

# UNOFFICIAL COPY

RECORDING REQUESTED BY:

LANDESBANK HESSEN-THÜRINGEN  
GIROZENTRALE

WHEN RECORDED MAIL TO:

Gary A. Goodman, Esq.  
Dentons US LLP  
1221 Avenue of the Americas  
New York, New York 10020-1089



Doc# 1828234018 Fee \$52.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 10/09/2018 09:49 AM PG: 1 OF 8

## ASSIGNMENT OF RENTS AND LEASES

made by

311 WEST ILLINOIS STREET OWNER LLC,  
a Delaware limited liability company,  
as "Assignor"

in favor of

LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE,  
Individually and as Agent for itself and certain other Banks,  
as "Assignee"

Property Address: 311 West Illinois Street  
Chicago, Illinois

Perm. Tax No.: 17-09-250-003-0000  
17-09-250-004-0000  
17-09-250-005-0000  
17-09-250-006-0000

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## ASSIGNMENT OF RENTS AND LEASES

This **ASSIGNMENT OF RENTS AND LEASES** (this "Agreement") is dated as of October 5, 2018, by **311 WEST ILLINOIS STREET OWNER LLC**, a Delaware limited liability company, having an address at 225 W. Washington Street, Suite 2300, Chicago, Illinois 60606 ("Borrower"), to **LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE**, as agent for the banks described in the Term Loan Agreement (the "Banks"), whose address is 420 Fifth Avenue, 24th Floor, New York, New York 10018-2729, Attention: Thomas Crowley ("Agent"). Capitalized terms not defined herein shall have the meanings given to such terms in that certain Term Loan Agreement dated as of the date hereof among Agent, the Banks and Borrower, as the same may be supplemented, amended and/or restated from time to time (the "Loan Agreement").

### RECITALS:

WHEREAS, Agent, Borrower and the Banks are parties to a loan (the "Loan") in the principal amount evidenced by and set forth in that certain Term Loan Promissory Note from Borrower to the order of Agent dated as of the date hereof, as the same may be issued, supplemented, amended, restated, renewed, replaced, substituted, modified and/or extended from time to time (the "Note"), which Note is secured by, among other things, a Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, of even date herewith, executed by Borrower for the benefit of Agent and securing the payment of an indebtedness in the principal amount of \$75,000,000.00 and intended to be recorded simultaneously herewith in the Cook County, Illinois Recorder of Deeds (as the same may be supplemented, consolidated amended, extended and/or restated from time to time, the "Mortgage"), encumbering the Property (as defined in Section 1 hereof); and

WHEREAS, in connection with the Loan, Agent requires that Borrower enter into this Agreement.

### AGREEMENT:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Agent agree as follows:

1. Absolute Assignment. Borrower unconditionally and absolutely assigns to Agent all of Borrower's right, title and interest in and to: (a) all leases, subleases, occupancy agreements, licenses, usufructs, rental contracts and other agreements now or hereafter existing relating to the use or occupancy of the project located on the real property described in Exhibit A hereto (the "Property") or related parking, together with all guarantees, modifications, extensions and renewals thereof (collectively, the "Leases"); and (b) all rents, issues, profits, income and proceeds due or to become due from tenants of the Property, including rentals and all other payments of any kind under the Leases, together with all deposits (including security deposits) of tenants thereunder (collectively, the "Rents"). This Agreement is an absolute assignment to Agent and not an assignment as security for the performance of the obligations under the Loan Documents, or any other indebtedness.

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2. Rights of Agent. Subject to the provisions of Section 6 below, Agent shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Agent and that all Rents are to be paid directly to Agent, whether or not Agent has commenced or completed foreclosure or taken possession of the Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim, with respect to Rents and Leases; (d) enter upon, take possession of and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Borrower under the Leases and exercise any and all rights of Borrower therein contained to the full extent of Borrower's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Agent's request while an Event of Default exists, Borrower shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Property. Borrower irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Borrower, to comply with all demands of Agent under this Agreement and to turn over to Agent on demand all Rents which it receives.

3. No Obligation. Notwithstanding Agent's rights hereunder, Agent shall not be obligated to perform, and Agent does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Agreement. Prior to taking possession of the Property by foreclosure or deed in lieu thereof, Agent shall have no responsibility on account of this Agreement or the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property.

4. Right to Apply Rents. Agent shall have the right, but not the obligation, to use and apply any Rents received hereunder in such order and such manner as Agent may determine for:

(a) Enforcement or Defense. The payment of costs and expenses of enforcing or defending the terms of this Agreement or the rights of Agent hereunder, and collecting any Rents;

(b) Loan Payments. Interest, principal or other amounts payable pursuant to (1) the Loan Agreement, (2) the Note, (3) the Mortgage, (4) this Agreement and (5) all other documents and instruments evidencing, governing and securing the Loan and any and all restatements, consolidations, renewals, supplements, modifications, amendments or extensions thereof or replacements or substitutions therefor; and

(c) Operating Expenses. Payment of costs and expenses of the operation and maintenance of the Property, including (1) rentals and other charges payable by Borrower under any ground lease or other agreement affecting the Property; (2) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property; (3) insurance premiums; (4) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents; (5) wages and salaries of employees, commissions of agents and attorneys' fees and

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expenses; and (6) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Property.

After the payment of all such costs and expenses and after Agent has established such reserves as it, in its sole discretion, deems necessary for the proper management of the Property, Agent shall apply all remaining Rents received by it to the reduction of the Loan.

5. No Waiver. The exercise or nonexercise by Agent of the rights granted in this Agreement or the collection and application of Rents by Agent or its agent shall not be a waiver of any default by Borrower under this Agreement or any other Loan Document. No action or failure to act by Agent with respect to any obligations of Borrower under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Agent's rights and privileges under this Agreement, or discharge, release or modify any of Borrower's duties or obligations hereunder.

6. Revocable License. Notwithstanding that this Agreement is an absolute assignment of the Rents and the Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and the Leases, Agent grants to Borrower a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents and to administer and enforce the Leases. Such license may be revoked by Agent upon the occurrence of any Event of Default.

7. Term. This Agreement shall continue in full force and effect until (a) all amounts due under the Loan Documents are indefeasibly paid in full, and (b) all other Obligations are fully satisfied. Borrower shall apply any Rents which it receives to the payment of debt service on the Note and other payments due under the Loan Agreement, taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Property, insurance premiums, operation and maintenance charges relating to the Property, and other obligations of lessor under the Leases before using such proceeds for any other purpose.

8. Liability of Agent. Agent shall not in any way be liable to Borrower for any action or inaction of Agent, its employees or agents under this Agreement, except for Agent's or its employees' or agents' acts of gross negligence or willful misconduct.

9. Foreclosure. In the event of foreclosure of the Mortgage by sale or otherwise, the Agent is hereby authorized to sell the lessors' interest in the Leases and Rents or to assign the same without consideration to the purchaser at said sale or to any other claimant to the title to the Property by virtue of a foreclosure of the Mortgage; and there shall be no liability to account to Borrower for any rents or profits accruing after the foreclosure of the Mortgage.

10. Rent Roll. Borrower hereby represents and warrants to Agent that any rent roll previously delivered to Agent, if any, is true and correct as to the date hereof and that no further leases affect the Property. Borrower further represents and warrants to Agent that (i) all state and local governmental and/or municipal approvals relating to the space covered by the Leases have been duly issued and are in full force and effect, and (ii) at no time during the term of the Note shall Borrower use the Property or permit any tenant of the Property to use the Property in a

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manner which would violate or could lead to liability under any federal, state or local environmental law, rule or regulation.

11. Modification. This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

12. Successors and Assigns. This Agreement shall inure to the benefit of Agent and its successors and assigns and shall be binding on Borrower and its successors and assigns.

13. Governing Law. IN ACCORDANCE WITH THE TERMS OF THE OTHER LOAN DOCUMENTS AND EXCEPT AS PROVIDED BELOW, THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND UNDER THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LEGAL REQUIREMENTS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF SUCH STATE. BORROWER AND AGENT FURTHER ACKNOWLEDGE, AGREE AND STIPULATE THAT THIS AGREEMENT WAS MADE BY BORROWER IN THE STATE OF NEW YORK, THAT THE PROCEEDS OF THE INDEBTEDNESS SECURED HEREBY WERE RECEIVED BY BORROWER IN THE STATE OF NEW YORK AND THAT THE STATE OF NEW YORK HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES INVOLVED IN THIS TRANSACTION AND TO THE UNDERLYING TRANSACTIONS SECURED BY THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT:

(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY AGENT OF PROVISIONAL REMEDIES AGAINST BORROWER DIRECTLY RELATING TO THE REAL PROPERTY ENCUMBERED HEREBY, INCLUDING, BY WAY OF ILLUSTRATION BUT NOT LIMITATION, ANY SUCH ACTIONS FOR REPLEVIN, FOR FORECLOSURE, FOR CLAIM OR DELIVERY OF PROPERTY, OR FOR THE APPOINTMENT OF A RECEIVER, SHALL BE GOVERNED BY THE LEGAL REQUIREMENTS OF THE STATE OF ILLINOIS;

(ii) LEGAL REQUIREMENTS OF THE STATE OF ILLINOIS SHALL APPLY TO THE EXTENT, BUT ONLY TO THE EXTENT, NECESSARY IN ORDER TO CREATE, TO PERFECT, OR TO FORECLOSE THE SECURITY INTEREST AND LIENS CREATED HEREBY; PROVIDED, HOWEVER, THAT NOTHING IN THIS PARAGRAPH SHALL IN ANY EVENT BE CONSTRUED TO PROVIDE THAT THE SUBSTANTIVE LEGAL REQUIREMENTS OF THE STATE OF ILLINOIS SHALL APPLY TO THE OBLIGATIONS AND INDEBTEDNESS SECURED BY THIS AGREEMENT OR THE MORTGAGE OR EVIDENCED BY THE OTHER LOAN DOCUMENTS, WHICH ARE AND SHALL CONTINUE TO BE GOVERNED BY THE SUBSTANTIVE LEGAL REQUIREMENTS OF THE STATE OF NEW YORK. IN SUCH CONNECTION, THE PARTIES FURTHER AGREE THAT

(b) AGENT MAY ENFORCE ITS RIGHTS UNDER THE LOAN DOCUMENTS, INCLUDING ITS RIGHT TO SUE BORROWER AND/OR ANY GUARANTOR, TO COLLECT ANY OUTSTANDING INDEBTEDNESS, OR TO OBTAIN A

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JUDGMENT AGAINST BORROWER IN THE STATE OF NEW YORK, THE STATE OF ILLINOIS OR OTHER STATES FOR ANY DEFICIENCY PRIOR TO OR FOLLOWING FORECLOSURE, IN ACCORDANCE WITH NEW YORK LEGAL REQUIREMENTS, AND IF AGENT OBTAINS A DEFICIENCY JUDGMENT IN A STATE OTHER THAN IN THE STATE OF ILLINOIS, AGENT SHALL HAVE THE RIGHT TO ENFORCE SUCH JUDGMENT IN THE STATE OF ILLINOIS, AS WELL AS IN OTHER STATES;

(c) WHENEVER POSSIBLE, EACH PROVISION OF THIS AGREEMENT SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LEGAL REQUIREMENTS, BUT IF ANY PROVISION OF THIS AGREEMENT SHALL BE UNENFORCEABLE OR PROHIBITED BY OR INVALID UNDER APPLICABLE LEGAL REQUIREMENTS, SUCH PROVISION SHALL BE INEFFECTIVE TO THE EXTENT OF SUCH UNENFORCEABILITY, PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINING PROVISIONS OF THIS AGREEMENT.

14. Conflict. If any conflict or inconsistency exists between the absolute assignment of the Rents and the Leases in this Agreement and any such assignment as security in the Mortgage, the terms of this Agreement shall control.

15. Limitation of Liability. Section 12.1 of the Loan Agreement is hereby incorporated herein by reference.

16. Miscellaneous. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, this Agreement does not create or secure any new or further indebtedness or obligation other than the aggregate principal indebtedness or obligation secured by or which under any contingency may be secured by the Mortgage recorded in the Cook County, Illinois Recorder of Deeds prior to the recording of this Agreement.

*[remainder of page intentionally left blank]*

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IN WITNESS WHEREOF, this Agreement is duly executed as of the date first written above.

**BORROWER:**

**311 WEST ILLINOIS STREET OWNER LLC,**  
a Delaware limited liability company

By: *Jeanne Lazar*  
Name: Jeanne Lazar  
Its: Authorized Signatory

STATE OF ILLINOIS )  
COUNTY OF COOK ) ss

I, *Sylvia Easton-Coleman*, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jeanne Lazar, the Authorized Signatory of 311 West Illinois Street Owner, LLC, a Delaware limited liability company (the "Company") personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument in his/her capacity as Authorized Signatory of the Company as his/her free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 4 day of October, 2018.

*Sylvia Easton-Coleman*  
Notary Public

My commission expires: 11-22-2022

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## EXHIBIT A

### LEGAL DESCRIPTION

Lots 1 through 6, inclusive, together with that part of Lot 7 in Block 4 in Butler, Wright & Webster's Addition to Chicago in the West 1/2 of the West 1/2 of the Northeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, lying East of the following described line:

Beginning at a point on the North Line of Lot 7 aforesaid 6.08 feet West of the Northeast Corner thereof; thence Southerly along a line drawn 6.08 feet West of and parallel with the East Line of Said Lot 7, a distance of 76.05 feet; thence Easterly perpendicular to the last described line, 2.08 feet; thence Southerly along a line drawn 4.00 feet West of and parallel with the East Line of Said Lot 7, a distance of 24.00 feet to the South line of Said Lot 7, being the Southerly Terminus of the herein described line, in Cook County Illinois.

Address:

311 West Illinois Street, Chicago, Illinois 60654

PINs:

17-09-250-003-0000

17-09-250-004-0000

17-09-250-005-0000

17-09-250-006-0000