

UNOFFICIAL COPY

THIS INSTRUMENT WAS PREPARED
BY AND AFTER RECORDING
SHOULD BE RETURNED TO:

Alan Leib, Esq.
Harris Kessler & Goldstein LLC
640 North LaSalle Street
Suite 590
Chicago, Illinois 60610
(312) 280-0111



Doc#: 0421839144
Eugene "Gene" Moore Fee: \$44.50
Cook County Recorder of Deeds
Date: 08/05/2004 03:55 PM Pg: 1 of 11

PROPERTY ADDRESS:

33 WEST GRAND AVENUE
CHICAGO, ILLINOIS 60610

TAX IDENTIFICATION NUMBERS:

17-09-248-01-0000
17-09-248-02-0000

COLLATERAL ASSIGNMENT OF LEASE

THIS COLLATERAL ASSIGNMENT OF LEASE (the "**Assignment**") is made as of this 5th day of August, 2004 by and between Red Star Outdoor, LLC, an Illinois limited liability company ("**Assignor**"), and JAMES R. LASKY ("**Assignee**"), with reference to the following facts:

RECITALS:

A. Assignor is the lessee of certain real property at 33 West Grand Ave., Chicago, Illinois 60610, as legally described in Exhibit A, attached hereto (the "**Demised Premises**") pursuant to that certain Lease dated December 17, 2003 as amended (the "**Lease**") between Assignor and Chicago Medical Society, an Illinois not-for-profit organization ("**Lessor**").

B. Pursuant to that certain Membership Interest Purchase Agreement of even date herewith between Assignor and Assignee, (the "**Purchase Agreement**"), Assignor is assigning its interest and granting a security interest in the Lease as collateral security for the payment of that certain \$446,000.00 promissory installment note (the "**Lasky Note**") and for the payment of that certain \$1,846,000.00 promissory installment note (the "**Purchase Note**");

UNOFFICIAL COPY

C. To induce Assignee to accept the Lasky Note and the Purchase Note under the Purchase Agreement, Assignor has offered and agreed to execute and deliver to Assignee this Assignment whereby Assignor has agreed to collaterally assign the Lease to Assignee and grant a security interest therein to Assignee.

NOW, THEREFORE, in consideration of the above and the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Capitalized Terms. All capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Purchase Agreement, the Lasky Note and the Purchase Note (the Lasky Note and the Purchase Note are referred to individually as a "Note" and collectively as the "Notes").

2. Recitals. The recitals set forth above are true and correct and are incorporated into this Assignment by this reference as if they were fully set forth herein.

3. Collateral Assignment and Grant of Security Interest.

3.1 To secure all obligations of Assignor to Assignee under the Notes (the "**Obligations**"), Assignor hereby collaterally assigns, transfers, grants and sets over to Assignee, all of Assignor's right, title and interest, powers, privileges and other benefits as lessee under the Lease, including, but not limited to, the right to enter upon, take possession of and use any and all property leased to Assignor, as lessee, and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of any default giving rise to a right in favor of Assignor under the Lease, to exercise Assignor's rights as lessee under 11 U.S.C. §365(h) including but not limited to Assignor's right to remain in possession of the Demised Premises, and to take any and all other actions whatsoever which Assignor is or may become entitled to do under the Lease. This Assignment is effective: (a) between the parties hereto and all third parties (except Lessor), and (b) as to Lessor upon Lessor's acceptance of this Assignment.

This Assignment is made solely as collateral security for the Obligations and the execution and delivery hereof shall not impair or diminish the obligations of Assignor under the Lease, nor shall any of the obligations contained in the Lease be imposed upon Assignee, and Assignor shall remain obligated to perform each and every obligation required of it under the Lease. Upon payment in full of the indebtedness due Assignee pursuant to the Notes and all

UNOFFICIAL COPY

other sums payable thereunder or hereunder, this Assignment shall terminate and all rights and interests herein assigned and granted to Assignee shall revert to Assignor.

4. Release of Assignment. This Assignment is one of three Assignments made by Assignor in favor of Assignee as security for the payment of the Notes under the terms of the Purchase Agreement. Under the terms of the Purchase Agreement, one of the three Assignments (the first lease identified on Exhibit F of the Purchase Agreement) will be released by Assignee upon the payment in full of the Lasky Note and \$1,000,000.00 in principal under the Purchase Note. The remaining two Assignments will be released upon payment in full of all Obligations. In addition, under the terms of paragraph 4 of the Purchase Agreement, the parties have agreed to substitute collateral as set forth in the Agreement upon the occurrence of the events set forth in the Agreement.

5. Representations and Warranties of Assignor. Assignor hereby represents and warrants to Assignee, that:

5.1 A copy of the Lease, including any and all amendments or modifications thereto, has been delivered herewith to Assignee;

5.2 The Lease is in full force and effect according to its terms and there exists no default on the part of Assignor thereunder, nor does Assignor have any actual knowledge of any default or any acts or events which, with the passage of time or giving of notice or both, could constitute a default thereunder on the part of Assignor;

5.3 Assignor shall faithfully abide by, perform and discharge each and every material obligation, covenant, condition, duty and agreement which the Lease provides is to be performed by Assignor;

5.4 Without the prior written consent of Assignee, Assignor shall not amend, modify, change, or terminate the Lease.

5.5 There have been no assignments of, or any agreements to assign, the Lease to any other party;

5.6 Assignor is not conducting nor will it conduct any business within, on or about the Demised Premises in violation of any law, regulation or ordinance;

5.7 Assignor will appear in and defend any action or proceedings arising under, growing out of or in any manner connected with the obligations, covenants, duties, agreements or liabilities of Assignor under the Lease;

UNOFFICIAL COPY

5.8 In the event Assignor fails to perform or discharge its obligations or duties under the Lease as required in Section 5.3 herein or under this Assignment, Assignee may elect to, but shall have no obligation to (and shall not thereby release Assignor from any obligation hereunder), perform or discharge any such obligation or duty under the Lease to such extent as Assignee may deem necessary or advisable, in its sole discretion, to protect the security provided hereby, including, but not limited to, appearing in and defending any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee hereunder;

5.9 This Assignment is the legal, valid and binding obligation of Assignor enforceable against Assignor in accordance with the terms hereof;

5.10 The person executing this Assignment on behalf of Assignor is a duly authorized agent of Assignor; and

5.11 Assignor will not pledge, mortgage, or otherwise encumber or permit to exist any lien, security interest or charge upon its interest in the Lease collaterally assigned hereunder.

6. Protection of Lease by Assignee.

6.1 Assignee may elect to, but shall not be required to, take such action, from time to time Assignee deems appropriate to maintain or protect its security interest hereunder; provided, however, that any such action of the Assignee shall not, in any manner whatsoever, impair or affect any liability hereunder, nor prejudice or waive nor be construed to impair, affect, prejudice or waive any of Assignee's rights and remedies at law, in equity or by statute, nor release or discharge, nor be construed to release or discharge Assignor for the Obligations.

6.2 Assignor will, from time to time, do and perform any other act or acts and will execute, acknowledge, deliver and file, register, record (and will re-file, re-register and re-record whenever required) any further instruments, including any documents as required by the Uniform Commercial Code to perfect Assignee's interests, whether required by law or requested by Assignee in order to confirm, or further assure, the interest of Assignee hereunder. If Assignor fails to execute and deliver any such documents within ten days after request by Assignee, Assignor shall be deemed to have irrevocably appointed Assignee as Assignor's attorney-in-fact to execute and deliver such documents in Assignor's name.

UNOFFICIAL COPY

It is further understood that this Assignment shall not, until Assignee exercises his rights hereunder, operate to place responsibility for the control, care, management or repair of the Demised Premises, or parts thereof, upon Assignee, nor shall it operate to make Assignee liable for the carrying out of any of the terms and conditions of the Lease, or for any waste of the Demised Premises, or for any dangerous or defective condition of the Demised Premises, or for any negligence (other than the negligence of Assignee and its agents) in the management, upkeep, repair, or control of Demised Premises resulting in the loss or injury or death to any party, licensee, employee or stranger.

6.3 Assignor shall cause a copy of every notice or communication received from any of the other parties to the Lease, which notices or communication shall notify Assignor of any default, event of default, breach or other violation, on the part of Assignor under the Lease, to be promptly delivered to Assignee in the manner and at the place provided for in the Purchase Agreement for the giving of notice thereunder, or at such other address or in such other manner as Assignee shall designate. Assignor shall promptly notify Assignee upon receiving notice of the filing of any bankruptcy petition by or against, or the institution of any insolvency or reorganization proceeding involving, the lessor under the Lease, and shall thereafter keep Assignee informed of any information which comes to Assignor's attention in connection with such bankruptcy, insolvency or reorganization proceeding. Without limiting the generality of the foregoing, Assignor shall provide Assignee with copies of all notice, summonses, pleadings, applications and other documents received by Assignor in connection with any such proceeding.

7. Event of Default.

7.1 Default Under Notes. The occurrence of any default by Assignor under the Notes, the Agreement or any of the other Transaction Documents.

7.2 No Event of Default. Assignee hereby agrees with Assignor that, so long as no Event of Default of any kind has occurred and is continuing hereunder or under either or both of the Notes, or (i) Assignee shall not exercise, enforce or avail itself, or seek to exercise, enforce or avail itself of any of the rights, powers, privileges, authorizations or benefits assigned and transferred to Assignee pursuant to this Assignment, and (ii) Assignor may exercise or enforce, or seek to exercise or endorse such rights, powers, privileges, authorizations or benefits under the Lease.

UNOFFICIAL COPY

8. Remedies upon Event of Default.

8.1 Remedies. Upon the occurrence of an Event of Default hereunder (provided that Assignee, upon learning of such default, gives Assignor immediate notice of such default and of any subsequent action by Assignee hereunder):

8.1.1 Any and all outstanding Obligations may, at the option of Assignee, and without demand, notice or legal process of any kind, be declared, and immediately shall become due and payable, and Assignee may exercise, from time to time, any rights and remedies available to him against Assignor under the Uniform Commercial Code and any other applicable law in addition to, and not in lieu of, any rights and remedies expressly granted in this Assignment or in the Notes;

8.1.2 Without notice, demand or legal process of any kind, Assignee may take possession of the Demised Premises and may proceed immediately to exercise each and all of the powers, rights and privileges reserved or granted to Assignor under the Lease, including, without limitation, the exclusive power to manage, direct, control and deal with the Demised Premises or any part thereof and to enter into new contracts for the sale of billboard advertising thereon, provided that Assignee shall not breach the terms of any existing contract for the sale of billboard advertising; and

8.1.3 Assignor agrees that in the event Assignor fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, no remedy of law will provide adequate relief to Assignee, and further agrees that Assignee shall be entitled to temporary and permanent injunctive relief in any such case.

9. Fees. Assignor shall pay all expenses, including but not limited to all attorneys' fees and other expenses, paid or incurred by the Assignee in connection with the enforcement of his rights and remedies hereunder.

10. Notification of Any Default. Assignor shall notify Assignee upon the occurrence of any default by Assignor under this Assignment or the Notes.

11. Assignment. Neither party may assign any of its rights and obligations hereunder without the prior written consent of the other party.

UNOFFICIAL COPY

12. Notices. All notices, requests and other communications herein provided for or which may be given in connection with this Assignment shall be in writing, and shall be sent by: (i) certified mail/return receipt requested/postage prepaid; (ii) an overnight delivery service; or (iii) facsimile transmission, to the parties at their respective address set forth in the Notice section of the Purchase Agreement. Notices so sent by mail shall be deemed to have been given three (3) days after the date of mailing. Notices sent by overnight delivery service shall be deemed given upon the date of actual delivery. Notices sent by facsimile transmission shall be deemed to have been given on the date sent, provided confirmatory notice is sent on the same day by first-class mail, postage prepaid. Any party may change the address to which future notices are to be given by giving the other party notice of the new address in accordance with this section.

13. Successors and Assigns; Amendments. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and may be amended or modified only by a written instrument executed by each party to be bound by such amendment or modification.

14. Governing Law; Consent to Jurisdiction. This Assignment shall be construed and governed in accordance with the laws of the State of Illinois. The parties hereby consent to the jurisdiction of any state or federal court sitting in Cook County, Illinois in any action or proceeding relating to or arising out of this Assignment, and hereby waive any objection to the laying of venue in any such court.

15. Severability. Whenever possible each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Assignment.

16. Effect; UCC Financing Statement. This Assignment constitutes the granting by Assignor of a security interest in the Lease, all substitutions and replacements for, and all additions, amendments and accessions to, any and all of the foregoing; all products and proceeds with respect to any of the foregoing, and, to the extent not otherwise included, all payments under insurance payable by reason of loss or damage to or otherwise with respect to the foregoing.

To the extent that the aforementioned security interest is governed by the Illinois Uniform Commercial Code, the Assignor does

UNOFFICIAL COPY

hereby grant Assignee a security interest in and to the Lease. Assignee furthermore hereby authorizes Assignee to file a UCC Financing Statement to further evidence and perfect Assignee's security interest in the Lease, and to file other financing statements and continuation statements or other filings pursuant to the Illinois Uniform Commercial Code as Assignee shall deem appropriate.

17. Time of Essence. Time is of the essence in making payments of all amounts due any Assignee.

18. Enforcement. Should any legal proceedings be commenced to secure or enforce any right under this Assignment, the prevailing party shall be entitled to recover from the non-prevailing party its or his reasonable attorneys' fees and costs, in addition to all other relief to which said party may be entitled. The term "prevailing party" shall mean that party whose position is substantially upheld in a final judgment rendered, or, if the final judgment is appealed, that party whose position is substantially upheld by the decision of the final appellate body.

19. No Further Assignment, etc. by the Assignee. Assignee shall not further assign or pledge, mortgage, sublet or encumber the Lease or the Demised Premises, nor shall it permit to exist any further lien or encumbrance on the Lease or the Demised Premises which arises as a result of the action or inaction of Assignee.

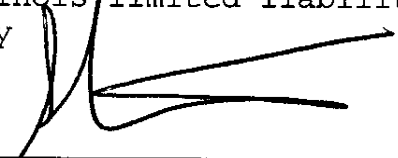
[EXECUTIONS ARE ON THE FOLLOWING PAGE]

UNOFFICIAL COPY

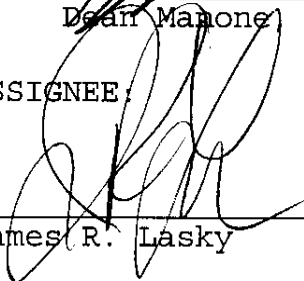
IN WITNESS WHEREOF, this Assignment has been executed by the undersigned as of the day and year first above written.

ASSIGNOR:

RED STAR OUTDOOR, LLC.
an Illinois limited liability
company

By: 
Scott Goldstein, Member

By: 
Dean Manone, Member

ASSIGNEE:

James R. Lasky

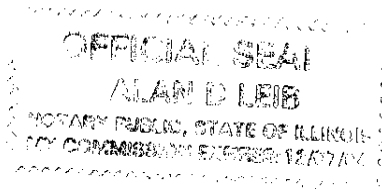
Property of Cook County Clerks Office

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, ALAN D. LEIB, the undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Scott Goldstein, personally known to me to be a Member of RED STAR OUTDOOR, LLC, an Illinois limited liability company, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such Member of such company, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth and pursuant to such company's authority.

GIVEN under my hand and Notarial Seal this 5th day of August, 2004.


Notary Public

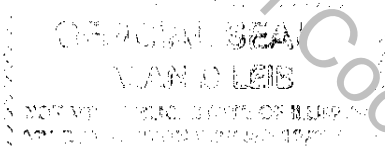


UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Alan D. Leib, the undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Dean Manone, personally known to me to be a Member of RED STAR OUTDOOR, LLC, an Illinois limited liability company, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such Member of such company, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth and pursuant to such company's authority.

GIVEN under my hand and Notarial Seal this 5th day of August, 2004.

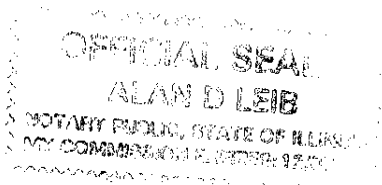


Alan D. Leib
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Alan D. Leib, the undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that James R. Lasky, personally known to me, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth and pursuant to such company's authority.

GIVEN under my hand and Notarial Seal this 5th day of August, 2004.



Alan D. Leib
Notary Public

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1

LOTS 1,2,3,4 AND 5 IN THE RE SUBDIVISION OF LOTS 9 AND 10 IN BLOCK 9 IN WOLCOTT'S ADDITION TO CHICAGO, IN THE EAST HALF (1/2) OF THE NORTHEAST QUARTER (1/4) OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN - 17-09-248-01-0000

PARCEL 2

LOT 11 IN BLOCK 9 IN WOLCOTT'S ADDITION TO CHICAGO, IN THE NORTHEAST QUARTER (1/4) OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN - 17-09-248-02-0000