

# ASSIGNMENT OF LEASES AND RENTS

This ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is given as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ ("Assignor") to \_\_\_\_\_ ("Assignee").

## RECITALS

- A. Assignor is the owner of the real property described in Exhibit A attached hereto. Such real property, together with all improvements now or hereafter located thereon and all appurtenances thereto, is referred to as the "Property."
- B. Assignor has executed a Promissory Note, as the same may be modified, extended, renewed, rearranged or replaced from time to time, (the "Note") dated \_\_\_\_\_ in the principal face amount of \$\_\_\_\_\_. The Note is secured by, among other things, a Mortgage dated \_\_\_\_\_ and recorded \_\_\_\_\_ in the \_\_\_\_\_ County Clerk's/Register's Office in Book \_\_\_\_\_ Page \_\_\_\_\_ or Instrument No. \_\_\_\_\_, as the same may be amended, supplemented, restated or replaced from time to time, (the "Mortgage"), encumbering the Property, from Assignor to Assignee.
- C. The Note, the Mortgage, this Assignment, and all other documents now or hereafter executed or delivered by Assignor in connection with the loan evidenced by the Note (the "Loan"), as any or all such documents may be amended, substituted for, or replaced from time to time, are referred to collectively as the "Loan Documents."

## ASSIGNMENT

NOW, THEREFORE, to induce Assignee to make the Loan, as a partial source of repayment of the Loan, and as additional security for the payment and performance of all obligations of Assignor to Assignee evidenced by or referred to in the Loan Documents, whether now existing or subsequently incurred, Assignor hereby undertakes and agrees as follows:

- 1. Definitions. Any initially capitalized terms not otherwise defined herein shall have the same meaning in this Assignment as ascribed to such term in the Mortgage.
- 2. Assignment of Leases and Rents. Assignor hereby unconditionally, presently, absolutely and irrevocably grants, transfers and assigns unto Assignee all rents, royalties, issues, profits and income ("Rents") now or hereafter due or payable to Assignor for the occupancy or use of the Property, and all leases, subleases and other use and occupancy agreements affecting the Property or any part thereof now existing or hereafter entered into between Assignor (or Assignor's predecessor in interest in title to the Property or any part thereof) and tenants of Assignor or such predecessor in interest ("Leases"), whether written or oral, with all security therefor, including all guaranties thereof, now or hereafter affecting the Property. The aforesaid assignment shall be effective immediately upon Assignor's execution of this

Assignment and is not conditioned upon the occurrence of an Event of Default or any other contingency or event; provided, however, that Assignee hereby grants to Assignor a license to collect, retain and enjoy such Rents provided that no Event of Default has occurred and is continuing. Such license shall be revocable by Assignee with notice to Assignor at any time after the occurrence of an Event of Default. Assignor represents that the Rents payable to Assignor and the Leases have not been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time during the life of this Assignment be sold, assigned, transferred or set over by Assignor; and Assignor has good right to sell, assign, transfer and set over the same and to grant to and confer upon Assignee the rights, interest, powers, and authorities herein granted and conferred. Failure of Assignee at any time or from time to time to enforce the assignment of Rents and Leases under this section shall not in any manner prevent its subsequent enforcement, and Assignee is not obligated to collect anything hereunder, but is accountable only for sums actually collected.

3. Further Assignment. Assignor shall give Assignee at any time upon demand any further or additional customary forms of assignment or transfer of such Rents, Leases and Security as may be reasonably requested by Assignee, and shall deliver to Assignee executed copies of all such Leases and security.
4. Application of Rents. Assignee shall be entitled to deduct and retain a just and reasonable compensation from monies received hereunder for its services or that of its agents in collecting such monies. Subject to the provisions of said Mortgage, any monies received by Assignee hereunder may be applied when received from time to time in payment of any taxes, assessments or other liens affecting the property regardless of the delinquency, such application to be in such order as Assignee may determine. The acceptance of this Assignment by Assignee or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any Lease nor an assumption of any liability under any Lease.
5. Collection of Rents. Upon or at any time after an Event of Default shall have occurred and be continuing, Assignee may declare all sums secured hereby immediately due and payable, and may, at its option, with notice, and whether or not the Secured Obligations shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court (a) enter upon, take possession of, manage and operate the Property, or any part thereof (including without limitation making necessary repairs, alterations and improvements to the Property); (b) make, cancel, enforce or modify Leases; (c) obtain and evict tenants; (d) fix or modify Rents; (e) do any acts which Assignee deems reasonably proper to protect the security thereof; and (f) either with or without taking possession of the Property, in its own name sue for or otherwise collect and receive such Rents, including those past due and unpaid. In connection with the foregoing, Assignee shall be entitled and empowered to employ attorneys, and management, rental and other agents in and about the Property and to effect the matters which Assignee is empowered to do, and in the event Assignee shall itself effect such matters, Assignee shall be entitled to charge and receive reasonable management, rental and other fees, charges, costs and expenses of Assignee or such persons shall be additional Secured Obligations. Assignee may apply all funds collected as aforesaid, less costs and expenses of operation and collection, including reasonable attorneys' and agents' fees, charges, costs and expenses, as aforesaid, upon and Secured Obligations, and in such order as Assignee may determine. The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid shall not

cure or waive any default or waive, modify or affect notice of default under the Note or this Assignment or invalidate any act done pursuant to such notice.”

6. Authority of Assignee. Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Assignee hereunder without investigating the reason for any action taken by Assignee, or the validity or the amount of secured obligations owing to Assignee, or the existence of any default in the Note or this Assignment, or under or by reason of this Assignment or Rents and Leases, or the application to be made by Assignee of any amounts to be paid to Assignee. The sole signature of Assignee shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of Assignee for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Property. Checks for all or any part of the rentals collected under this Assignment shall be drawn to the exclusive order of Assignee.
7. Indemnification of Assignee. Nothing herein contained shall be deemed to obligate Assignee to perform or discharge any obligation, duty or liability of any lessor under any Lease of the Property, and Assignor shall and does hereby indemnify and hold Assignee harmless from any and all liability, loss or damage which Assignee may or might incur under any Lease or by reason of the assignment, excluding, however, any such matter resulting from Assignee’s gross negligence or willful misconduct; and any and all such liability, loss or damage incurred by Assignee, together with the costs and expenses, including reasonable attorney’s fees, incurred by Assignee in defense of any claims or demands therefor (whether successful or not), shall be additional Secured Obligations, and Assignor shall reimburse Assignee therefor on demand. Notwithstanding the provisions of this Section 7, if there occurs a Deed in Lieu of Foreclosure Conveyance (as defined below), Assignor’s indemnification of Assignee pursuant to this Section 7 will be limited to such liabilities, loss, damage, costs and expenses that accrued prior to the date of the Deed in Lieu of Foreclosure Conveyance.

As used herein, the term “Deed in Lieu of Foreclosure Conveyance” shall mean the transfer of the Property from Assignor to Assignee or Assignee’s designee in accordance with the following terms and conditions: Assignor shall deliver to Assignee, in form and substance reasonably satisfactory to Assignee, (i) a deed in lieu of foreclosure for the Property in proper form for recording subject to only the Permitted Exceptions, (ii) all transfer tax returns and transfer tax forms required to be filed with such a deed in lieu of foreclosure, (iii) a bank check covering all transfer taxes, title insurance premiums for an owner’s title insurance policy reasonably satisfactory to Assignee, and recorded charges for the deed in lieu of foreclosure and other necessary or required documents, and (iv) any other documentation and other items reasonably required by Assignee, such as, without limitation, (a) title affidavits, (b) FIRPTA certificates, (c) certified copies of Assignor’s organizational documents, (d) resolutions and consents of appropriate parties authorizing the delivery of the deed in lieu of foreclosure, (e) evidence reasonably satisfactory to Assignee that no Hazardous Materials (as defined in the Environmental Indemnity Agreement) are then affecting the Property (which evidence shall include a Phase I Environmental Site Assessment and, if applicable, a Phase II Environmental Site Assessment), (f) an update to the survey as required by the title company for the issuance of such owner’s title insurance policy, (g) a bill of sale in favor of Assignee or Assignee’s designee for any and all Chattels and Intangible Personalty, (h) an assignment of all Leases, (i) an assignment of all permits, licenses, warranties and contracts at and/or affecting the Property, (j) letters executed by Assignor to all tenants at the Property notifying such tenants

of the transfer by Deed in Lieu of Foreclosure Conveyance and directing the tenants to pay all Rent and other amounts due under the respective Leases to an address designated by Assignee, (k) a certified rent roll for the Property as of the date of transfer by Deed in Lieu of Foreclosure Conveyance, (l) all leasing files necessary for the administration of the Property, (m) certified statement of all accounts payable, and (n) evidence or of a bank check for the payment of, any and all accrued taxes, assessments, and/or utility charges affecting the Property, which accrued up to and including the date of transfer by Deed in Lieu of Foreclosure Conveyance.

8. **Cross-Default Clause.** Any default by Assignor in the performance or observance of any covenant or condition hereof, and the continuance thereof after any notice and cure period, shall be deemed an Event of Default under each of the Loan Documents, entitling Assignee to exercise all or any remedies available to Assignee under the terms of any or all Loan Documents and any Event of Default under any other Loan Documents shall be deemed a default hereunder, entitling Assignee to exercise any or all remedies provided for herein. Failure by Assignee to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Assignee, and the waiver by Assignee of any such default by Assignor hereunder shall not constitute a continuing waiver or a waiver of any other default or the same default on any future occasion.
9. **Reassignment by Assignee.** Assignee may assign all or part of Assignor's right, title, and interest in any or all Leases (to the extent of the interests therein conferred upon Assignee by the terms hereof) to any subsequent holder, owner, co-owner or participant, of or in the Note or other Loan Documents, or to any person who acquires title to the Property through foreclosure or otherwise. From and after the acquisition of title to the Property by any person, through foreclosure or conveyance in lieu of foreclosure, no assignee, of Assignor's interest in any Lease shall be liable to account to Assignor for the rents, income, and profits thereafter accruing. The recording of any valid release of the Mortgage shall operate as a release of this Assignment in favor of the then owner of the Property; provided, that the recording of any valid partial release of the Mortgage shall operate as a release hereof only with respect to that portion of the Property thereby released from the Mortgage, the term "Property" as used herein being deemed thereafter to refer only to that portion of the Property remaining encumbered by the Mortgage and the term "Assignor" as used herein being deemed thereafter to refer only to the owner or owners of such remaining portion of the Property; and provided further, that the affidavit of any officer of Assignee stating that any part of the indebtedness secured hereby remains unpaid shall constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely upon such affidavit.
10. **Rights and Remedies.** All rights and remedies set forth in this Assignment and in the other Loan Documents are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment thereon, issue execution therefor and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby. Unless expressly provided in this Assignment to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein regarding any breach or default by any other interested party referred to herein, in the performance by such other party of any obligations contained herein shall be deemed a consent to or waiver of the party of the performance by such other party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other obligations hereunder.

11. Interpretation. If any provision of this Assignment or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Assignment shall be construed as if such invalid part were never included herein.
12. Successors and Assigns. This Assignment and all provisions hereof shall be binding upon Assignor, its successors and assigns, and all other persons or entities claiming under or through Assignor and the "Assignor," 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 or this Assignment. The word "Assignee," when used herein shall include Lender's successors and assigns, including all other holder, from time to time, of the Note. This Assignment shall run with the land constituting the Property.
13. Binding Effect. The provisions of this Assignment shall bind and benefit the parties hereto and their respective successors and permitted assigns.
14. Notices. Notices under this Assignment shall be given in the manner set forth in the Mortgage.
15. Governing Law. This Assignment shall be construed and enforced according to the laws of the State of New Jersey, without giving effect to conflict of laws principles.
16. Conflict with Mortgage. In the event of any conflict between the terms hereof and the terms of the Mortgage, the Mortgage shall control and be binding.
17. Non-Recourse. Assignor's obligations hereunder are subject to and limited by the terms of the Mortgage.

Signed and delivered as of the date first above written.

ASSIGNOR:

\_\_\_\_\_  
By:

SCHEDULE A  
LEGAL DESCRIPTION

STATE OF NEW JERSEY     )  
  ) ss:  
COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, a Notary Public in and for the state of New Jersey, personally appeared \_\_\_\_\_, personally known to me or proved to me on the bases of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public  
My Commission Expires