

# UNOFFICIAL COPY

Document Prepared by and  
After Recording Return to:

W. Roger Carlson, Jr.  
Jason A. Doran  
Carlson Partners, Ltd.  
2500 S. Highland Ave., Suite 360  
Lombard, IL 60148



Doc#: 1400344080 Fee: \$50.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 01/03/2014 03:42 PM Pg: 1 of 7

*This space reserved for Re*

## COLLATERAL ASSIGNMENT OF LEASES AND RENTS

*30th*  
**THIS COLLATERAL ASSIGNMENT OF LEASES AND RENTS** (this "Assignment") is made as of the 30th day of December, 2013, from **400 Illinois Street, LLC**, an Illinois limited liability company ("Borrower") the address of which is 7500 West Imperial Drive, Bridgeview, Illinois, Attn: Mr. John Patrick Tierney, to **FIRST MIDWEST BANK**, a national banking association, having offices at One Pierce Place, Suite 1500, Itasca, Illinois ("Lender")

### RECITALS:

A. Borrower has executed and delivered to Lender that certain Promissory Note of even date herewith (hereinafter referred to as the "Note") in the principal amount of ONE MILLION THREE HUNDRED FIFTY THOUSAND AND NO-HUNDREDTHS DOLLARS (\$1,350,000.00) and its Mortgage and Security Agreement (the "Mortgage") of even date herewith, to secure the Note, conveying the premises (the "Premises") legally described in Exhibit "A", attached hereto and made a part hereof; and

B. Borrower has agreed to execute and deliver this Assignment as further security for its obligations under the Note.

**THEREFORE**, Borrower, for and in consideration of these presents and the mutual agreements herein contained for other good and valuable consideration, the receipt of which is hereby acknowledged, and as further and additional security for payment of the Note; the principal sum, interest, premiums and other indebtedness evidenced thereby; any amendments, extensions or renewals of the Note; any other indebtedness or obligation secured or guaranteed by the Mortgage; payment of all other sums with interest thereon becoming due and payable to Lender under the provisions of this Assignment; and the performance and discharge of each and every obligation, covenant and agreement of Borrower contained in this Assignment, the Note and the Mortgage (collectively the "Loan Documents"), does hereby sell, assign and transfer unto Lender its interest in all leases, licenses or tenancies (including concessions) of the Premises or any part thereof, or any letting of or agreement for the use or occupancy of the Premises or any part thereof, whether written or oral, heretofore or hereafter made or agreed to by any party, including without limitation, Lender in the exercise of the powers herein conferred or otherwise, and any and all extensions, renewals and replacements of any of the foregoing ("Leases"), together with all the rents, income, issues and profits now due and which may hereafter become due under or by virtue of the Leases, together with all guaranties of any of the foregoing, it being the intention hereby to establish an absolute transfer and assignment of all of the foregoing to Lender.

NO 1131284 302853

# UNOFFICIAL COPY

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

1. Agreements Regarding Leases. Borrower agrees, represents and warrants unto Lender as follows:

(a) Borrower is the sole owner of the entire interest of the landlord in the Leases, which Leases are and shall remain subordinate to the lien created by the Loan Documents; without Lender's prior written consent, Borrower will not transfer, sell, assign, pledge, encumber or grant a security interest in any of the Leases; without Lender's prior written consent, Borrower will not consent to, suffer or permit the assignment or subletting of any leasehold estate created thereunder; any attempted assignment or subletting without Lender's written consent, whether by Borrower or by a tenant, shall be null and void;

(b) any Leases are and will be valid and enforceable in accordance with their terms, and shall remain in full force and effect irrespective of any merger of the interest of landlord and tenant thereunder;

(c) Borrower will promptly notify Lender of any default or claimed default by landlord or tenant under the Leases of which it becomes aware;

(d) Borrower shall not hereafter permit any Lease to become subordinate to any lien other than the lien of the Mortgage, and any liens to which the Mortgage is now, or may pursuant to its terms become, subordinate, nor terminate, modify or amend any of the Leases or any of the terms thereof without the prior written consent of Lender, and any attempted termination, modification or amendment of any of the Leases without such written consent shall be null and void;

(e) no payment of rent has been or will be made by any tenant or by any person in possession of any portion of the Premises for more than one month's installment in advance or has been or will be waived, released, reduced or discounted, or otherwise discharged or compromised by Borrower, and Borrower waives any right of set-off against any tenant or any person in possession of any portion of the Premises; Borrower has not made and will not make any other or further assignment of the rents, issues, income or profits of the Premises or of the Leases except subsequent to or in connection with the release of this Assignment with respect to such portion of the Premises so released;

(f) Borrower shall perform all of its covenants and agreements under the Leases and shall not suffer or permit any release of liability of, or right to withhold payment of rent by, the tenants therein;

(g) Borrower shall not waive, cancel, release, modify, excuse, condone, discount, set-off, compromise or in any manner release or discharge any tenant under any of the Leases from any obligation, covenant, condition or requirement of said Leases, without prior written consent of Lender.

Any amounts received by Borrower or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification or amendment of any of the Leases prohibited by the terms of this Assignment and any amounts received by Borrower as rents, income, issues or profits from the Premises from and after the date of any Event of Default under the Mortgage or under any of the Loan Documents, which default shall not have been cured within the time periods, if any, expressly established therefor, shall be held by Borrower as trustee for Lender and all such amounts shall be accounted for to Lender and shall not be commingled with other funds of Borrower. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Lender as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith; by way of example and not of limitation, such notice may be given by an instrument recorded with the Recorder of Deeds of the county in which the Premises are located stating that Borrower has received or will receive such

# UNOFFICIAL COPY

amounts in trust for Lender.

2. Waiver of Liability. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions hereinafter contained. In the exercise of the powers granted by the Mortgage, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

3. Further Assurances and Assignments. Borrower further agrees to execute and deliver immediately upon the request of Lender, all such further assurances and assignments concerning the Leases or the Premises as Lender shall from time to time require.

4. Exercise of Remedies. In any case in which, under the provisions of the Mortgage, Lender has a right to institute foreclosure proceedings, whether before or after institution of legal proceedings to foreclose the lien thereof or before or after sale thereunder, upon demand of Lender, Borrower agrees to surrender to Lender and Lender shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys, and Lender in its discretion may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all the documents, books, records, papers and accounts of Borrower or the then owner of the Premises relating thereto, and may exclude Borrower, its agents, or servants, wholly therefrom and may as attorney-in-fact of Borrower, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof either personally or by its agents, with full power and to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment of security of the rents, income, issues and profits of the Premises, including action for the recovery of the rent, actions in forcible detainer and actions in distress of rent, hereby granting full power and authority to exercise each of the rights, privileges and powers herein granted at any and all time hereafter, and with full power to cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same, to elect to disaffirm any Lease or sublease made subsequent to the Mortgage or subordinated to the lien thereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises that may seem judicious, in its discretion, to insure and reinsure the same for all risks incidental to Lender's possession, operation and management thereof and to receive all such rents, income, issues and profits.

5. Indemnity. Lender shall not at any time (regardless of any exercise by Lender, or right of Lender to exercise, any powers herein conferred) be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases or rental agreements relating to the Premises, and Borrower shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which Lender may or might incur under or by reason of (a) any Leases, (b) the assignment thereof, (c) any action taken by Lender or its agents hereunder, unless constituting willful misconduct or gross negligence, or (d) claims and demands which may be asserted against it 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.

6. Application of Proceeds. Lender, in the exercise of the rights and powers conferred upon it by this Assignment, shall have full power to use and apply the rents, income, issues and profits of the Premises to the payment of or on account of the following, in such order as Lender may determine:

- (a) operating expenses of the Premises, including costs of management and leasing thereof (including reasonable compensation to Lender and its agents, and lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), establishing any claims for damages, and premiums on insurance hereinabove authorized; it being expressly understood and agreed that Lender in the exercise of such powers may so pay any claims purporting to be for any operating expenses of the Premises, without inquiry into, and without respect to, the validity thereof and whether such claims are in fact for operating expenses of the Premises;

# UNOFFICIAL COPY

(b) taxes and special assessments now due or which may hereafter become due on the Premises;

(c) the costs of all repairs, replacements, alterations, additions or betterments, and improvements of the Premises, including, without limitation, the cost from time to time of installing or replacing such fixtures, furnishings and equipment therein, and of placing the Premises in such condition as will, in the reasonable judgment of Lender, make it readily rentable or saleable;

(d) any indebtedness secured or guaranteed by the Mortgage or any deficiency which may result from any foreclosure sale.

7. Power of Attorney. Borrower does hereby appoint irrevocably the Lender as its true and lawful attorney in its name and stead and hereby authorizes Lender, with or without taking possession of the Premises, to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms, in its discretion as it may determine, and to collect all of said rents, income, issues and profits now or hereafter arising from or accruing or due under the Leases with the same rights and powers and subject to the same immunities, exonerations of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Premises pursuant to the provisions hereinafter set forth. Powers of attorney conferred upon Lender pursuant to this Assignment are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Lender.

8. Occurrence of Default. It is the intention of the parties that this Assignment is a present grant by Lender to Borrower of a revocable license to collect any rents due under the Leases, which license shall be automatically revoked upon the occurrence of an Event of Default as defined in the Mortgage, or a default in the performance and observance by any party other than Lender of its obligations and agreements under the Note or the Mortgage, in each instance after any applicable grace periods shall have expired. Nothing herein contained shall be deemed to affect or impair any rights which Lender may have under the Note or the Mortgage or to affect the impression of a trust upon funds received by a trustee in the manner provided for in Paragraph 1 above.

9. Election of Remedies. The provisions set forth in this Assignment shall be deemed a special remedy given to Lender, and shall not be deemed exclusive of any of the remedies granted in the Note or the Mortgage, but shall be deemed an additional remedy and shall be cumulative with the remedies therein and elsewhere granted Lender, all of which remedies shall be enforceable concurrently or successively. No exercise by Lender of any of its rights hereunder shall cure, waive or affect any default hereunder or under the Note or the Mortgage. No inaction or partial exercise of rights by Lender shall be construed as a waiver of any of its such rights and remedies, and no waiver by Lender of any such rights and remedies shall be construed as a waiver by Lender of any of its other rights and remedies.

10. Continual Effectiveness. No judgment or decree which may be entered on any debt secured or intended to be secured by Lender shall operate to abrogate or lessen the effect of this Assignment, but the same shall continue in full force and effect until the payment, discharge and performance of any and all indebtedness and obligations evidenced by the Note or secured or guaranteed by the Mortgage, in whatever form, and until all bills incurred by virtue of the authority herein contained have been fully paid out of rents, income, issues and profits of the Premises, or by Borrower, or until such time as this instrument may be voluntarily released. This instrument shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after the sale, until the issuance of a deed pursuant to a foreclosure decree, unless all indebtedness secured or guaranteed by the Mortgage is fully satisfied before the expiration of any period of redemption.

11. Notices. All notices or other communications required or permitted to be given hereunder shall be given in writing and delivered either by (a) certified mail, return receipt requested, postage prepaid, (b) a reputable messenger service or a nationally recognized priority delivery service such as Federal Express, or (c) facsimile or other telecopy transmission (followed by a hard copy sent as provided in clauses (a) and (b) above), addressed as follows:

**UNOFFICIAL COPY****To Mortgagee:**

First Midwest Bank  
 One Pierce Place, Suite 1500,  
 Itasca, IL 60143-1253  
 Attn:  
 Telephone:  
 Facsimile:

With a copy to:  
 Carlson Partners, Ltd.  
 2500 S. Highland Ave., Suite 360  
 Lombard, Illinois 60148  
 Attn: W. Roger Carlson, Jr., Esq.  
 Telephone: 630-953-5660  
 Facsimile: 630-953-5661

**To Mortgagor:**

(as Sole Member of other Mortgagor)

LBJ Holding Company, Inc,  
 7500 West Imperial Drive  
 Bridgeview, IL 60455  
 Attn: \_\_\_\_\_  
 Telephone:  
 Facsimile:

with a copy to:  
 Schuyler, Roche & Crisham, P.C.  
 Two Prudential Plaza  
 180 N. Stetson Avenue, Suite 3700  
 Chicago, Illinois 60601  
 Attn: Chris A. Leach  
 Telephone: 630-565-8402  
 Facsimile: 312-565-8300

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by certified mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if transmitted by messenger or a priority delivery service, upon receipt, provided receipt occurs before 5:00 P.M. on a business day in the jurisdiction of the recipient. Counsel for a party may give notice to the other party with the same effect as if given by a party.

12. **Binding Agreements.** This Assignment and all provisions hereof shall be binding upon all persons or entities claiming by, under or through Borrower. The word "Borrower", when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note, the Mortgage or this Assignment. The word "Lender", when used herein, shall include Lender's successors, assigns and legal representatives, including all other holders, from time to time, of the Note.

13. **Governing Law; Interpretation.** This Assignment shall be governed by the laws of the State of Illinois in which state the Note, the Mortgage and this Assignment were executed and delivered, the Premises are located, the proceeds of the Loan were disbursed by Lender, and the principal and interest due under the Note are to be paid. Wherever possible, each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Assignment. Time is of the essence of this Assignment.

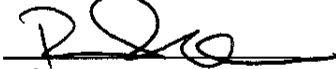
14. **Miscellaneous.** Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally. The Section headings used herein are for convenience of reference only and shall not define or limit the provisions of this Assignment. As used in this Assignment, the singular shall include the plural and the plural shall include the singular, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

[SIGNATURE PAGE TO FOLLOW]

# UNOFFICIAL COPY

**IN WITNESS WHEREOF**, the undersigned have caused this Assignment to be executed as of the day and year first above written.

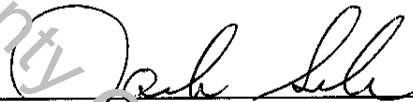
**400 Illinois Street, LLC**,  
an Illinois limited liability company  
LBJ Holding Company, Inc., Sole Member

By:   
Berkshire J. Bohac  
(print)  
Its: President

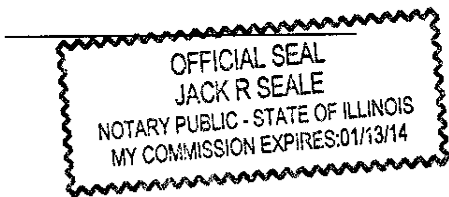
STATE OF ILLINOIS                    )  
  )SS.  
COUNTY OF Cook                    )

I, Jack R. Seale, a notary public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Berkshire J. Bohac, personally known to me to be the Sole Member of 400 Illinois Street, LLC, a limited liability company organized and existing under the laws of the State of Illinois, and 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 as such, he signed and delivered said instrument pursuant to proper authority given by said limited liability company, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

**GIVEN** under my hand and notarial seal this 30 day of December, 2013.

  
Notary Public

My Commission expires:





# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE LAND

Lot 6 in Block 5 in Truesdell's Addition to Athens, being a subdivision of part of Section 20, Township 37 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

22-20-428-001-0000 400-402 ILLINOIS STREET LEMONT, IL 60439

Property of Cook County Clerk's Office