

# UNOFFICIAL COPY

*Prepared By +*

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Harrison & Held, LLP  
333 West Wacker Drive  
Suite 1700  
Chicago, Illinois 60606  
Attn: Robert G. Davidson, Esq.



Doc#: 1225812146 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/14/2012 01:20 PM Pg: 1 of 10

## ASSIGNMENT OF LEASES AND RENTS (2834 N. ALBANY)

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of August 23, 2012, by and from 2834 ALBANY LLC, an Illinois limited liability company ("Borrower"), to and for the benefit of ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Assignee").

### RECITALS:

A. Borrower is the owner of certain real property located in Cook County, State of Illinois more particularly described in Exhibit A attached hereto ("Property").

B. Bank has agreed to make a loan to Borrower in the original aggregate principal amount of \$1,456,000.00 (the "Loan") pursuant to that certain Loan Agreement of even date herewith by and among Borrower, other affiliated borrowers of other loans, and Assignee (as amended, restated, modified or supplemented and in effect from time to time, the "Loan Agreement"). The Loan is evidenced by (i) a Promissory Note of even date herewith from Borrower to the Bank in the original principal amount of \$1,456,000.00 (as amended, restated, modified or supplemented and in effect from time to time, the "Note").

C. The Loan is secured by: (i) that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of December 29, 2011, as modified by a Mortgage Modification Agreement of even date hereunder by Borrower and other affiliated borrowers of other loans (as so amended and as hereafter modified from time to time, the "Mortgage"), and (ii) certain other documents evidencing or securing the Loan (together with the Note, the Loan Agreement and the Mortgage, the "Loan Documents").

D. The obligations of Borrower under the Loan Agreements, the Note, the Mortgage, this Assignment, and the other Loan Documents are collectively referred to herein as the "Obligations".

E. Borrower is required as a condition to the making of the Loan to transfer and assign to Assignee all of Borrower's right, title and interest in, to and under the Leases and Rents (as defined below).

S Y  
P 10  
S N  
SC Y  
INT TRV

8894088 DZ AY 3 of 3

# UNOFFICIAL COPY

## AGREEMENT:

**NOW, THEREFORE**, as an inducement for the making of the Loans, Borrower hereby represents, warrants, covenants and agrees as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:

“**Event of Default**” means an Event of Default, as defined in the Loan Agreement.

“**Leases**” means all leases, subleases, rental contracts, occupancy agreements, licenses and other arrangements (in each case whether existing now or in the future) pursuant to which any person or entity occupies or has the right to occupy or use any portion of the Property, and includes (a) any supplement, modification, amendment, renewal or extension of any Lease and (b) any security or guaranty for any Lease.

“**Lessees**” means the lessees under the Leases or any subtenants or occupants of the Property.

“**Rents**” means all rents, issues, income, revenues, royalties, profits and other amounts now or in the future payable under any of the Leases, including those past due and unpaid.

Capitalized terms used in this Assignment and not otherwise defined are used as defined in the Loan Agreement.

2. **Assignment.** As security for the payment and performance of the Obligations, Borrower hereby absolutely and unconditionally transfers, sets over and assigns to Assignee all present and future right, title and interest of Borrower in, to and under the Leases and the Rents, together with all advance payments, security deposits and other amounts paid or payable to or deposited with Borrower under any of the Leases and all other rights and interests of Borrower under or in respect of any of the Leases. This Assignment is intended to be and is an absolute present assignment from Borrower to agent, it being intended hereby to establish a complete and present transfer of all Leases and Rents with the right, but without the obligation, to collect all Rents.

3. **License.** Except as hereinafter set forth, Borrower shall have a license to collect the Rents accruing under the Leases as they become due (“**License**”), but not in advance, and to enforce the Leases. Subject to Section 8.1 hereof, the License shall automatically terminate upon the occurrence of an Event of Default. Borrower covenants and agrees that in exercising its License it shall hold all Rents in trust and shall apply the same first to the payment of the reasonable expenses of owning, maintaining, repairing, operating and renting the Property, and then to payment of the Obligations.

4. **Representations and Warranties.** Borrower hereby represents and warrants to Assignee that: (a) Borrower is the absolute owner of the entire lessor’s interest in each of the Leases, with absolute right and title to assign the Leases and the Rents; (b) to Borrower’s knowledge, the Leases are valid, enforceable and in full force and effect and have not been modified, amended or terminated; (c) there are no outstanding assignments or pledges of the

# UNOFFICIAL COPY

Leases or of the Rents and no other party has any right, title or interest in the Leases or the Rents; (d) there are no existing defaults under the provisions of the Leases on the part of the lessor and to Borrower's knowledge, there are no existing defaults under the provisions of the Leases on the part of the Lessees thereunder; (e) to Borrower's knowledge, no Lessee has any defense, set-off or counterclaim against Borrower; (f) except as disclosed in writing to Assignee, no Lessee has any purchase option or first refusal right or any right or option for additional space with respect to the Property; (g) Borrower has not accepted prepayments of installments of rent or any other charges under any Lease for a period of more than one (1) month in advance; and (h) to Borrower's knowledge, except as otherwise disclosed to Assignee in writing, all work required to be performed by Borrower, as landlord, as of the date hereof under any Lease has been completed in accordance with the provisions of the Lease.

## 5. Covenants of Borrower.

5.1 New Leases and Lease Terminations and Modifications. Except for residential leases of one year or less on Borrower's standard lease substantially in the form and content as provided by Borrower to Mortgagee pursuant to the Loan Agreement, Borrower shall not enter into, cancel, surrender or terminate (except as a result of a material default by the Lessees thereunder and failure of such Lessee to cure the default within the applicable time periods set forth in the Lease), amend or modify any Lease, or make any subsequent assignment or pledge of a Lease, or consent to the subordination of the interest of any Lessee in any Lease, or consent to any assignment by any Lessee or any subletting, without the prior written consent of Assignee. Any attempt to do any of the foregoing without the prior written consent of Assignee (if such consent is required) shall be null and void.

5.2 Performance under Leases. The Borrower shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and the Borrower shall not do or suffer to be done anything to impair the security thereof. Except to operate the Property in the ordinary course, the Borrower shall not (i) release the liability of any Lessee under any Lease or any guaranty thereof, (ii) consent to any Lessee's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any Lessee's claim of a total or partial eviction, (iv) consent to a termination or cancellation of any Lease, except as specifically provided above or in such Lease, or (v) enter into any oral leases with respect to all or any portion of the Property;

5.3 Collection of Rents. The Borrower shall not collect any of the Rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

5.4 Further Assignment. The Borrower shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all Rents, except as specifically permitted by the Loan Documents;

5.5 Lease Guaranty. Except to operate the Property in the ordinary course, the Borrower shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;

# UNOFFICIAL COPY

5.6 Waive Rental Payments. The Borrower shall not waive or excuse the obligation to pay rent under any Lease;

5.7 Defending Actions. The Borrower shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any Lessee or guarantor thereunder, and shall pay all costs and expenses of the Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which the Assignee may appear;

5.8 Enforcement. The Borrower shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the Lessees and guarantors thereunder;

5.9 Notice. Borrower shall immediately notify the agent of any material breach by a Lessee or guarantor under any Lease; and

5.10 Subordination. The Borrower shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent.

6. **Intentionally Deleted.**

7. **Assignee's Rights Upon Lessee Bankruptcy.** Upon the occurrence of any default under this Assignment or any other Event of Default, and if a Lessee under a Lease files or has filed against it any petition in bankruptcy or for reorganization, or undertakes or is subject to similar action, Assignee shall have, and is hereby assigned by Borrower, all of the rights which would otherwise inure to the benefit of Borrower in such proceedings, including, without limitation, the right to seek "adequate protection" of its interests, to compel rejection of any Lease, and to seek such claims and awards as may be sought or granted in connection with the rejection of such Lease. Unless otherwise consented to by Assignee in writing, Assignee's exercise of any of the rights provided herein shall preclude Borrower from the pursuit and benefit thereof without any further action or proceeding of any nature. Assignee, however, shall not be obligated to make timely filings of claims in any bankruptcy, reorganization or similar action, or to otherwise pursue creditor's rights therein.

8. **Default of Borrower.**

8.1 Remedies. Upon the occurrence of any default under this Assignment or any other Event of Default, Borrower's License to collect Rents shall immediately cease and terminate, unless Assignee shall otherwise notify Borrower in writing that such License is not being terminated by Assignee. Assignee shall thereupon be authorized at its option to enter and take possession of all or part of the Property, in person or by agent, employee or court appointed receiver, and to perform all acts necessary for the operation and maintenance of the Property in the same manner and to the same extent that Borrower might reasonably so act. In furtherance thereof, Assignee shall be authorized, but under no obligation, to collect the Rents arising from the Leases, and to enforce performance of any other terms of the Leases including, but not limited to, Borrower's rights to fix or modify rents, sue for possession, of the leased premises,

# UNOFFICIAL COPY

relet all or part of the leased premises, and collect all Rents under such new Leases. Borrower shall also pay to Assignee, promptly upon any default under this Assignment or any other Event of Default: (a) all rent prepayments and security or other deposits paid to Borrower pursuant to any Lease assigned hereunder; and (b) all charges for services or facilities or for escalations which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default. Assignee will, after payment of all proper costs, charges and any damages, apply the net amount of such Rents to the Obligations. Assignee shall have sole discretion as to the manner in which such Rents are to be applied, the reasonableness of the costs to which they are applied, and the items that will be credited thereby. Upon request by Assignee at any time and from time to time, Borrower shall deliver to Assignee an updated certified Rent Roll for the Property in a form satisfactory to Assignee.

8.2 Notice to Lessee. Borrower hereby irrevocably authorizes each Lessee, upon demand and notice from Assignee of the occurrence of an Event of Default, to pay all Rents under the Leases to Assignee. Borrower agrees that each Lessee shall have the right to rely upon any notice from Assignee directing such Lessee to pay all Rents to Assignee, without any obligation to inquire as to the actual existence of an Event of Default, notwithstanding any notice from or claim of Borrower to the contrary. Borrower shall have no claim against any Lessee for any Rents paid by Lessee to Assignee.

8.3 Assignment of Defaulting Borrower's Interest in Lease. Assignee shall have the right to assign Borrower's right, title and interest in and to the Leases to any person acquiring title to the Property through foreclosure or otherwise. Such assignee shall not be liable to account to Borrower for the Rents thereafter accruing.

8.4 No Waiver. Assignee's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Assignee's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Assignee has under the Loan Agreements, the Notes, the Mortgage and any of the other Loan Documents. Assignee's rights and remedies hereunder may be exercised as often as Assignee deems expedient.

8.5 Costs and Expenses. The reasonable cost and expenses (including any receiver's fees and attorneys' fees) incurred by Assignee pursuant to the powers contained in this Assignment shall be immediately reimbursed by Borrower to Assignee on demand, shall be secured hereby and, if not paid by Borrower, shall bear interest from the date due at the Default Rate (as defined in the Loan Agreement). Assignee shall not be liable to account to Borrower for any action taken pursuant hereto, other than to account for any Rents actually received by Assignee.

9. Indemnification of Assignee. Borrower hereby agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, expense or damage (including reasonable attorney fees) that Assignee may or might incur under the Leases or by reason of this Assignment; provided, however, that Borrower shall not have any obligation hereunder to indemnify Assignee with respect to matters caused by or resulting from the willful misconduct or gross negligence of Assignee. Such indemnification shall also cover any and all claims and demands that may be asserted against Assignee under the Leases or this Assignment.



# UNOFFICIAL COPY

Nothing in this section shall be construed to bind Assignee to the performance of any Lease provisions, or to otherwise impose any liability upon Assignee including, without limitation, any liability under covenants of quiet enjoyment in the Leases in the event that any Lessee shall have been joined as party defendant in any action to foreclose the Mortgage and shall have been barred thereby of all right, title, interest, and equity of redemption in the Property. This Assignment imposes no liability upon Assignee for the operation and maintenance of the Property or for carrying out the terms of any Lease before Assignee has entered and taken possession of the Property. Any loss or liability incurred by Assignee by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Assignee's request, be immediately reimbursed by Borrower. Such reimbursement shall include interest at the Default Rate provided in the Loan Agreement, costs, expenses and reasonable attorney fees. Assignee may, upon entry and taking of possession, collect the Rents and apply them to reimbursement for any such loss or liability. The provisions of this Section 9 shall survive repayment of the Obligations and any termination or satisfaction of this Assignment.

10. **Additions to, Changes in and Replacement of Obligations.** Assignee may take security in addition to the security already given Assignee for the payment of the Obligations or release such other security, and may release any party primarily or secondarily liable on the Obligations, may grant or make extensions, renewals, modifications or indulgences with respect to the Obligations or the Mortgage and replacements thereof, which replacements of the Obligations or the Mortgage may be on the same terms as, or on terms different from, the present terms of the Obligations or the Mortgage, and may apply any other security held by it to the satisfaction of the Obligations, without prejudice to any of its rights hereunder.

11. **Power of Attorney.** In furtherance of the purposes of this Assignment, Borrower hereby appoints Assignee as Borrower's attorney-in-fact, with full authority in the place of Borrower, at the option of Assignee at any time after the occurrence of an Event of Default, and in the name of Borrower or Assignee, to (a) collect, demand and receive the Rents and other amounts payable under any Lease, (b) bring suit and take other action to enforce the Leases, (c) enforce, supplement, modify, amend, renew, extend, terminate and otherwise administer the Leases and deal with Lessees in relation to the Leases, (d) give notices, receipts, releases and satisfactions with respect to the Leases and the Rents and other amounts payable under any Lease, and (e) take such other action as Assignee may reasonably deem necessary or advisable in connection with the exercise of any right or remedy or any other action taken by Assignee under this Assignment.

12. **No Mortgagee in Possession; No Other Liability.** The acceptance by Assignee of this Assignment, with all of the rights, power, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Property by Assignee, be deemed or construed to: (a) constitute Assignee as a mortgagee in possession nor place any responsibility upon Assignee for the care, control, management or repair of the Property, nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by any Lessee, occupant or other party, or for any dangerous or defective condition of the Property, nor thereafter at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases or to the Property; (b) require Assignee to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any

# UNOFFICIAL COPY

obligation, duty or liability under the Leases; or (c) require Assignee to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by Lessees and not assigned and delivered to Assignee. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person in or about the Property.

13. **Termination of Assignment.** Assignee shall terminate and release this Assignment as to all or a portion of the Property to the same extent as the Mortgage is released in whole or in part.

14. **Miscellaneous.**

14.1 **Severability.** If any term of this Assignment or the application hereof to any person or set of circumstances, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such provision or part thereof to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent consistent with applicable law.

14.2 **Captions.** The captions or headings at the beginning of each section hereof are for the convenience of the parties only and are not part of this Assignment.

14.3 **Counterparts.** This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be construed together and shall constitute one instrument. It shall not be necessary in making proof of this Assignment to produce or account for more than one such counterpart.

14.4 **Notices.** All notices or other written communications hereunder shall be given in the manner set forth in the Loan Agreements.

14.5 **Modification.** No amendment, modification or cancellation of this Assignment or any part hereof shall be enforceable without Assignee's prior written consent.

14.6 **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the state in which the Property is located.

14.7 **Successors and Assigns; Gender; Joint and Several Liability.** 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, successors and assigns, and all subsequent owners of the Property, and all subsequent holders of the Notes and the Mortgage, subject in all events to the provisions of the Mortgage regarding transfers of the Property by Borrower. 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. If there is more than one (1) party constituting Borrower, all obligations of each Borrower hereunder shall be joint and several.

# UNOFFICIAL COPY

14.8 Expenses. Borrower shall pay on demand all costs and expenses incurred by Assignee in connection with the review of Leases, including reasonable fees and expenses of Assignee's outside counsel.

15. **WAIVER OF JURY TRIAL**. BORROWER AND ASSIGNEE, BY ITS ACCEPTANCE HEREOF, HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND ASSIGNEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND ASSIGNEE. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANKS AND ASSOCIATED TO PROVIDE THE LOANS DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

16. **JURISDICTION AND VENUE**. BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER OR ASSIGNEE AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS ASSIGNMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY ASSIGNEE IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THE MORTGAGE. BORROWER WAIVES ANY CLAIM THAT COOK COUNTY, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY ASSIGNEE OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY ASSIGNEE OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE  
FOLLOWS]***





# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

#### Legal Description:

LOTS 10 AND 11 IN MEYER AND SMITH'S SUBDIVISION OF THE SOUTH 1/2 OF THE EAST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 2874 N. Albany, Chicago, IL

Permanent Tax Index Number: 13-25-130-022-0000