



Doc#: 0725444035 Fee: \$36.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/11/2007 11:56 AM Pg: 1 of 7

This instrument was prepared by  
and upon recordation should be  
returned to:

David Greenman  
Enterprise Counsel Group  
18800 Von Karman, Suite 100  
Irvine, CA 92612

ASSIGNMENT OF RENTS AND LEASES

**THIS ASSIGNMENT OF RENTS AND LEASES** (this "**Assignment**") is made and executed as of the 31<sup>st</sup> day of August, 2007 by **140-200 S. ROSELLE ROAD, LLC**, a Delaware limited liability company ("**Borrower**"), whose mailing address is c/o RREEF, 41<sup>st</sup> Floor, 875 N. Michigan Ave., Chicago, IL 60611, to, in favor of and for the benefit of **STATE FARM BANK, F.S.B.**, a federal savings bank, its successors or assigns ("**State Farm**"), whose mailing address is One State Farm Plaza, Bloomington, Illinois 61710.

WITNESSETH:

**WHEREAS**, State Farm has made a loan to Borrower (the "**Loan**") which is evidenced by that certain Promissory Note executed by Borrower to and in favor of State Farm of even date herewith in the principal amount of Fourteen Million Five Hundred Thousand Dollars (\$14,500,000.00) (the "Note").

**WHEREAS**, the Note is secured by (i) a Mortgage and Security Agreement executed by Borrower and in favor of State Farm of even date herewith (the "**Mortgage**") granting to State Farm, among other things, a first priority lien and encumbrance upon the Real Estate (as defined in the Mortgage) and Improvements (as defined in the Mortgage) legally described in Exhibit A attached to this Assignment (the "**Premises**"); and (ii) certain other Loan Documents (as defined in the Mortgage), also executed by Borrower to and in favor of State Farm of even date herewith, the terms and provisions of which Mortgage and other Loan Documents are by this reference thereto incorporated herein and made a part hereof.

**WHEREAS**, as a material inducement to State Farm to make the Loan and as further security for the Loan, Borrower makes this Assignment.

**NOW, THEREFORE**, for \$10.00 and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

1. **Assignment of Rents and Leases.**

1.1. **Definitions.** For purposes of this Assignment, the following definitions shall apply:

First American Title Order # 298194 4 of 5  
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7

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1.1.1. "**Major Leases**": Leases that demise 8,000 square feet or more and have a lease term of at least 3 years, together with all extensions, renewals, amendments, modifications, replacements and substitutions therefor; provided, however, a replacement or substitution for a Major Lease shall in turn be deemed a "Major Lease" only if such replacement or substitution demises 8,000 square feet or more and has a lease term of at least 3 years. As of the date hereof, the Leases listed and described in Section 3.18 of the Mortgage constitute Major Leases.

1.1.2. "**Minor Leases**": Leases that are not Major Leases; provided, however, if any Minor Lease, after modification, meets the definition of a Major Lease, such Minor Lease shall thereupon become a Major Lease.

1.1.3. "**Leases**": All Major Leases and Minor Leases.

1.1.4. "**Guarantees**": Any and all guarantees of the payment of rent by and performance of all other obligations of the tenants under the Leases.

1.1.5. "**Other Definitions**". Capitalized terms not otherwise defined in this Assignment shall have the meanings ascribed to such terms in the Note, the Mortgage and other Loan Documents.

1.2. "**Assignment of Rents**". Subject to the terms and conditions of this Assignment, Borrower hereby absolutely, unconditionally and irrevocably transfers, conveys, assigns and grants to State Farm all of Borrower's right, title and interest in and to all rents, issues, profits, proceeds, income, revenues, royalties, advantages, avails, claims against guarantors, security and other deposits (whether in cash or other form), advance rentals, damages, insurance and condemnation proceeds and any and all other payments or benefits now or hereafter derived, directly or indirectly, from the Leases (collectively the "**Rents**").

1.3. "**Assignment of Leases**". Subject to the terms and conditions of this Assignment, Borrower hereby absolutely, unconditionally and irrevocably assigns and grants to State Farm all of Borrower's right, title and interest as landlord in, to and under all Leases, together with any and all Guarantees.

1.4. "**Absolute Assignments**". The foregoing assignments of Rents and Leases are present and absolute assignments and not collateral assignments. State Farm's right to the Rents and Leases is not contingent upon its possession of the Premises.

1.5. "**License**". State Farm hereby grants to and confers upon Borrower a revocable license to collect and retain the Rents as the same become due and payable under the Leases, but not in excess of 30 days in advance, so long as, and only so long as, no Event of Default (as herein defined) exists under this Assignment, the Note, the Mortgage or any of the other Loan Documents (the "**License**"). Upon the occurrence and during the continuance of an Event of Default, the License granted and conferred herein shall immediately and automatically be revoked, cease and terminate without notice.

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Upon any such revocation and termination of the License, State Farm shall have the right to notify all tenants under the Leases to pay the Rents then due and thereafter coming due directly to State Farm. After such revocation and termination of the License, any and all Rents received by Borrower shall be remitted to State Farm not later than three (3) business days following Borrower's receipt of the same.

Borrower hereby authorizes and directs any tenant under the Leases, upon receipt of written notice from State Farm stating that an Event of Default has occurred and is continuing, to pay directly to State Farm the Rents then due and thereafter coming due under the Leases. Borrower agrees that any tenant shall have the right to rely upon any such notice from State Farm without any obligation, and without any right, to inquire as to whether any such Event of Default has actually occurred and is continuing and notwithstanding any claim of Borrower to the contrary. Borrower shall have no claim (and hereby waives any claim) against any tenant for the Rents paid by such tenant directly to State Farm following its receipt of any such notice from State Farm.

## 1.6 Covenants.

**1.6.1. General.** All Leases shall be written on Borrower's standard form of lease or on such other form of lease, each of which shall have been approved by State Farm. Borrower shall furnish State Farm with executed copies of all Leases within fifteen (15) days after execution thereof. All proposed Leases and extensions, renewals, amendments or modifications of existing Leases shall (i) be at rental rates (including rental concessions) that are at least equal to those charged for comparable properties within the submarket area of the Premises; (ii) have been negotiated at arm's length with bona fide independent third party tenants; and (iii) in Borrower's prudent business judgment, not materially impair the value of Premises. Borrower shall use reasonable efforts to include a provision in all Leases subordinating the Lease to the Mortgage and an agreement by the tenant to attorn to State Farm.

**1.6.2. Negative Covenants.** Borrower shall not, without the prior written consent of State Farm, (i) enter into any new Major Lease or extend, renew, amend or modify any Major Lease (other than extensions, renewals, amendments or modifications exercisable by the tenant without the necessity of Landlord's comment and in accordance with the terms of a Major Lease previously approved by State Farm); (ii) consent to or permit the assignment or subletting of any Major Lease (other than assignments or subleases in accordance with the terms of a Major Lease previously approved by State Farm); (iii) amend or modify any Minor Lease so as to cause such Minor Lease to become a Major Lease; (iv) cancel or terminate any Major Lease; or (v) alter, amend, modify, change or terminate the terms of any guaranties of any Major Lease. The consent of State Farm shall not be unreasonably withheld.

**1.6.3. Affirmative Covenants.** So long as no Event of Default is in existence under any of the Loan Documents and subject to Sections 1.6.1 and 1.6.2 (iii) above, Borrower may enter into, extend, renew, amend, modify or permit the assignment or sublease of any of the Minor Leases.

## 2. Default and Remedies.

**2.1. Default.** The occurrence of an Event of Default under the Mortgage shall constitute an "**Event of Default**" of and under this Assignment.

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## 2.2. Remedies.

2.2.1. Upon the occurrence of an Event of Default, the License shall automatically be revoked, cease and terminate without notice to Borrower and without regard to the adequacy or inadequacy of State Farm's security under this Assignment, the Mortgage or the other Loan Documents. Thereupon, State Farm shall be entitled to exercise any and all rights and remedies provided in this Assignment, the Mortgage and the other Loan Documents. The application of any Rents collected by State Farm shall be in accordance with the terms of the Mortgage.

2.2.2. The rights and remedies provided in this Assignment shall not be deemed exclusive of any rights or remedies granted to State Farm in the Mortgage or by law, but shall be deemed special and additional rights and remedies and shall be cumulative with those rights and remedies granted in the Mortgage or by law. Borrower's liability under this Assignment is subject to Article V of the Note.

2.3 Duties. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises upon State Farm, nor for the performance of any of the terms and conditions of any of the Leases, nor shall it operate to make State Farm responsible or liable for any waste committed on the Premises by any tenant or any other party or for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or control of the Premises. State Farm shall not be liable for any loss sustained by Borrower resulting from State Farm's failure to let the Premises or from any other act or omission of State Farm in managing the Premises. Borrower shall and does hereby indemnify and hold State Farm harmless from and against any and all liability, loss, claim, demand or damage which may or might be incurred by reason of this Assignment, including, without limitation, claims or demands for security deposits from tenants deposited with Borrower, and from and against any and all claims and demands whatsoever which may be asserted against Borrower by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases. Should State Farm incur any liability by reason of this Assignment or in defense of any claim or demand for loss or damage as provided above, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereof at the Default Rate from the date paid or incurred by State Farm until repaid by Borrower, shall be immediately due and payable to State Farm by Borrower upon demand and shall be secured by the Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

## 3. Miscellaneous.

3.1 Perfection. This Assignment shall be perfected upon its recordation in the official public records of Cook County, Illinois. Neither possession of the Rents nor the appointment of a Receiver of the Premises shall be required for such perfection.

3.2 Assignment. State Farm may assign its rights in and under this Assignment to any subsequent holder of the Note and Mortgage and to any person acquiring title to the Premises through foreclosure of the Mortgage or otherwise.

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**3.3 Obligations.** State Farm shall not be obligated to perform or discharge, nor, by its acceptance of this Assignment, does it undertake to perform or discharge, any obligation, duty or liability of Borrower, as landlord under the Leases, or otherwise. Nothing herein contained shall be construed as causing State Farm to be a "Mortgagee in Possession" and State Farm shall have no liability of a Mortgagee in Possession by exercising its rights under this Assignment, all such liability being expressly waived and released by Borrower.

**3.4 Ownership.** Borrower represents and warrants that, subject to the rights, titles and interests of State Farm under the Loan Documents, it is the absolute owner of the Rents and Leases with full right, power and authority to execute and deliver this Assignment. To Borrower's knowledge and except as disclosed in any tenant estoppels or rent roll delivered to State Farm by Borrower, each of the Leases is legally valid, binding upon and enforceable against the tenant named therein and has not been changed or modified. There is no outstanding assignment or pledge of the Rents or Leases or any one thereof.

**3.5 Notices.** Any Notice required to be given hereunder shall be given in the manner specified in the Mortgage.

**3.6 Conflict.** In the event of a conflict between the provisions of this Assignment and any other Loan Documents, this Assignment shall control.

**3.7 Cooperation.** Borrower agrees to cooperate with any reasonable request of State Farm to implement the provisions of this Assignment.

**3.8 Successors and Assigns.** Whenever the word "Borrower" is used herein, it is agreed and understood that the same includes and shall be binding upon Borrower's successors and assigns and any party holding title to the Premises by, through or under Borrower. All of the rights, powers, privileges and immunities herein granted and assigned to State Farm shall also inure to its successors and assigns, including all holders of the Note and Mortgage. This Assignment shall be governed by the laws of the State in which the Real Estate is located.

**3.9 Limitation of Liability.** This Assignment is subject to the limitation of liability provisions set forth in **Section 7.11** of the Mortgage.

**3.10 WAIVER OF TRIAL BY JURY. BORROWER AND STATE FARM HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY ANY PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING, DIRECTLY OR INDIRECTLY TO THIS ASSIGNMENT OR ANY ACTS OR OMISSIONS OF BORROWER IN CONNECTION THEREWITH OR CONTEMPLATED THEREBY.**

SIGNATURE ON NEXT PAGE



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## Exhibit A

### (Legal Description)

Real property in the City of Schaumburg, County of Cook, State of Illinois, described as follows:

PARCEL 1:

LOT 1 IN TOWN SQUARE RESUBDIVISION, BEING A RESUBDIVISION OF LOT 2 OF TOWN SQUARE SHOPPING CENTER SUBDIVISION AND LOTS 1 AND 2 OF WILK'S SUBDIVISION, AND PART OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 22 TOWNSHIP 41 NORTH RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING AND BEING IN THE VILLAGE OF SCHAUMBURG, COOK COUNTY ILLINOIS.

PARCEL 2:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 CONTAINED IN THE DECLARATION OF EASEMENTS AND PROTECTIVE COVENANTS FOR TOWN SQUARE SHOPPING CENTER

RECORDED APRIL 25, 1996 AS DOCUMENT 96328988 AND AMENDED BY FIRST AMENDMENT RECORDED AS DOCUMENT 97377291 AND RE-RECORDED AS DOCUMENT 00553312 BY SECOND AMENDMENT RECORDED AS DOCUMENT 98630985 AND BY THIRD AMENDMENT RECORDED SEPTEMBER 21, 2005 AS DOCUMENT 0526450057.

PARCEL 3:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 CONTAINED IN THE DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS RECORDED FEBRUARY 17, 1998 AS DOCUMENT 98125948.

140-200 South Roselle Road  
Schaumburg, IL 60193