

UNOFFICIAL COPY



Document prepared by and
after recording return to:

Joel V. Sestito, Esq.
Quarles & Brady LLP
300 North LaSalle Street, Suite 4000
Chicago, Illinois 60654

Doc#: 1405955069 Fee: \$58.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 02/28/2014 02:18 PM Pg: 1 of 11

Property Address:
4837-4851 North Albany, Chicago,
Illinois

PIN Number:
13-12-314-002-0300

AMENDED AND RESTATED ASSIGNMENT OF LEASES AND RENTS

THIS AMENDED AND RESTATED ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of February 20, 2014 with an effective date of January 31, 2014 by and from TANIOS FAMILY LIMITED PARTNERSHIP, an Illinois limited partnership (the "Assignor"), to and for the benefit of NORTHBROOK BANK & TRUST COMPANY, an Illinois state chartered bank, as successor by assignment to North Shore Community Bank & Trust Company, its successors and assigns ("Assignee" or "Lender").

RECITALS:

- A. Assignor is, or, as of the date hereof, will be the owner of certain real property located in Cook County, State of Illinois more particularly described in Exhibit A attached hereto.
- B. Assignor and Lender entered into a certain loan arrangement (the "Original Loan") evidenced by that certain Promissory Note dated as of January 14, 2011, made by Assignor in favor of Lender (the "Original Note"), pursuant to which Lender made a loan to Assignor in the original principal amount of Two Million Five Hundred Seventy-Five Thousand Dollars (\$2,575,000.00).
- C. Assignor and Lender have agreed to amend and restate the terms of the Original Loan (hereinafter the amended and restated loan shall be referred to as the "Loan") on the terms and conditions set forth in that certain Loan Agreement dated as of even date herewith between Assignor and Lender (as the same may from time to time be amended, supplemented, restated or otherwise modified, the "Loan Agreement").
- D. North Shore Community Bank & Trust Company assigned its interest in the Original Loan, the Original Note, and all other documents executed by Assignor in connection therewith to Northbrook Bank & Trust Company pursuant to that certain agreements.
- E. The Loan is, or will be, evidenced by that certain Amended and Restated Promissory Note dated as of even date herewith, executed by Assignor and payable to the order of Lender in the original principal amount of Two Million Five Hundred Seventy-Five Thousand Dollars (\$2,575,000.00) (such note, as it may hereafter be renewed, extended, supplemented,

QB\24829304.3

Freedom Title Corporation
2260 Hicks Road
Suite 415
Rolling Meadows IL 60008

6714705 2/2

UNOFFICIAL COPY

increased or modified and in effect from time to time, and all other notes given in substitution therefor, or in modification, renewal, or extension thereof, in whole or in part, is herein called the "Note").

F. The Loan is secured, among other items, by (i) a certain Amended and Restated Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents (as amended, modified and restated from time to time, the "Mortgage"), dated as of even date herewith, executed and delivered by Assignor for the benefit of Lender, encumbering certain interests in real and personal property as more particularly described in the Mortgage (the "Property"); (ii) a certain Amended and Restated Guaranty of Payment (as amended, modified and restated from time to time, the "D. Tanios Payment Guaranty") dated as of even date herewith from Diane Tanios for the benefit of Lender; (iii) a certain Amended and Restated Guaranty of Payment (as amended, modified and restated from time to time, the "I. Tanios Payment Guaranty"; together with the D. Tanios Payment Guaranty, the "Payment Guaranty") dated as of even date herewith from Ishac Tanios for the benefit of Lender; and (iv) certain other documents securing repayment of the Note (together with the Mortgage, this Assignment, the Loan Agreement, the Payment Guaranty, the Note, and all other documents evidencing or securing the Loan are hereinafter collectively referred to herein as the "Loan Documents"). All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Agreement and the Loan Documents are hereby made a part of this Assignment to the same extent and with the same force and effect as if they were fully set forth herein and Assignor covenants and agrees to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms.

G. This Assignment amends and restates that certain Assignment of Leases and Rents dated on or about January 14, 2011 and recorded with the Recorder of Deeds of Cook County, Illinois on January 24, 2011 as Document 1102404227 made by Assignor to Lender.

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

AGREEMENT:

NOW, THEREFORE, as an inducement to amend and extend the Loan, Assignor 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.

UNOFFICIAL COPY

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

“Obligations” means, collectively, the obligations of Assignor under the Loan Agreement, the Note, the Mortgage, this Assignment, and the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing.

“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.** Subject to the License set forth in Section 3, as security for the payment and performance of the Obligations, Assignor hereby absolutely and unconditionally transfers, sets over and assigns to Assignee all present and future right, title and interest of Assignor 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 Assignor under any of the Leases and all other rights and interests of Assignor under or in respect of any of the Leases. Subject to the License set forth in Section 3, this Assignment is intended to be and is an absolute present assignment from Assignor to Assignee, 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, Assignor shall have a license to collect the Rents accruing under the Leases as they become due (“License”), but not more than thirty (30) days in advance, and to enforce the Leases. The License shall automatically be revoked upon the occurrence of an Event of Default. Assignor 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.** Assignor hereby represents and warrants to Assignee that: (a) Assignor 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 Assignor’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 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 known existing defaults under the provisions of the Leases on the part of the lessor and to Assignor’s knowledge, there are no existing defaults under the provisions of the Leases on the part of the Lessees thereunder; (e) to Assignor’s knowledge, no Lessee has any defense, set-off or counterclaim against Assignor; (f) no Lessee has any purchase option or first refusal right or any right or option for additional space with respect to the Property; (g) Assignor 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 except for security or similar deposits; and (h) to Assignor’s knowledge, all work required to be performed by Assignor, as landlord, as of the date hereof under any Lease has been completed in accordance with the provisions of the Lease.

UNOFFICIAL COPY

5. Covenants of Assignor.

5.1 New Leases and Lease Terminations and Modifications. Assignor 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 such Lease, or make any subsequent assignment or pledge of such a Lease, or consent to the subordination of the interest of any Lessee in any such Lease, or consent to any assignment by and Lessee or any subletting, without the prior written consent of Assignee, provided however, Lender's consent shall not be required for Leases which (i) do not adversely deviate from the Standard Lease Form (as such term is defined in the Loan Agreement), (ii) are for a term of not less than twelve (12) months, and (iii) are on terms and conditions and for rents that are market-standard for the vicinity in which the Property is located. 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 Assignor 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 Assignor shall not do or suffer to be done anything to impair the security thereof. With respect to any Lease, the Assignor shall not (i) release the liability of any Lessee 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, except as specifically provided above, or (v) enter into any oral leases with respect to all or any portion of the Property;

5.3 Collection of Rents. The Assignor shall not collect any of the Rents, issues, income or profits assigned hereunder more than one (1) month in advance of the time when the same shall become due, except for security or similar deposits;

5.4 Further Assignment. The Assignor 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. The Assignor 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;

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

5.7 Defending Actions. The Assignor 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;

UNOFFICIAL COPY

5.8 Enforcement. The Assignor 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 Subordination. Assignor 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; and

6. Cancellation of Lease. In the event that any Lease permits cancellation thereof on payment of consideration and the privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Assignee, and if an Event of Default has occurred, shall be applied, at the election of Assignee, to the Obligations in whatever order Assignee shall choose in its discretion or shall be held in trust by Assignee as further security, without interest, for the payment of the Obligations. Prior to such Event of Default, Assignor may use and apply such termination payments to expenses of the Property.

7. Assignee's Rights Upon Lessee Bankruptcy. Upon the occurrence of an 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 Assignor, all of the rights which would otherwise inure to the benefit of Assignor 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 Assignor 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 Assignor.

8.1 Remedies. Upon the occurrence of an Event of Default, Assignor's License to collect Rents shall immediately cease and terminate. 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 Assignor 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, 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 under such new Leases. Assignor shall also pay to Assignee, promptly upon any Event of Default: (a) all rent prepayments and security or other deposits paid to Assignor 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

UNOFFICIAL COPY

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.

8.2 Notice to Lessee. Assignor 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. Assignor 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 Assignor to the contrary. Assignor shall have no claim against any Lessee for any Rents paid by Lessee to Assignee.

8.3 Assignment of Defaulting Assignor's Interest in Lease. Assignee shall have the right to assign Assignor'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 Assignor 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 Agreement, the Note, 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 cost and expenses (including any receiver's fees and fees) incurred by Assignee pursuant to the powers contained in this Assignment shall be immediately reimbursed by Assignor to Assignee on demand, shall be secured hereby and, if not paid by Assignor, shall bear interest from the date due at the Default Rate (as defined in the Note). Assignee shall not be liable to account to Assignor for any action taken pursuant hereto, other than to account for any Rents actually received by Assignee.

9. Indemnification of Assignee. Assignor 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. Such indemnification shall also cover any and all claims and demands that may be asserted against Assignee under the Leases or this Assignment. 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 a 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 Assignor. Such reimbursement shall include interest at the Default Rate provided in the Note, 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.

UNOFFICIAL COPY

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, Assignor hereby appoints Assignee as Assignor's attorney-in-fact, with full authority in the place of Assignor, at the option of Assignee at any time after the occurrence of and during the continuation of an Event of Default, and in the name of Assignor 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 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 Assignor 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

UNOFFICIAL COPY

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 Agreement.

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 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 Note and the Mortgage, subject in all events to the provisions of the Mortgage regarding transfers of the Property by Assignor. 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 Assignor, all obligations of each Assignor hereunder shall be joint and several.

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

15. Governing Law and Consent to Jurisdiction

15.1 Substantial Relationship. The parties agree that the State of Illinois has a substantial relationship to the parties and to the underlying transactions embodied by the Loan Documents.

15.2 Place of Delivery. Assignor agrees to furnish to Assignee at Assignee's office in Chicago, Illinois all further instruments, certifications and documents to be furnished hereunder, if any.

15.3 Governing Law. This Assignment and the obligations of Assignor hereunder that affect the Property shall be governed by and interpreted and determined in accordance with the laws of the State of Illinois.

UNOFFICIAL COPY

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

[Signature page follows]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed and delivered as of the day and year first above written.

ASSIGNOR:

TANIOS FAMILY LIMITED PARTNERSHIP, an Illinois limited partnership

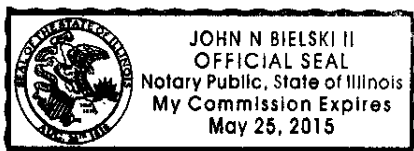
By: Ishac S. Tanios
Name: Ishac S. Tanios
Its: General Partner

STATE OF Illinois)
COUNTY OF Cook) SS.

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Ishac S. Tanios, the General Partner of TANIOS FAMILY LIMITED PARTNERSHIP, an Illinois limited partnership, who is 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/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of February, 2014.

[Signature]
Notary Public



My Commission Expires:
May 25, 2015

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 2 TO 9, BOTH INCLUSIVE, IN BLOCK 2 IN W.F. KAISER AND COMPANY'S SECOND ALBANY PARK SUBDIVISION OF THE WEST 1/2 OF BLOCK 19 AND THE NORTH 1/2 OF BLOCK 30 IN JACKSON'S SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 11 AND THE SOUTHWEST 1/4 OF SECTION 12, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBERS:

13-12-314-002-0000

COMMON ADDRESS:

4837-4851 North Albany, Chicago, Illinois 60625

Property of Cook County Clerk's Office

Exhibit A