

UNOFFICIAL COPY

**THIS DOCUMENT PREPARED BY
AND AFTER RECORDING
RETURN TO:**

Alvin J. Helfgot, Esq.
Deutsch, Levy & Engel, Chartered
225 W. Washington Street
Ste. 1700
Chicago, Illinois 60606

Address of Properties:

3720 N. Greenview Avenue
Chicago, Illinois 60613

PIN: 14-20-112-039 0000



Doc#: 1302329046 Fee: \$56.00
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/23/2013 11:58 AM Pg: 1 of 10

COLLATERAL ASSIGNMENT OF LEASES AND RENTS

THIS COLLATERAL ASSIGNMENT OF LEASES AND RENTS, dated as of January 17th, 2013 (this "Assignment") by JW GREENVIEW LLC, an Illinois limited liability company (the "Assignor") to and for the benefit of TALMER BANK AND TRUST ("Assignee").

WITNESSETH:

Assignor, in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash in hand paid and other good and valuable consideration paid by Assignee, the receipt and sufficiency of which is hereby acknowledged, does hereby absolutely and unconditionally GRANTS, CONVEYS, ASSIGNS, TRANSFERS and SETS OVER unto Assignee the following:

A. All rights, interests and estates of Assignor in, to and under all leases and other agreements affecting the use, occupancy or possession of all or any portion of the land described on Exhibit A attached hereto and made a part hereof for all purposes and/or any and all improvements now or hereafter located thereon (such land and improvements being herein referred to collectively as the "Premises") including without limitation, that certain Lease dated September 26, 2012 by and between Jan and Erica Goldman (collectively, the "Goldmans") and Assignor, and that certain Agreement concerning 3720 North Greenview Avenue, Chicago, Illinois by and between the Goldmans and Assignor; together with all renewals and extensions of such leases and other agreements and all other leases or agreements that may hereafter be entered into which cover all or any portion of the Premises, (such leases and agreements, and any renewals and extensions thereof, being herein referred to collectively as the Leases" and individually as a "Lease" and the term "Lessee" as used herein meaning any party

1/15/2013
377066-2

UNOFFICIAL COPY

entitled to the use, occupancy or possession of any portion of the Premises pursuant to any Lease);

B. The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other sums of money that may now and at any time hereafter become due and payable to Assignor under the terms of the Leases (such sums being herein referred to collectively as the "Rents"), arising or issuing from or out of the Leases or from or out of the Premises or any portion thereof, including without limitation, minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises, and all of Assignor's rights to recover monetary amounts from any lessee in bankruptcy, including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under the Federal Bankruptcy Code, subject however to a license hereby granted by Assignee to Assignor to collect and receive all of the Rents, which license is limited as hereinafter provided; and

C. Any and all guarantees of payment of Rents.

To protect and further the security of this Assignment, Assignor agrees as follows:

1. Assignor hereby represents and warrants unto Assignee that: (a) Assignor is the sole owner of the lessor's interest in the Leases and have good title and good right to assign the Leases and the Rents hereby assigned and no other person or entity has any right, title or interest therein; (b) in all material respects, Assignor has duly and punctually performed all of the terms, covenants, conditions and warranties of the Leases that were to be kept, observed and performed by them; (c) Assignor has not executed any prior assignments of the Leases or the Rents; (d) no Rents have been anticipated and no Rents for any period subsequent to the date of this Assignment have been collected in advance of the time when the same became due under the terms of the applicable lease; (e) Assignor has performed no act or executed any other instrument which might prevent Assignee from enjoying and exercising any of its rights and privileges evidenced hereby; (f) to the best of Assignor's knowledge, there exists no defense, counterclaim or setoff to the payment of any Rents; and (g) to the best of Assignor's knowledge, there are no defaults now existing under the Leases and no event has occurred which with the passage of time or the giving or both, would constitute such a default.

2. Reference is hereby made to the following instruments executed in connection herewith: (a) that certain Revolving Credit Note of even date herewith, in the maximum principal amount of \$8,000,000.00, executed by Elscott 50 LLC (the "Borrower") and payable to the order of Assignee (such Note and all modifications, renewals, substitutions and extensions thereof being referred to herein as the ("Note"), and; (b) that certain Mortgage and Security Agreement of even date herewith (the "Mortgage") made by the Borrower to secure the payment of the Note covering the

UNOFFICIAL COPY

Premises; and (c) that certain Loan Agreement of even date herewith by and between the Borrower and Assignee (the "Loan Agreement"). Assignor agrees that, so long as the indebtedness evidenced by the Note or any portion thereof or any other indebtedness secured by the Mortgage shall remain unpaid, other than leases in the ordinary course of business, Assignor will make no further assignment, pledge, or disposition of the Leases or the Rents, nor will Assignor subordinate any of the Leases to any deed of trust or mortgage or any other encumbrance of any kind or permit, consent or agree to such subordination; nor will Assignor, without the Assignee's prior written consent, agree to any amendment or change in the terms of any of the Leases which materially reduces the Rents payable thereunder or increases any risk or liability of the lessor thereunder; nor will Assignor receive or collect any Rents from any present or future lessee of the Premises or any portion thereof for a period of more than one (1) month in advance of the date on which such payment is due; nor will Assignor, without Assignee's prior consent, other than in the ordinary course of business, cancel or terminate any of the Leases, accept a surrender thereof, commence an action of ejectment or any summary proceedings for dispossession of a lessee under any of the Leases; nor will Assignor convey or transfer or suffer or permit a conveyance or transfer of the Premises demised thereby or of any interest therein so as to effect directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any lessee thereunder; nor will Assignor enter into any other new Leases or renew or extend the term of any Lease except at a rate and on other terms and conditions consistent with leases of similar businesses and at similar locations in the surrounding community.

3. Assignor covenants with Assignee, for so long as the indebtedness evidenced by the Note or any portion thereof shall remain unpaid: (a) to observe and perform duly and punctually all the obligations imposed upon the lessor under the Leases and not to do or permit to be done anything to impair the security thereof; (b) at Assignee's request to assign and transfer to Assignee by specific Assignment of Leases and Rents, in the form of this Assignment, any and all subsequent Leases upon all or any portion of the Premises (it being understood and agreed that no such specific assignment shall be required for such subsequent Leases to be covered by and included within this Assignment as provided herein); (c) to execute and deliver at the request of Assignee all such further assurances and assignments in the Premises covered by the Leases as Assignee shall from time to time require; (d) to deliver other records and instruments, including, without limitation, rent rolls and books of account, that Assignee shall from time to time reasonably require; and (e) notify Assignee of the vacancy of any leased space in the Premises.

4. Until the occurrence of an Event of Default specified in the Note, the Loan Agreement or the Mortgage, or until there is a breach by Assignor of any of the covenants, warranties, or representations made by Assignor in this Assignment, Assignor shall be entitled under the license granted hereby, but limited as provided herein, to collect and enjoy the use of all of the Rents, after timely payment of the payments due on the Note. Upon the occurrence of an Event of Default specified in the Note, the Loan Agreement or the Mortgage, or upon a breach by Assignor of any of the covenants, warranties or representations made by Assignor in this Assignment,

UNOFFICIAL COPY

Assignee shall have the right, power, and privilege (but shall be under no duty) to terminate the license granted to Assignor hereunder and to exercise and enforce any or all of the following rights and remedies at any time; to take possession of the Premises and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem proper in accordance with the terms and provisions relating to taking possession of the Premises contained in the Mortgage and this Assignment, to require Assignor to transfer all security deposits to Assignee, together with all records evidencing these deposits; and either with or without taking possession of the Premises, Assignee shall have the right, power, and privilege (but shall be under no duty) immediately to demand, collect and sue for, in its own name or in the name of Assignor, all Rents, as they become due and payable, including Rents that are past due and unpaid, and to apply such Rents to the payment (in such order as Assignee shall determine) of: (a) all expenses of managing, operating, and maintaining the Premises, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary or desirable, all taxes, assessments, charges, claims, utility costs and premiums for insurance, the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Premises and/or collecting the Rents; and (b) principal and interest on the Note and other indebtedness secured by the Mortgage and attorney and collection fees, in such order as Assignee in its sole discretion may determine.

5. In the event Assignee exercises its rights hereunder, Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to lease the Premises, or any portion thereof, or from any other act or omission of Assignee in managing the Premises, unless such loss is caused by the willful misconduct or negligence of Assignee. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases by reason of this Assignment or the exercise of any rights or remedies hereunder. Assignor shall and hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all liability, loss or damage incurred under the Leases by reason of this Assignment or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever that may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, including, without limitation, any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any lessee under any Lease and not assigned and actually delivered to Assignee, other than any liability, loss or damage caused by the negligence or willful misconduct of Assignee, or any liability, loss or damage that occurs after Assignee takes possession of the Premises. Should Assignee incur any such liability under the Leases by reason of this Assignment or the exercise of rights or remedies hereunder, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney fees, shall be secured hereby and Assignor shall reimburse Assignee therefor immediately upon demand, failing which Assignee may, at its option, declare all indebtedness secured hereby and by the Mortgage to be immediately due and payable. This Assignment shall not operate to place any responsibility upon Assignee for the control, care, management or repair of the Premises, nor for the carrying out of any of

UNOFFICIAL COPY

the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Premises by the tenants or by any other parties or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair, or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee, or stranger.

6. ASSIGNOR HEREBY AUTHORIZES AND DIRECTS THE CURRENT LESSEES OR ANY OTHER OR FUTURE LESSEES OR OCCUPANTS OF THE PREMISES OR ANY PART THEREOF, UPON RECEIPT FROM ASSIGNEE OF WRITTEN NOTICE TO THE EFFECT THAT ASSIGNEE IS THEN THE HOLDER OF THE NOTE AND MORTGAGE AND THAT AN EVENT OF DEFAULT HAS OCCURRED UNDER THE NOTE, THE LOAN AGREEMENT, THE MORTGAGE OR UNDER THIS ASSIGNMENT, TO PAY OVER TO ASSIGNEE ALL RENTS ARISING OR ACCRUING UNDER ANY OF THE LEASES OR FROM THE PREMISES DESCRIBED THEREIN OR ANY OTHER PORTION OF THE PREMISES AND TO CONTINUE TO DO SO UNTIL OTHERWISE NOTIFIED BY ASSIGNEE.

7. This Assignment is primary in nature to the obligation evidenced and secured by the Note, the Mortgage and any other document given to secure and collateralize the indebtedness secured by the Mortgage. Assignor agrees that Assignee may enforce this Assignment without first resorting to or exhausting any other security or collateral; provided, however, that nothing herein contained shall prevent Assignee from suing on the Note, foreclosing the Mortgage or exercising any other right under any document securing the payment of the Note.

8. Nothing contained herein and no act done or omitted by Assignee pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note and Mortgage or a waiver or curing of any default hereunder or under the Note or the Mortgage, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Note and the Mortgage. The right of Assignee to collect the interest and indebtedness evidenced by the Note and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

9. Assignee may at any time and from time to time in writing: (a) waive compliance by Assignor with any covenant herein made by Assignor to the extent and in the manner specified in such writing; (b) consents to Assignor doing any act that Assignor is prohibited from doing hereunder, or consent to Assignor failing to do any act which Assignor is required to do hereunder, to the extent and in the manner specified in such writing; or (c) release any portion of the Premises and/or the Leases, or any interest therein, from this Assignment of Leases and Rents. No such act shall in any way impair the rights of Assignee hereunder except to the extent specifically agreed to by Assignee in such writing.

10. The rights and remedies of Assignee hereunder shall not be impaired by: (a) any renewal, extension, or modification that Assignee may grant with respect to any

UNOFFICIAL COPY

indebtedness secured hereby; (b) any surrender, compromise, release, renewal, extension, exchange, or substitution that Assignee may grant in respect of any item of the Premises and/or the Leases or any part thereof or any interest therein; or (c) any release or indulgence granted to any endorser, guarantor or surety of any indebtedness secured hereby.

11. A determination that any provision of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

12. The terms, provisions, representations, and warranties herein contained shall run with the land and shall inure to the benefit of, and bind, Assignor and Assignee and their respective representatives, successors and assigns, all tenants and their subtenants and assigns, and all subsequent owners of the Premises and subsequent holders of the Note and Mortgage. All references in this Assignment to Assignor or Assignee shall be deemed to include all such representatives, successors and assigns of such respective party.

13. Within this Assignment, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. The provisions of this Assignment are intended to supplement the provisions contained in the Mortgage. In the event of any conflict between the terms of this Assignment and the terms of the Mortgage, the terms of this Assignment shall prevail insofar as the Leases and Rents are concerned, but the terms of the Mortgage shall prevail in all other respects.

14. This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

15. This Assignment shall become null and void at such time as Borrower shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

16. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

17. All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of Assignor and Assignee, as the case may be, as specified in the Loan Agreement.

18. ASSIGNOR AND ASSIGNEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO

UNOFFICIAL COPY

ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (b) ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. ASSIGNOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST ASSIGNEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

Signature Page Follows.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date set forth above.

J W GREENVIEW, LLC

By: ELSCOTT 50 LLC, its sole Member

By: The Wolcott Group, Inc., one of its Managers

By:  _____

Printed Name and Title: Victor Michel, Treasurer

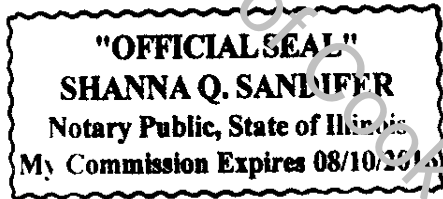
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS:

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Victor Michel, 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 signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of JW Greenview LLC, for the uses and purposes therein set forth.

Given under my hand and official seal, as of the 17th day of January, 2012¹³.



Shanna Q. Sandifer
Notary Public

Commission expires: 08/10/2013

County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

Legal Description

THE SOUTH 1/2 OF LOT 24 AND ALL OF LOT 25 IN OSCAR CHARLES ADDITION TO LANE PARK IN THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office