance charges or fees, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents, security deposits and liquidated damages following default or late payment of rent, premiums payable by any Lessee upon the exercise of a cancellation privilege provided for in any Lease and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Mortgaged Premises, together with any and all rights and claims of any kind which Assignor may have against any Lessee under any Lease or any subtenants or occupants of the Mortgaged Premises.

## **Article 2** **ASSIGNMENT**

2.1 **Absolute Assignment**. Assignor, in consideration of the sum of TEN DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER and DELIVER Assignor's entire interest in the Leases, the Rents and any and all guarantees thereof unto the Assignee, subject only to the "Permitted Encumbrances" (as such term is defined in the Mortgage), TO HAVE AND TO HOLD the Leases, the Rents and guarantees thereof unto Assignee, forever, and Assignor does hereby bind itself, its successors and assigns to WARRANT and FOREVER DEFEND the title to the Leases, the Rents and guarantees thereof unto Assignee against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Permitted Encumbrances. The parties hereto acknowledge and agree, and it is their intent, that this assignment of Leases, Rents and guarantees is an absolute and present assignment of such Leases, Rents and guarantees.

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The foregoing assignment of Leases, Rents and guarantees to Assignee extends to property of the Assignor acquired before the commencement of any federal or state bankruptcy or insolvency proceedings and to property of the Assignor acquired by the estate of Assignor after the commencement of such proceedings.

## Article 3

### LIMITED LICENSE, CONTINUATION AND TERMINATION OF ASSIGNMENT

3.1 **Limited License.** Provided that there exists no Event of Default hereunder or under or in any Loan Document, Assignor shall have the right under a limited and revocable license granted hereby, and Assignee hereby grants to Assignor such a license (hereinafter referred to as the "License") but limited and revocable as provided in Paragraph 7.1 hereof, to collect, but not more than one (1) month in advance (other than customary and reasonable security deposits), all of the Rents arising from or out of the Leases, or any renewals or extensions thereof, or from or out of the Mortgaged Premises or any part thereof, and Assignor shall receive such Rents and hold the same, as well as the right and license to receive such Rents, in trust, to be applied, and Assignor hereby covenants to apply the Rents, to the payment of interest and principal then due on account of the Indebtedness, to the satisfaction and discharge of the Obligations and/or any Specified Derivatives Obligations then due, including specifically, but without limitation to the payment of taxes and assessments upon the Mortgaged Premises before payment of penalty or interest are due thereon, to the cost of such insurance, maintenance and repairs as may be required by the terms of the Loan Documents and in satisfaction of all obligations under the Leases, all prior to the application by Assignor of the Rents for any other purposes. Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, Assignor shall be permitted to make distributions to its sole member in accordance with the terms, conditions, and provisions of its operating agreement.

3.2 **Continuation and Termination of Assignment.** Upon the indefeasible repayment in full of the Indebtedness and the discharge in full of all of the Obligations and Specified Derivatives Obligations, as evidenced by a full release or satisfaction of record of the Mortgage, this Assignment shall become and be void and of no force or effect. Written demand by Assignee delivered to any Lessee for payment of Rents by reason of the occurrence of any Event of Default claimed by Assignee shall be sufficient evidence of each such Lessee's obligation and authority to make all future payments of Rents to Assignee without the necessity for further consent by the Assignor. Assignor hereby defends, indemnifies, and agrees to hold each Lessee free and harmless from and against all liability, loss, cost, damage or expense suffered or incurred by such Lessee by reason of its compliance with any demand for payment of Rents made by Assignee contemplated by the preceding sentence.

## Article 4

### WARRANTIES AND REPRESENTATIONS

Assignor hereby unconditionally warrants and represents to Assignee as follows:

4.1 **Ownership of Leases and Rents.** Assignor is the owner in fee simple absolute of the Mortgaged Premises, subject only to the Permitted Encumbrances, and has good title to the Leases, Rents and guarantees and all requisite right, power and authority to assign the Leases, Rents, and guarantees and no other person, firm or entity has any right, title or interest therein.

4.2 **No Default.** Except as otherwise disclosed in the rent roll provided by Assignor to Assignee in connection with the execution and delivery hereof or in any estoppel certificate provided to

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Assignee by any Lessee in connection with the execution and delivery hereof, Assignor has duly and punctually performed, all and singular, the terms, covenants, conditions and warranties of the Leases on Assignor's part to be kept, observed and performed, and the Lessees thereunder are not in default of any of the terms, conditions or provisions of the respective Leases.

4.3 **No Modification of Leases or Anticipation or Hypothecation of Rents.** The Leases are valid and unmodified, except as indicated herein, and are in full force and effect; Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, whether now due or hereafter to become due; the Rents now due, or to become due, for any periods subsequent to the date hereof have not been collected more than one (1) month in advance and that payment thereof has not been anticipated more than one (1) month in advance, waived or released, discounted, set off or otherwise discharged or compromised. Assignor has not received any funds or deposits from any Lessee for which credit has not already been made on account of accrued Rents, and Assignor has not received any bona fide and acceptable offer to purchase the Mortgaged Premises or any part thereof which would in any way affect any right or option of first refusal to purchase all or any portion of the property now contained in any Lease; and Assignor has not done anything which might prevent Assignee from or limit Assignee in operating under or enforcing any of the provisions hereof.

## Article 5 AFFIRMATIVE COVENANTS

Assignor hereby unconditionally covenants and agrees with Assignee as follows:

5.1 **Performance.** Assignor shall observe, perform and discharge, duly and punctually, all and singular, its obligations, terms, covenants, conditions and warranties under the Leases, and Assignor shall give prompt notice to Assignee of any failure on the part of Assignor to observe, perform and discharge the same or of any claim made by the Lessee or any such failure by Assignor.

5.2 **Notification to Lessees.** Upon request by Assignee, Assignor shall notify and direct, in writing, each and every present or future Lessee or occupant of the Mortgaged Premises or of any part thereof that any security deposit or other deposits heretofore delivered to Assignor have been retained by Assignor or assigned and delivered to Assignee, as the case may be.

5.3 **Enforcement.** Assignor shall enforce, short of termination of the Leases, or secure in the name of the Assignee the performance of each and every obligation, term, covenant, condition and agreement in the Leases to be performed by any Lessee, and Assignor shall appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with the Leases or the obligations, duties or liabilities of the Assignor and any Lessee thereunder, and upon request by Assignee, Assignor will do so in the name and on behalf of the Assignee, but at the expense of the Assignor, and Assignor shall pay all reasonable costs and expenses of the Assignee, including reasonable attorneys' fees and disbursements, in any action or proceeding in which the Assignee may appear.

5.4 **Anticipation or Hypothecation of Rents.** Assignor shall neither receive nor collect any Rents (other than customary and reasonable security deposits) from any present or future Lessee for a period of more than one (1) month in advance (whether in cash or by evidence of indebtedness), nor pledge, transfer, mortgage or otherwise encumber or assign future payments of Rents, nor waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any Lessee under any Lease of and from any obligations, covenants, conditions and agreements to be kept, observed and performed by such Lessee, including the obligation to pay Rents thereunder, in the manner and at the time and place specified therein.

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5.5 **Execution and Modification of Leases.** Unless Assignor first obtains the prior express written consent of Assignee (which consent shall not be unreasonably withheld, except as to items (b)(i), (iii), (vii), (ix), (x), and (xi) below), Assignor shall not:

- (a) execute any Lease of all or any portion of the Mortgaged Premises (except that Assignor may execute or terminate Service Agreements without Assignee's consent or Approved Leases that do not require Lender's approval under the Credit Agreement);
- (b) subject to the provisions of Paragraph 5.3 hereof:
  - (i) cancel, terminate or consent to any surrender of any Lease (except that Assignor may execute or terminate Service Agreements without Assignee's consent or Approved Leases that do not require Lender's approval under the Credit Agreement);
  - (ii) commence any action of ejectment or any summary proceedings for dispossession of the Lessee under any Lease or exercise any right of recapture provided in any Lease unless expressly permitted by the terms of the Credit Agreement;
  - (iii) modify or in any way alter the terms of any Lease (except the foregoing shall not apply to Service Agreements or Approved Leases which are amended or modified in accordance with the requirements of the Credit Agreement without necessity of Assignee's consent);
  - (iv) waive or release the Lessee or any guarantors from any obligations or conditions to be performed by the Lessee or any guarantor under a Lease;
  - (v) renew or extend the term of any Lease unless an option therefor was originally so reserved by the Lessee and for a fixed and definite or fair market rental, or such renewal or extension otherwise complies in substance with the requirements for a new Lease for which approval is not required under the Credit Agreement, even if a new Lease is not executed for such renewal or extension;
  - (vi) relocate any Lessee within the Mortgaged Premises unless otherwise permitted in an Approved Lease;
  - (vii) consent to any material modification of the express purposes for which the Mortgaged Premises has been leased;
  - (viii) consent to any subletting of the Mortgaged Premises or any part thereof, to any assignment of any Lease by any Lessee thereunder, or to any assignment or further subletting of any sublease, without obtaining in each instance the prior written consent of Assignee (except to the extent that no such consent is required under the applicable Lease);
  - (ix) receive or collect any Rents from any present or future Lessee for a period of more than one (1) month in advance (whether in cash or by evidence of indebtedness);
  - (x) pledge, transfer, mortgage or otherwise encumber or assign future payments of Rents; or
  - (xi) waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any Lessee under any Lease of and from any material obligations, covenants, conditions and agreements to be kept, observed and performed by such Lessee, including the obligation to

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pay Rents thereunder, in the manner and at the time and place specified therein.

5.6 **Delivery of Leases; Further Acts and Assurances.** Until the Indebtedness and the Obligations and Specified Derivatives Obligations have been indefeasibly repaid in full and discharged, Assignor will deliver to the Assignee executed copies of all existing and future Leases (but not Service Agreements) when executed upon all or any part of the Mortgaged Premises and will transfer and assign future Leases upon the same terms and conditions as herein contained, and Assignor hereby covenants and agrees to make, execute and deliver to Assignee, upon demand and at any time or times, any and all assignments and other documents and instruments which Assignee may reasonably deem advisable to carry out the true purpose and intent of this Assignment.

5.7 **No Merger of Estates.** So long as the Indebtedness and the Obligations or any Specified Derivatives Obligations remain unpaid and undischarged, and unless the Assignee otherwise consents, in writing, the fee and the leasehold estates in and to the Mortgaged Premises shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates (without implying Assignee's consent to such union) either in the Assignor, the Assignee or in any Lessee or in any third party by purchase or otherwise.

5.8 **Estoppel Certificates.** Within thirty (30) days after written request by the Assignee, the Assignor shall use its good faith efforts to obtain and shall deliver to the Assignee and to any party designated by the Assignee estoppel certificates executed by the Assignor and by each of the Lessees certifying (if such be the case) to certain matters relating to the Leases, including, without limitation: (a) that the Leases are in full force and effect; (b) the date and amount of each tenant's most recent payment of rent and other charges; (c) that there are no uncured defaults, defenses or offsets outstanding, or stating those claimed by the Assignor or any tenant; and (d) any other information reasonably requested by the Assignee; provided, however, that such request by Assignee shall not, if no Event of Default exists, be made more than once annually and Assignor shall not be liable to Assignee should any Lessee either fail to execute and deliver an estoppel certificate or executes and delivers an estoppel certificate on a form other than the form requested by Assignee.

## Article 6 EVENTS OF DEFAULT

6.1 **Events of Default.** The term "Event of Default," as used herein and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of an "Event of Default" (as such term is defined in the Credit Agreement).

## Article 7 REMEDIES

7.1 **Remedies.** Assignor hereby expressly acknowledges and agrees that upon or any time after the occurrence and during the continuance of an Event of Default hereunder or under any of the other Loan Documents, Assignee's right, title and interest in and to the Leases, Rents and guarantees shall be and remain absolute and inviolate in accordance with the provisions of this Assignment. Moreover, without limiting, altering, affecting or impairing in any manner or to any extent the absolute right, title and interest of Assignee as provided herein, upon the occurrence and during the continuance of such an Event of Default, Assignee shall have the complete right, power and authority hereunder, then or thereafter, to exercise and enforce any or all of the following rights and remedies:

- (a) To terminate the License and then and thereafter, with or without taking



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possession of the Mortgaged Premises, in Assignor's own name, to demand, collect, receive, sue for, attach and levy on the Rents and 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, apply the net proceeds thereof, together with any funds of Assignor deposited with Assignee, in reduction or repayment of the Indebtedness and the Obligations (and Specified Derivatives Obligations) in such order of priority as is provided in the Credit Agreement in connection with an Event of Default;

(b) To declare the Indebtedness immediately due and payable and, at its option, exercise all of the rights and remedies contained in the Loan Documents; and

(c) Without regard to the adequacy of the security or solvency of Assignor or waste, with or without any action or proceeding through any person or by any agent, or by a receiver to be appointed by a court of competent jurisdiction, and irrespective of the Assignor's possession, then or thereafter to enter upon, take possession of, manage and operate the Mortgaged Premises or any part thereof; make, modify, enforce, cancel or accept surrender of any Lease now in effect or hereafter in effect on the Mortgaged Premises or any part thereof, remove and evict any Lessee; increase or decrease Rents under any Lease; decorate, clean and repair, and otherwise do any act or incur any cost or expense which Assignee may deem reasonably necessary to protect the status and value of the Mortgaged Premises as fully and to the same extent as Assignor could do if in possession thereof; and in such event, to apply the Rents so collected to the operation and management of the Mortgaged Premises, but in such order or priority as Assignee shall deem proper (but subject to the terms of the Mortgage), and including the payment of reasonable management, brokerage and attorneys' fees and disbursements, and payment of the Indebtedness and the Obligations (and Specified Derivatives Obligations) and to the establishment and maintenance, without interest, of a reserve for replacements.

(d) Make or do any payments or acts which Assignor fails to make or do in such manner and to such extent as Assignee may deem necessary to protect the Mortgaged Premises or any Lease, including the right to appear in and defend any action or proceeding purporting to affect the Mortgaged Premises or any Lease or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor contained in any Lease and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

7.2 **Exculpation of Assignee.** The acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority created hereby, shall not, prior to entry upon and taking possession of the Mortgaged 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 the Assignee to appear in or defend any action or proceeding relating to the Leases, the Rents or the Mortgaged 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 any Lease or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any Lessee and not assigned and delivered to Assignee or obligate Assignee to lease the Mortgaged Premises or attempt to do the same, nor, except if caused by the gross negligence or intentional misconduct of Assignee or of its agents, employees or representatives, shall Assignee be liable in any way for any injury or damage to persons or property sustained by any person, firm or corporation in or about the Mortgaged Premises.

7.3 **No Waiver or Election of Remedies.**

(a) **Waiver.** Neither the collection of the Rents and application as provided for in this Assignment nor the entry upon and taking possession of the Mortgaged Premises by Assignee shall

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be deemed to cure or waive any Event of Default or waive, modify or affect any notice of default under any Loan Document or invalidate any act done pursuant to any such notice. The enforcement of any such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect, notwithstanding that the collection and application of the Rents may have cured the original Event of Default. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent Event of Default.

(b) **Election of Remedies.** The failure of the Assignee to assert any of the terms, covenants and conditions of this Assignment for any period of time or at any time or times 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 to this Assignment shall be deemed to be an election of remedies or a waiver by Assignee of any of its rights and remedies under any other Loan Document or under the law. The right of the Assignee to collect and enforce the payment of the Indebtedness and performance of the Obligations and the Specified Derivatives Obligations and to enforce any security therefor may be exercised by the Assignee either prior to or simultaneously with or subsequent to any action taken hereunder.

#### 7.4 **Appointment of Attorney-in-Fact.**

(a) **Rents.** Subject to the License described and limited in Paragraphs 3.1 and 7.1 hereof, Assignor hereby constitutes and appoints Assignee the true and lawful attorney, coupled with an interest, of the Assignor and in the name, place and stead of Assignor to, during the pendency of any Event of Default, demand, sue for, attach, levy, recover and receive all Rents and any premium or penalty payable upon the exercise by any Lessee under any Lease of a privilege of cancellation originally provided in such Lease and to give proper receipts, releases and acquittances therefor and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion of the Indebtedness or the Obligations or Specified Derivatives Obligations as provided in the Credit Agreement in connection with an Event of Default, notwithstanding the fact that such portion of the Indebtedness or the Obligations or Specified Derivatives Obligations may not then be due and payable or that such portion of the Indebtedness or the Obligations or Specified Derivatives Obligations is otherwise adequately secured; and Assignor does hereby authorize and direct any such Lessee to deliver such payment to Assignee in accordance with this Assignment, and Assignor hereby ratifies and confirms all that its said attorney, the Assignee, shall do or cause to be done by virtue of the powers granted hereby. The foregoing appointment is irrevocable and continuing (and such rights, powers and privileges shall be exclusive in Assignee, its successors and assigns) so long as any part of the Indebtedness or the Obligations or Specified Derivatives Obligations secured hereby remain unpaid and undischarged, but such appointment shall be exercised by Assignee only during the pendency of an Event of Default. The foregoing power of attorney shall be deemed to be granted in compliance with the Illinois Power of Attorney Act (755 ILCS 45 *et seq.*). A Lessee need not inquire into the authority of Assignee to collect any rents, and its obligations to Assignor shall be absolutely discharged to the extent of any payment to Assignee.

(b) **Leases.** Subject to the License described and limited in Paragraphs 3.1 and 7.1 above, Assignor hereby constitutes and appoints Assignee the true and lawful attorney, coupled with an interest, of the Assignor and in the name, place and stead of said Assignor to, during the pendency of any Event of Default, subject and subordinate at any time and from time to time any Lease or any part thereof to the lien and security interest of the Mortgage or any other mortgage, Mortgage or security agreement on or to any ground lease of the Mortgaged Premises, or to request or require such subordination, where such reservation, option or authority was reserved to the Assignor under any such Lease, or in any case where the Assignor otherwise would have the right, power or privilege so to do. The foregoing power of attorney shall be deemed to be granted in compliance with the Illinois Power of Attorney Act (755 ILCS

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Loan No. 1011058

45 et seq.). The foregoing appointment is irrevocable and continuing, and such rights, powers and privileges shall be exclusive in Assignee, its successors and assigns, so long as any part of the Indebtedness or the Obligations or Specified Derivatives Obligations secured hereby remain unpaid and undischarged, but such appointment shall be exercised by Assignee only during the pendency of an Event of Default. Assignor hereby warrants that Assignor has not at any time prior to the date hereof exercised any such right, and Assignor hereby covenants not to exercise any such right, to subordinate any such Lease to the lien of the Mortgage or to any other mortgage, or security agreement.

7.5 **Assignor's Indemnities.** Assignor hereby agrees to defend, indemnify and hold the Assignee free and harmless from and against any and all liability, loss, cost, damage or expense which Assignee may incur (except to the extent the same arise by reason of the gross negligence or willful misconduct of the Assignee or of the Assignee's agents, employees or representatives) under or by reason of this Assignment, or for any action taken by the Assignee hereunder, or by reason or in defense of any and all claims and demands whatsoever which may be asserted against Assignee arising out of the Leases, including specifically, but without limitation, any claim by any Lessee of credit for Rents paid to and received by Assignor but not delivered to Assignee, for any period under any Lease more than one (1) month in advance of the due date thereof. In the event the Assignee incurs any such liability, loss, cost, damage or expense, the amount thereof, including reasonable attorneys' fees, with interest thereon, if not paid within thirty (30) days, at the Post-Default Rate specified in the Notes, shall be payable by Assignor to Assignee immediately, without demand, and shall be secured hereby and by all other security for the payment and performance of the Indebtedness and the Obligations and the Specified Derivatives Obligations, including specifically, but without limitation, the lien and security interest of the Mortgage.

## Article 8 MISCELLANEOUS

8.1 **Performance at Assignor's Expense.** The cost and expense of performing or complying with any and all of the Obligations and Secured Derivatives Obligations shall be borne solely by Assignor, and no portion of such cost and expense (except to the extent that certain costs and expenses are included within the definition of "Indebtedness") shall be, in any way and to any extent, credited against any installment on or portion of the Indebtedness.

8.2 **Survival of Obligations.** Each and all of the Obligations and Secured Derivatives Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the Credit Facility called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

8.3 **Further Assurances.** Assignor, upon the request of Assignee, will execute, acknowledge, authorize, deliver and record and/or file such further instruments and do such further reasonable acts as may be reasonably necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, substitutions, replacements, modifications or amendments to the Leases.

8.4 **Recording and Filing.** Assignor will cause the Mortgage, this Assignment, the financing statements and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and refiled in such manner and in such places as Assignee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

8.5 **Notices.** All notices or other communications required or permitted to be given pursuant to this Assignment shall be in writing and shall be given in the manner set forth in the Credit Agreement.

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Assignor hereby acknowledges and agrees that notice given under any provision of the Loan Documents shall also satisfy the notice requirements under any other provision of the Loan Documents relating to the same factual circumstances, and in no event shall Assignee be required to give more than one (1) notice for default of the Obligations (or Specified Derivatives Obligations) or failure to pay the Indebtedness.

8.6 **Successors and Assigns.** All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties hereto, their successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them; provided, however, Assignor may not assign, transfer or in any way hypothecate its interest in the Loan Documents or the Mortgaged Premises (or any portion thereof, except as may be expressly permitted by the Loan Documents) without Assignee's prior express written consent.

8.7 **No Waiver; Severability.** Any failure by Assignee to insist, or any election by Assignee not to insist, upon strict performance by Assignor of any of the terms, provisions or conditions of this Assignment or the other Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions or conditions thereof; and Assignee shall have the right at any time or times thereafter to insist upon strict performance by Assignor of any and all of such terms, provisions and conditions. This Assignment and the other Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable legal requirements. If any provision of this Assignment or any of the other Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather, shall be enforced to the greatest extent permitted by law.

8.8 **Entire Agreement and Modification.** This Assignment and the other Loan Documents contain the entire agreement between the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. The Loan Documents may not be amended, revised, waived, released or terminated orally, but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party. Assignor expressly agrees that for purposes of this Assignment: (i) this Assignment shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1 *et seq.* (the "Credit Act"); (ii) the Credit Act applies to this transaction including, but not limited to, the execution of this Assignment; and (iii) any action on or in any way related to this Assignment shall be governed by the Credit Act.

8.9 **Counterparts.** This Assignment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

8.10 **Headings.** The Article, Paragraph and Subparagraph captions hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Paragraphs or Subparagraphs.

8.11 **Parties Bound.** The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns and all Lessees, and all subtenants and assigns of such Lessees and all subsequent owners of the Mortgaged Premises and all subsequent holders of the Notes and the other Loan Documents. In this Assignment, whenever the context so requires the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. All obligations of each Assignor

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hereunder shall be joint and several.

8.12 **Applicable Law**. This Assignment shall be construed in accordance with the laws of the State of Illinois.

8.13 **Venue**. Assignor agrees that venue in any proceeding hereunder shall be proper in the jurisdiction in which the Mortgaged Premises is located.

8.14 **WAIVER OR RIGHT TO TRIAL BY JURY**. ASSIGNOR AND, BY ITS ACCEPTANCE HEREOF, ASSIGNEE, HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS ASSIGNMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS ASSIGNMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND ASSIGNOR AND ASSIGNEE EACH HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS ASSIGNMENT AND ASSIGNEE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS PARAGRAPH 8.14 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO AND ASSIGNEE TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

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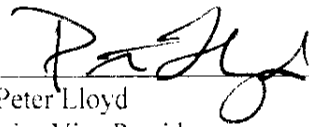
Loan No. 1011058

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IN WITNESS WHEREOF, intending to be legally bound, Assignor has executed and delivered this Assignment, as an instrument under seal, as of the day and year first set forth above.

KTR ILL V LLC, a Delaware limited liability company

By: **KTR Property Trust III**, a Maryland real estate investment trust, its Sole Member

By:   
J. Peter Lloyd  
Senior Vice President

Property of Cook County Clerk's Office



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Loan No. 10,1058

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF Montgomery :

: SS

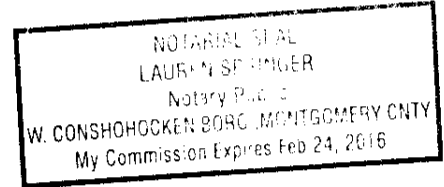
On this 18<sup>th</sup> day of December 2013, before me, Lauren Springer  
a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared J. PETER LLOYD,  
personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is  
subscribed to the within instrument and acknowledge to me that he executed the same in his authorized  
capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the  
person acted, executed the instrument.

WITNESS my hand and official seal aforesaid

Signature

Lauren Springer  
2/24/16

My commission expires



[REDACTED]

[REDACTED]

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## EXHIBIT "A"

ATTACHED TO AND MADE A PART OF THAT CERTAIN  
ABSOLUTE ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS (MELROSE  
PARK, ILLINOIS) BY KTR ILL V LLC, AS ASSIGNOR, IN FAVOR OF WELLS FARGO  
BANK, NATIONAL ASSOCIATION, IN ITS CAPACITY AS ADMINISTRATIVE AGENT FOR  
CERTAIN LENDERS FROM TIME TO TIME, AS ASSIGNEE,  
DATED DECEMBER 20, 2013

## LEGAL DESCRIPTION

2407-2457 West North Ave, Melrose Park, IL  
60160  
PIN 12-34-300-004-0000  
12-34-304-002-0000  
12-34-304-006-8001  
12-34-304-006-8002

Property of Cook County Clerk's Office





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THE WEST 570 FEET OF THAT PART OF THE SOUTHWEST FRACTIONAL QUARTER, SOUTH OF THE INDIAN BOUNDARY LINE OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE INDIANA HARBOR BELT RAILROAD COMPANY AND NORTH OF THE NORTH LINE OF THE RIGHT OF WAY OF WEST NORTH AVENUE AS WIDENED, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SAID SOUTHWEST FRACTIONAL QUARTER AND THE NORTH LINE OF RIGHT OF WAY OF WEST NORTH AVENUE, SAID POINT BEING 102.43 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SOUTHWEST FRACTIONAL QUARTER; THENCE NORTH ALONG THE WEST LINE OF SAID SOUTHWEST FRACTIONAL QUARTER, 1342.37 FEET TO THE INTERSECTION OF SAID LINE WITH THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE INDIANA HARBOR BELT RAILROAD COMPANY, SAID POINT BEING 342.74 FEET SOUTH OF THE INDIAN BOUNDARY LINE, THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF SAID RAILROAD ALONG A LINE FORMING AN ANGLE OF 136 DEGREES 30 MINUTES 52 SECONDS FROM SOUTH TO EAST TO NORTH WITH THE WEST LINE OF SAID SOUTHWEST FRACTIONAL QUARTER, 828.28 FEET TO INTERSECTION OF SAID RIGHT OF WAY LINE WITH THE EAST LINE OF THE WEST 570 FEET OF SAID SOUTHWEST FRACTIONAL QUARTER; THENCE SOUTH ALONG A LINE 570 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST FRACTIONAL QUARTER, 1945.14 FEET TO THE INTERSECTION OF SAID PARALLEL LINE WITH THE NORTH LINE OF RIGHT OF WAY OF WEST NORTH AVENUE, SAID POINT BEING 102.78 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHWEST FRACTIONAL QUARTER; THENCE WEST ALONG THE NORTH RIGHT OF WAY LINE OF WEST NORTH AVENUE 570 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.