

UNOFFICIAL COPY



Prepared BY:
KATHERINE F. TROY
MAYO CROWE LLC
CITY PLACE II
185 ASYLUM STREET
HARTFORD, CT 06103

Doc#: 1401029069 Fee: \$54.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 01/10/2014 02:20 PM Pg: 1 of 9

MAI 131
Stewart Title NTS Chicago
10 S. Riverside Plaza, Suite 1450
Chicago, IL 60606
PH: 312-849-4400
File No: 1300030185

2 of 9

MC REALTY XXXIV, INC., as assignor

TO

REVERE HIGH YIELD FUND, LP, as assignee

ASSIGNMENT OF LEASES AND RENTS

Date: As of December 31, 2013

Location: 37 King Arthur Court
Northlake, Illinois

County: Cook

UNOFFICIAL COPY

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "*Assignment*"), is made as of the 31st day of December, 2013, by and from MC REALTY XXXIV, INC., a Illinois corporation having an office and place of business at 869 East Schaumburg Road, Suite 200, Schaumburg, IL 60194 (the "*Assignor*"), to and for the benefit of REVERE HIGH YIELD FUND, LP, a Delaware limited partnership, with an address of 20 Ketchum Street, Westport, Connecticut 06880, together with its successors and assigns (the "*Lender*").

RECITALS:

1. Assignor is the holder of the real property located in the City of Northlake, County of Cook and State of Illinois, as applicable, as more particularly described in Exhibit A attached hereto and by this reference incorporated herein (collectively the "*Premises*").
2. Assignor, MC Realty XXXII, Inc., an Illinois corporation, MC Realty XXXIII, Inc., an Illinois corporation, and MC Realty XXXVI, Inc., an Illinois corporation (collectively, the "*Borrower*"), have executed and delivered to Lender that certain Term Loan and Security Agreement (the "*Loan Agreement*") of even date herewith, Borrower has executed and delivered to Lender that certain Term Note (as amended and in effect from time to time, the "*Note*") of even date herewith in the maximum principal amount of \$2,200,000.00, Assignor has executed and delivered to Lender that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date and recorded contemporaneously herewith (the "*XXXIV Mortgage*"), MC Realty XXXII, Inc. has executed and delivered to Lender that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date and recorded contemporaneously herewith (the "*XXXII Mortgage*"), MC Realty XXXIII, Inc. has executed and delivered to Lender that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith (the "*XXXIII Mortgage*"), MC Realty XXXVI, Inc. has executed and delivered to Lender that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith (the "*XXXVI Mortgage*"); the XXXIV Mortgage, the XXXII Mortgage, the XXXIII Mortgage and the XXXVI Mortgage as amended and in effect from time to time are collectively referred to herein as the "*Mortgage*"), securing the indebtedness, liabilities and obligations of Borrower under the Note (collectively, the "*Obligations*"). The Note matures on **November 30, 2014**.
3. Assignor desires to transfer and assign to Lender all of its right, title and interest in, to and under (a) any and all leases, subleases, lettings, licenses, agreements relating to the use or occupancy of or affecting the Premises, now existing or hereafter entered into (collectively, the "*Leases*"), and all amendments, extensions, modifications, replacements or renewals of any of the foregoing and (b) the rents, income and profits due, or to become due thereunder and the right to enforce, whether at law or in equity or by any other means, all provisions thereof, including, without limitation, any guarantees of the obligations owed Assignor thereunder (collectively, the "*Rents*").

NOW, THEREFORE, for the consideration of Ten and No/100 Dollars (\$10.00), with intent to be legally bound hereby, and as an inducement for the making of the loan evidenced by the Loan Agreement and the Note and secured by the Mortgage, Assignor hereby transfers, sets

UNOFFICIAL COPY

over and assigns to Lender all right, title and interest of Assignor in, to and under (a) the Leases and all amendments, extensions, modifications, replacements or renewals thereof, and (b) the Rents. This Assignment is intended to be and is an absolute present assignment from Assignor to Lender and is not intended and does not constitute either additional security or the passage of a security interest; provided, however, that Assignor shall only have a license to collect, except as hereinafter provided, the Rents accruing by virtue of the Leases as they respectively become due ("**License**"), but not in advance, and to enforce the agreements of the Leases, so long as there is no Event of Default. Assignor covenants and agrees, however, that in exercising its License it shall hold any and all such Rents in trust for the benefit of Lender and shall apply the same in payment of the Obligations, to the extent then due, with the balance, so long as no Event of Default has occurred, to the account of Assignor.

Assignor further covenants and agrees as follows:

1. **Lender as Creditor of Lessee.** Upon execution of this Assignment, Lender, and not Assignor, shall be the creditor of each lessee under any Lease (each, a "**Lessee**") in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting any such Lessee. However, to the extent permitted by law, Assignor, and not Lender, shall be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Lender shall have the option to apply any monies received by it as such creditor to the reduction of the principal of or the prepayment premium, if any, or interest on the Obligations.
2. **Default Remedies of Lender.** It shall constitute an "**Event of Default**" under this Assignment if (a) Assignor fails to perform any obligation or observe any condition under this Assignment beyond the applicable grace period therefor, or (b) an event of default occurs under the Loan Agreement, the Note, the Mortgage, or any other deed of trust, mortgage, security agreement, cash collateral agreement, cash management agreement, lockbox agreement, environmental indemnity agreement, guaranty, assignment of leases or rents, pledge agreement, reserve account agreement, assignment of contracts, licenses, permits, agreements, warranties and approvals, or any other instrument now or hereafter given to evidence or further secure the payment of any of the Obligations (all such documents, the "**Loan Documents**"). If an Event of Default occurs under this Assignment, the License of Assignor to collect Rents shall cease and terminate. Lender shall thereupon be authorized at its option to enter and take possession of all or part of the Premises, and to perform all acts necessary for the operation and maintenance of the Premises in the same manner and to the same extent that Assignor might reasonably so act. Upon and after an Event of Default, either with or without entering upon or taking possession of the Premises, Lender shall also 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, Assignor's rights to fix or modify Rents, sue for possession of the leased premises, relet all or part of the leased premises, and collect all rents, income and profits under such new leases. Assignor shall also pay to Lender, promptly upon any Event of Default, (i) all rent prepayments and security or other deposits paid to Assignor pursuant to any Lease assigned hereunder and (ii) all charges for services or facilities or for escalation which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after any Event of Default. Lender will, after payment of all proper costs, charges and any damages including, without limitation, those payable pursuant to Section 6 hereof, apply the net amount of

UNOFFICIAL COPY

such Rents to the sums then due to Lender under the Loan Documents. Lender shall have sole discretion as to the manner in which such net income is applied, the reasonableness of the costs to which it is applied, and the items that will be credited thereby. Assignor and Lender agree and stipulate that upon execution of this Assignment, Assignor's only interest in the Leases or Rents is as a licensee revocable upon the occurrence of an Event of Default as defined herein.

3. **Termination of Assignment.** When Borrower pays Lender for the full amount of the indebtedness secured by the Mortgage and evidenced by the Loan Agreement and the Note, this Assignment shall be terminated and released of record by Lender and shall thereupon be of no further force and effect.

4. **Notice to Lessee of Assignor's Default.** Assignor hereby irrevocably authorizes each Lessee upon demand and notice from Lender of Assignor's default under the Loan Documents, to pay all rents, income and profits under the Leases to Lender. Each Lessee shall have the right to rely upon any such notices of Lender that Lessee shall pay all rents, income and profits to Lender, without any obligation to inquire as to the actual existence of the default, notwithstanding any claim of Assignor to the contrary. Assignor shall have no claim against any Lessee for any rents paid by Lessee to Lender. Upon the curing of all defaults caused by Assignor under the Loan Documents, Lender may grant a new license to Assignor for the purpose of collecting the Rents accruing by virtue of the Leases as they respectively become due (also called the "*License*"), but not in advance, and to enforce the agreements of the Leases, and may give each such Lessee written notice of such cure and, thereafter, until further notice from Lender, the Lessees shall pay the Rents to Assignor.

5. **Assignment of Lender's Interest in Lease.** If Assignor has defaulted under the Loan Documents, Lender shall then have the right to assign Lender's right, title and interest in and to the Leases to any person acquiring title to the Premises through foreclosure or otherwise. Such assignee shall not be liable to account to Assignor for the Rents thereafter accruing. Lender shall also have the right to assign at any time Lender's right, title and interest in and to the Leases to any person acquiring Lender's right, title and interest in and to any of the Obligations or the Loan Documents.

6. **Indemnification of Lender.** Assignor hereby agrees to indemnify and hold Lender harmless from any and all liability, loss or damage that Lender may incur under the Leases or by reason of this Assignment, except for liability, loss or damage incurred as a direct result of Lender's willful misconduct or negligence. Such indemnification shall also cover any and all claims that may be asserted against Lender under the Leases or this Assignment. Nothing in this Section shall be construed to bind Lender to the performance of any Lease provisions, or to otherwise impose any liability upon Lender 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 Premises. This Assignment imposes no liability upon Lender for the operation and maintenance of the Premises or for carrying out the terms of any Lease before Lender has entered and taken possession of the Premises or acquired title to the Premises. Any loss or liability incurred by Lender, by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Lender's request, be reimbursed by Assignor. Such reimbursement shall include interest at the

UNOFFICIAL COPY

Default Rate (as defined in the Loan Agreement), costs, expenses and reasonable attorneys' fees. Lender may, upon entry and taking of possession, collect the Rents and apply them to reimbursement for any such loss or liability.

7. **Quality of Assignor's Title to Leases.** Assignor represents itself to be the absolute owner of the lessor's interest in the Leases, with absolute right and title to assign the Leases and the Rents due or to become due thereunder.

8. **New Leases, Amendments and Terminations.** Except as permitted pursuant to the Mortgage, Assignor covenants not to enter into any new Lease, to cancel, abridge, surrender or terminate any Lease or change, alter or modify any Lease, without the prior written consent of Lender. Assignor covenants to not make any subsequent assignment or pledge of any Lease, or consent to subordination of the interest of any Lessee under any Lease to any person other than Lender, without the prior written consent of Lender. Any attempt at: (i) cancellation, surrender, termination, change, alteration, or modification, except in the ordinary course of business; or (ii) assignment, pledge or subordination of any Lease without the written consent of Lender, shall be null and void.

9. **Delivery of Necessary Instruments to Lender.** Assignor shall execute and deliver to Lender, and hereby irrevocably appoints Lender, its successors and assigns, as Assignor's attorney-in-fact to execute and deliver during the term of this Assignment, all further instruments as Lender may deem necessary to make this Assignment and any further assignment effective. Assignor shall, upon demand, pay to Lender, or reimburse Lender for the payment of, any and all costs and expenses (including reasonable attorneys' fees) incurred in connection with the preparation and recording of such instruments.

10. **Cancellation of Lease.** Each Lease shall remain in full force and effect, notwithstanding any merger of Assignor's and Lessee's interest thereunder. In the event that any Lease permits cancellation thereof on payment of consideration and said privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Lender to be applied, at the election of Lender, to reduce the amount of the principal of the Obligations in the inverse order of maturity or to be held in trust by Lender as further security, without interest, for the payment of the principal and interest required to be paid by the Loan Documents.

11. **Assignor to Ensure Continued Performance Under Leases.** Assignor shall not execute any other assignment or pledge of the Leases, of any interest therein, or of any Rents payable thereunder. Assignor acknowledges that it has no further right, title, or interest in the Leases or Rents capable of being assigned to any other person or entity. Assignor shall perform all of its covenants as Lessor under the Leases, shall not take any actions that would, either presently or with the passage of time, cause a default by Assignor under the Leases, shall enforce the performance thereunder by all Lessees and shall not permit any release of liability of any Lessee or any withholding of rent payments by any Lessee. Assignor shall promptly deliver to Lender copies of any and all notices of default Assignor has sent to any Lessee. Assignor shall, upon Lender's request and at Assignor's expense, enforce the Leases and all remedies available to Assignor thereunder upon any Lessee's default. Assignor shall deliver to Lender copies of all papers served in connection with any such enforcement proceedings and shall consult with

UNOFFICIAL COPY

Lender, its agents and attorneys with respect to the conduct thereof. Assignor shall not enter into any settlement of any such proceeding without Lender's prior written consent.

12. Changes in Loan Document Terms; Additions to and Replacement of Loan Documents. Notwithstanding any variation of the terms of the Loan Documents, including any increase or decrease in the principal amount thereof or in the rate of interest payable thereunder or any extension of time for payment thereunder or the release of any part of the Premises subject to the Mortgage, the Leases and the benefits hereby assigned shall continue in accordance with the terms of this Assignment.

13. Exercise of Lender's Rights. Lender'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. Lender's rights and remedies hereunder may be exercised as often as Lender deems expedient.

14. WAIVER OF TRIAL BY JURY AND CERTAIN DAMAGES. ASSIGNOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY EITHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THIS ASSIGNMENT, THE LOAN AGREEMENT, THE MORTGAGE, THE LOAN DOCUMENTS, OR ANY ACTS OR OMISSIONS OF LENDER IN CONNECTION THEREWITH. FURTHER, ASSIGNOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. ASSIGNOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS ASSIGNMENT AND THAT LENDER WOULD NOT EXTEND CREDIT TO ASSIGNOR IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS ASSIGNMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY ASSIGNOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY ASSIGNOR.

15. Cumulative Rights and Remedies. The rights and remedies of Lender under this Assignment are cumulative and are not in lieu of, but are in addition to, any other rights or remedies which Lender shall have under the Loan Agreement, the Note, the Mortgage or any other instrument constituting security for the Obligations, or at law or in equity.

16. Severability. If any term of this Assignment, or the application hereof to any person or set of circumstances, shall to any extent be invalid, illegal, 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, illegal, or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest

UNOFFICIAL COPY

extent consistent with applicable law and this Assignment shall be interpreted and construed as though such invalid, illegal, or unenforceable term or provision (or any portion thereof) were not contained in this Assignment.

17. **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.

18. **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.

19. **Notices.** All notices required or permitted hereunder shall be given as provided in the Mortgage.

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

21. **Applicable Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to principles of conflicts of laws.

[Remainder of this page intentionally left blank; signature page follows]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Assignor has duly executed this Assignment under seal the date first above written.

ASSIGNOR:

Signed, Sealed and Delivered in the presence of:

Mark Conway
Witness

MC REALTY XXXIV, INC.,
an Illinois corporation

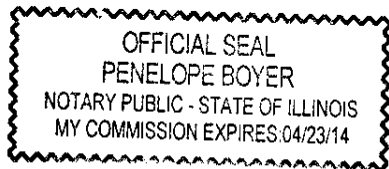
By: [Signature]
Name: George Miletic
Its: President

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Penelope Boyer, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that George Miletic, personally known to be to be the President of MC REALTY XXXIV, INC., an Illinois corporation, and personally known 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/she signed and delivered the said instrument pursuant to authority of said _____ as his/her free and voluntary act, and as the free and voluntary act and deed of said **MC REALTY XXXIV, INC.**, for the uses and purposes therein set forth.

WITNESS MY HAND and Notary seal this 27th day of December 2013.

Penelope Boyer
Notary Public



My commission expires:
4/23/14

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

PARCEL 1:

LOT 37 IN KING ARTHUR APARTMENTS OF NORTHLAKE UNIT NO. TWO, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR INGRESS AND EGRESS, AND PUBLIC UTILITIES, FOR THE BENEFIT OF PARCEL 1 AFORESAID, AS SET FORTH IN THE DECLARATION OF EASEMENTS RECORDED AS DOCUMENT 18653754, AND DECLARATION OF EASEMENTS RECORDED AS DOCUMENT 18844302, AND DOCUMENT 18844303, AS MODIFIED BY DOCUMENT 18922388, AND IN THE DECLARATION OF EASEMENTS 18844304, AS MODIFIED BY DOCUMENT 18927389 AND AS CREATED IN IN DEED RECORDED AS DOCUMENT 19479070 AND AS MODIFIED FROM TIME TO TIME.

PIN: 12-30-402-032-0000

Property of Cook County Clerk's Office