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Rhonda Francis Summit County Recorder

11/03/2023 08:52:57 AM Fee \$40.00

By COTTONWOOD TITLE INSURANCE AGENCY, INC.

Electronically Recorded

**Tax Serial Number:**

**440-MAIN-A**

**RECORDATION REQUESTED BY:**

Zions Bancorporation, N.A. dba Zions First National Bank  
Commercial Real Estate Utah  
1 South Main Street  
Salt Lake City, UT 84111

**WHEN RECORDED MAIL TO:**

Zions Bancorporation, N.A. dba Zions First National Bank  
Enterprise Loan Operations, UT ZTC4 1880  
PO Box 25007  
Salt Lake City, UT 84125-0007

170865- MCB

**FOR RECORDER'S USE ONLY**

**ASSIGNMENT OF RENTS**

**THIS ASSIGNMENT OF RENTS** dated October 30, 2023, is made and executed between 440 Main, LLC, a Utah limited liability company, whose address is 440 Main St., Park City, UT 84060 (referred to below as "Grantor") and Zions Bancorporation, N.A. dba Zions First National Bank, whose address is 1 South Main Street, Salt Lake City, UT 84111 (referred to below as "Lender").

**ASSIGNMENT.** For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in Summit County, State of Utah:

See the exhibit or other description document which is attached to this Assignment and made a part of this Assignment as if fully set forth herein.

The Property or its address is commonly known as 440 Main St., Park City, UT 84060. The Property tax identification number is 440-MAIN-A.

**CROSS-COLLATERALIZATION.** In addition to the Note and the Hedging Transaction, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Borrower and Grantor or any one or more of them to Lender, or any one or more of them, as well as all claims by Lender against Borrower and Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note or the Hedging Transactions, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower and Grantor or any one or more of them may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

**THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2)**

**PERFORMANCE OF ANY AND ALL OBLIGATIONS OF BORROWER AND GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, THE HEDGING TRANSACTION DOCUMENTS, AND THE RELATED DOCUMENTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ASSIGNMENT, NO GRANTOR SHALL BE DEEMED TO HAVE GUARANTEED, BECOME JOINTLY AND SEVERALLY OBLIGATED FOR OR TO HAVE PLEDGED ASSETS IN SUPPORT OF A "SWAP," AS DEFINED IN SECTION 1A(47) OF THE COMMODITY EXCHANGE ACT ("CEA"), ENTERED INTO ON OR AFTER OCTOBER 12, 2012, IF AT THE TIME THAT SWAP IS ENTERED INTO, SUCH GRANTOR IS NOT AN "ELIGIBLE CONTRACT PARTICIPANT" AS DEFINED IN SECTION 1A(18) OF THE CEA. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**GRANTOR'S WAIVERS.** Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

**BORROWER'S WAIVERS AND RESPONSIBILITIES.** Lender need not tell Borrower about any action or inaction Lender takes in connection with this Assignment. Borrower assumes the responsibility for being and keeping informed about the Property. Borrower waives any defenses that may arise because of any action or inaction of Lender, including without limitation any failure of Lender to realize upon the Property, or any delay by Lender in realizing upon the Property. Borrower agrees to remain liable under the Note with Lender no matter what action Lender takes or fails to take under this Assignment.

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that:

**Ownership.** Grantor is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

**Right to Assign.** Grantor has the full right, power and authority to enter into this Assignment and to assign and convey the Rents to Lender.

**No Prior Assignment.** Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

**No Further Transfer.** Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents except as provided in this Assignment.

**LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS.** Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

**Notice to Tenants.** Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

**Enter the Property.** Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

**Maintain the Property.** Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

**Compliance with Laws.** Lender may do any and all things to execute and comply with the laws of the State of Utah and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

**Lease the Property.** Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

**Employ Agents.** Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

**Other Acts.** Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

**No Requirement to Act.** Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

**APPLICATION OF RENTS.** All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender under this Assignment and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Assignment, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

**FULL PERFORMANCE.** If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Assignment, the Note, the Hedging Transaction Documents and the Related Documents, Lender shall execute and deliver to Grantor a suitable satisfaction of this Assignment and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Property. Any termination fee required by law shall be paid by Grantor, if permitted by applicable law.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Assignment or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Assignment or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Rents or the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Assignment also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of any Event of Default.

**DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Assignment:

**Payment Default.** Borrower fails to make any payment when due under the Indebtedness.

**Other Defaults.** Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Assignment or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor.

**Default on Other Payments.** Failure of Grantor within the time required by this Assignment to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Default in Favor of Third Parties.** Borrower, any guarantor or Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's, any guarantor's or Grantor's property or ability to perform their respective obligations under this Assignment or any of the Related Documents.

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Assignment or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Assignment or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Borrower's or Grantor's existence as a going business or the death of any member, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Grantor or by any governmental agency against the Rents or any property securing the Indebtedness. This includes a garnishment of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower or Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Property Damage or Loss.** The Property is lost, stolen, substantially damaged, sold, or borrowed against.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender

believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Cure Provisions.** If any default, other than a default in payment, is curable and if Grantor has not been given a notice of a breach of the same provision of this Assignment within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Borrower or Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Borrower would be required to pay.

**Collect Rents.** Lender shall have the right, without notice to Borrower or Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. Grantor hereby waives any requirement that the receiver be impartial and disinterested as to all of the parties and agrees that employment by Lender shall not disqualify a person from serving as a receiver.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Assignment, the Note, the Hedging Transaction Documents or by law.

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and

appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**DISPUTE RESOLUTION PROVISION.** This Dispute Resolution Provision contains a jury waiver, a class action waiver, and an arbitration clause (or judicial reference agreement, as applicable), set out in four Sections. **READ IT CAREFULLY.**

**SECTION 1. GENERAL PROVISIONS GOVERNING ALL DISPUTES.**

**1.1 PRIOR DISPUTE RESOLUTION AGREEMENTS SUPERSEDED.** This Dispute Resolution Provision shall supersede and replace any prior "Jury Waiver," "Judicial Reference," "Class Action Waiver," "Arbitration," "Dispute Resolution," or similar alternative dispute agreement or provision between or among the parties.

**1.2 "DISPUTE" defined.** As used herein, the word "Dispute" includes, without limitation, any claim by either party against the other party related to this Agreement, any Related Document, and the Loan evidenced hereby. In addition, "Dispute" also includes any claim by either party against the other party regarding any other agreement or business relationship between any of them, whether or not related to the Loan or other subject matter of this Agreement. "Dispute" includes, but is not limited to, matters arising from or relating to a deposit account, an application for or denial of credit, warranties and representations made by a party, the adequacy of a party's disclosures, enforcement of any and all of the obligations a party hereto may have to another party, compliance with applicable laws and/or regulations, performance or services provided under any agreement by a party, including without limitation disputes based on or arising from any alleged tort or matters involving the employees, officers, agents, affiliates, or assigns of a party hereto.

If a third party is a party to a Dispute (such as a credit reporting agency, merchant accepting a credit card, junior lienholder or title company), each party hereto agrees to consent to including that third party in any arbitration or judicial reference proceeding for resolving the Dispute with that party.

**1.3 Jury Trial Waiver.** Each party waives their respective rights to a trial before a jury in connection with any Dispute, and all Disputes shall be resolved by a judge sitting without a jury. If a court determines that this jury trial waiver is not enforceable for any reason, then at any time prior to trial of the Dispute, but not later than 30 days after entry of the order determining this provision is unenforceable, any party shall be entitled to move the court for an order, as applicable: (A) compelling arbitration and staying or dismissing such litigation pending arbitration ("Arbitration Order") under Section 2 hereof, or (B) staying such litigation and compelling judicial reference under Section 3 hereof.

**1.4 CLASS ACTION WAIVER.** If permitted by applicable law, each party waives the right to litigate in court or an arbitration proceeding any Dispute as a class action, either as a member of a class or as a representative, or to act as a private attorney general.

**1.5 SURVIVAL.** This Dispute Resolution Provision shall survive any termination, amendment or expiration of this Agreement, or any other relationship between the parties.

**SECTION 2. Arbitration IF JURY WAIVER UNENFORCEABLE (EXCEPT CALIFORNIA).** If (but only if) a state or federal court located outside the state of California determines for any reason that the jury trial waiver in this Dispute Resolution Provision is not enforceable with respect to a Dispute, then any party hereto may require that said Dispute be resolved by binding arbitration pursuant to this Section 2 before a single arbitrator. An arbitrator shall have no authority to determine matters (i) regarding the validity, enforceability, meaning, or scope of this Dispute Resolution Provision, or (ii) class action claims brought by either party as a class representative on behalf of others and claims by a class representative on either party's behalf as a class member, which matters may be determined only by a court without a jury. By agreeing to arbitrate a Dispute, each party gives up any right that party may have to a jury trial, as well as other rights that party would have in court that are

**not available or are more limited in arbitration, such as the rights to discovery and to appeal.**

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of, National Arbitration Forum ("NAF") or Judicial Arbitration and Mediation Service, Inc. ("JAMS") ("Administrator") as selected by the initiating party. However, if the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. If NAF and JAMS both decline to administer arbitration of the Dispute, and if the parties are unable to mutually agree upon a licensed attorney to act as arbitrator with an Administrator, then either party may file a lawsuit (in a court of appropriate venue outside the state of California) and move for an Arbitration Order. The arbitrator, howsoever appointed, shall have expertise in the subject matter of the Dispute. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where Lender or Bank is headquartered. The arbitrator shall apply the law of the state specified in the agreement giving rise to the Dispute.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator: (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment; (ii) will render a decision and any award applying applicable law; (iii) will give effect to any limitations period in determining any Dispute or defense; (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable; (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases; and (vi) will apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within 30 days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. If the terms of this Section 2 vary from the Administrator's rules, this Section 2 shall control.

**SECTION 3. JUDICIAL REFERENCE IF JURY WAIVER UNENFORCEABLE (CALIFORNIA ONLY).**

If (but only if) a Dispute is filed in a state or federal court located within the state of California, and said court determines for any reason that the jury trial waiver in this Dispute Resolution Provision is not enforceable with respect to that Dispute, then any party hereto may require that Dispute be resolved by judicial reference in accordance with California Code of Civil Procedure, Sections 638, et seq., including without limitation whether the Dispute is subject to a judicial reference proceeding. **By agreeing to resolve Disputes by judicial reference, each party is giving up any right that party**

may have to a jury trial. The referee shall be a retired judge, agreed upon by the parties, from either the American Arbitration Association (AAA) or Judicial Arbitration and Mediation Service, Inc. (JAMS). If the parties cannot agree on the referee, the party who initially selected the reference procedure shall request a panel of ten retired judges from either AAA or JAMS, and the court shall select the referee from that panel. (If AAA and JAMS are unavailable to provide this service, the court may select a referee by such other procedures as are used by that court.) The referee shall be appointed to sit with all of the powers provided by law, including the power to hear and determine any or all of the issues in the proceeding, whether of fact or of law, and to report a statement of decision. The parties agree that time is of the essence in conducting the judicial reference proceeding set forth herein. The costs of the judicial reference proceeding, including the fee for the court reporter, shall be borne equally by the parties as the costs are incurred, unless otherwise awarded by the referee. The referee shall hear all pre-trial and post-trial matters (including without limitation requests for equitable relief), prepare a statement of decision with written findings of fact and conclusions of law, and apportion costs as appropriate. The referee shall be empowered to enter equitable relief as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that are binding on the parties and rule on any motion that would be authorized in a trial, including without limitation motions for summary adjudication. Only for this Section 3, "Dispute" includes matters regarding the validity, enforceability, meaning, or scope of this Section, and (ii) class action claims brought by either party as a class representative on behalf of others and claims by a class representative on either party's behalf as a class member. Judgment upon the award shall be entered in the court in which such proceeding was commenced and all parties shall have full rights of appeal. This provision will not be deemed to limit or constrain Bank or Lender's right of offset, to obtain provisional or ancillary remedies, to interplead funds in the event of a dispute, to exercise any security interest or lien Bank or Lender may hold in property or to comply with legal process involving accounts or other property held by Bank or Lender.

Nothing herein shall preclude a party from moving (prior to the court ordering judicial reference) to dismiss, stay or transfer the suit to a forum outside California on grounds that California is an improper, inconvenient or less suitable venue. If such motion is granted, this Section 3 shall not apply to any proceedings in the new forum.

This Section 3 may be invoked only with regard to Disputes filed in state or federal courts located in the State of California. In no event shall the provisions in this Section 3 diminish the force or effect of any venue selection or jurisdiction provision in this Agreement or any Related Document.

**SECTION 4. Reliance.** Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce a jury waiver, class action waiver, arbitration provision or judicial reference provision in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, material reliance upon the mutual waivers, agreements, and certifications in the four Sections of this DISPUTE RESOLUTION PROVISION.

#### **ASSIGNMENT OF LEASES.**

**THIS ASSIGNMENT IS INTENDED TO INCLUDE AND PERTAIN TO GRANTOR'S "LEASES" (AS DEFINED IN THE "ASSIGNMENT" SUBSECTION BELOW) AS WELL AS TO GRANTOR'S "RENTS" (AS DEFINED IN THE "DEFINITIONS" SECTION BELOW).**

**THIS SECTION ENTITLED "ASSIGNMENT OF LEASES," AND EACH SUBSECTION HEREOF, IS IN ADDITION TO (AND NOT IN LIEU OR DEROGATION OF) THIS ASSIGNMENT'S PRESENT ASSIGNMENT OF RENTS. AS USED IN THIS ASSIGNMENT, THE TERMS "RENTS" AND "LEASES" ARE NOT INTENDED TO BE MUTUALLY EXCLUSIVE, AND EACH SHALL BE INTERPRETED TO HAVE ITS BROADEST MEANING AND SCOPE.**

**THIS ASSIGNMENT IS INTENDED TO ASSIGN TO LENDER (1) ALL OF GRANTOR'S RIGHT, TITLE AND INTEREST IN, TO AND UNDER ALL THE LEASES (AS DEFINED IN THE ASSIGNMENT CLAUSE BELOW) AND (2) ALL RENTS AT OR FROM THE PROPERTY, THE SAME BEING ASSIGNED ABSOLUTELY AND UNCONDITIONALLY TO LENDER AS COLLATERAL TO SECURE THE INDEBTEDNESS AND ALL OBLIGATIONS UNDER THE NOTE, THIS ASSIGNMENT**



**AND THE RELATED DOCUMENTS. THIS ASSIGNMENT INCLUDES ALL LEASES (A) FROM WHICH ANY OF THE RENTS ARISE OR (B) WHICH ARISE FROM OR OUT OF THE PROPERTY OR ITS OPERATIONS.**

This Assignment is an absolute assignment entitling Lender to collect the Rents and enforce the Leases at any time or from time to time. To the fullest extent permitted by law, Lender is authorized, without taking possession of the Property or foreclosing on the Property: (1) to petition any court having jurisdiction to appoint a receiver to take possession of the Rents; (2) to make demand on Grantor for all Rents then or thereafter accruing and received by Grantor to be paid to Lender or (3) to make demand on the tenants under the Leases to pay all Rents then accrued or thereafter accruing directly to Lender. All Rents actually received by Lender or any receiver shall be applied in the required order of priority (as set forth below). Upon Lender making demand for the Rents, Grantor shall immediately tender all accrued and unaccrued Rents then in Grantor's possession or thereafter accruing and received by Grantor to Lender. The **"required order of priority"** means the order in which the Rents received by Lender are to be applied pursuant to this Assignment. Insofar as permitted by law, Lender and Grantor agree to apply the Rents received by Lender in the following order of priority: (i) to Lender's or any receiver's reasonable expenses incurred to secure possession of the Rents or the Property or to enforce the Leases, including, but not limited to, reasonable attorney fees, court costs and costs of appeal; (ii) to reimburse Lender or any receiver for all costs or expenses incurred to protect the Property or Lender's lien covering the Rents, the Leases and/or the Property (including but not limited to all past due payments, escrows or reserves established by Lender for real property taxes, insurance premiums, utility payments, mechanic's liens or the payment of other lien obligations against the Property and any landlord Lease obligations which Lender in its sole discretion elects to pay to prevent any default or injury to the value of the Property); (iii) to all sums evidenced by the Note or secured by this Assignment or any of the Related Documents, including but not limited to all interest and principal due under the Note; (iv) any other Indebtedness owed to Lender; (v) to any additional Property obligations, expenses or other obligations (accelerated or unaccelerated), which Lender elects to pay to benefit the Property or Lender; (vi) after meeting all of the foregoing, to any current payments due any lien holder in the Property, subordinate to Lender; and (vii) any remaining sums, to Grantor.

Notwithstanding Grantor's assignment, Grantor may collect the Rents and enforce the Leases as the landlord therein until one or more of the following events occurs, upon which Grantor's right to collect the Rents or enforce the Leases shall be automatically terminated without any action or notice being required: (a) the occurrence of any default by Grantor under the Leases, this Assignment, the Note or the Related Documents; or (b) Lender sending Grantor written notice terminating Grantor's right to collect the Rents or enforce the Leases; or (c) Lender taking any action to file a petition for a receiver for the Rents, the Leases or the Property pursuant to item (1) in the preceding paragraph, or giving written notice to Grantor pursuant to item (2) in the preceding paragraph, or making written or oral demand upon Tenants to pay Rents directly to Lender pursuant to item (3) in the preceding paragraph.

**Grant of Security Interest.** Grantor hereby grants Lender a security interest in the Leases and any guaranties thereof and all of Grantor's contract rights, rights to payment, general intangibles, accounts, and chattel paper concerning or relating to the Property, and all proceeds arising from all of the foregoing.

**Assignment.** Grantor hereby grants, conveys, and assigns to Lender, as an absolute assignment, Grantor's entire interest as Landlord, in the Leases and any guaranties thereof, whether now existing or hereafter made or created covering all or any part of the Property, and further grants, transfers, and assigns to Lender all Rents as defined in the Definitions section of this Assignment. **"Lease"** means and includes any existing or future written or oral agreement for any right to use or occupy all or any portion of the Property for any term or rental specified in said agreement and also includes any license, privilege or use that conveys less than a leasehold estate to the user.

**Additional Defaults.** In addition to all other events of default stated herein, Grantor will be in default hereunder, and Lender may pursue any remedy or remedies provided herein, in the Note or in any of

the Related Documents if there is any material default by Grantor of any term, condition, or covenant in any of the Leases.

**Additional Default Remedies.** In addition to all other remedies under this Assignment, the Note or the Related Documents, Lender may, at its option and without regard to the adequacy of the security for the Indebtedness, either in person or by agent, with or without bringing an action or proceeding, or by receiver appointed by a court, (i) pay any payments or perform any obligations for which Grantor is obligated under this Assignment, the Leases, the Note or the Related Documents or in connection with the Property, in such manner and to such extent as Lender may deem necessary or appropriate to protect the security hereof, and (ii) pay, purchase, contest, or compromise any encumbrance, charge, or lien, which in Grantor's sole judgment appears to be prior or superior to the lien of the Indebtedness or the Related Documents, and in exercising any such powers, incur any liability and expend any amounts which Lender, in its absolute discretion, deems necessary, including any costs of evidence of title and attorney's fees or other costs of cure. Upon written notice to Grantor, Grantor must repay, without demand, all sums paid pursuant hereto by Lender within ten days from the date of payment and receipt of notice. All such repayments by Grantor shall be secured hereby.

**Lease Representations and Warranties.** Grantor hereby represents and warrants to Lender the following:

- a. Grantor has duly performed all the conditions imposed upon it by the existing Leases (and will duly perform all the conditions imposed upon it in future Leases).
- b. The Leases which have been entered into prior to the execution of this Assignment are now in full force and effect with rental payments paid current and no rents have been paid more than 30 days in advance.
- c. The existing Leases are (and all future Leases will be) assignable to Lender. Any prerequisites to such assignment have been (or shall have been) obtained. The Leases have not previously been assigned to any other party or subjected to any other lien, except as expressly indicated herein.
- d. Grantor is (or will be) the sole owner of the entire Landlord's leasehold interest in the existing Leases (and future Leases).
- e. The existing Leases are (and all future Leases shall be) valid and enforceable. Moreover, no Lease has been or will be altered, modified, or amended in any manner whatsoever except with the prior written consent of Lender.
- f. Grantor is not in default under any of the terms, covenants, or conditions of the Leases and will not permit a default to occur.
- g. The Leases, together with any exhibits, addendums, or other documents relating and/or attached thereto, and the transactions which they represent, are (and shall remain) free and clear of all defenses, setoffs, counterclaims, liens, and encumbrances of every kind and nature against Grantor and are free of all tenant defaults.

**Grantor's Lease Covenants.** Grantor agrees with respect to every existing and future Lease:

- a. To observe and perform all Lease obligations imposed on Lessor or Landlord under the Leases and to indemnify Lender from the consequences of any failure to do so.
- b. Not to interfere in any way with Lender's collection of Rents if Lender determines to collect such Rents.
- c. Not to collect any Rents under the Leases or from the Property or any tenant prior to the time when the same shall become due, or more than 30 days in advance of the due date.
- d. Not to interfere in any way with Lender's right to enforce this Assignment or any enforcement

of any liens held by Lender against the Property, the Leases, the Rents or Grantor's other property or against the property of any of Grantor's tenants pursuant to any rights or liens under the Leases and not to mortgage, encumber, or hypothecate Grantor's interest in the Leases or Rents to any person other than Lender hereunder.

- e. To promptly turn over to Lender all Rents upon demand by Lender.
- f. To preserve the Property free and clear of all liens and encumbrances, except as otherwise agreed to by Lender in writing.
- g. Not to execute any other assignment of the Landlord's interest in the Leases, Rents or any other assignment of leases or rents accruing under the Leases or from the Property.
- h. Not to alter, extend, or modify the terms of the Leases or give any consent or exercise any renewal or option required or permitted by the terms of the Leases without the prior written consent of Lender, except where such right is expressly granted by the terms of the Lease prior to the date of this Assignment or has been approved or consented to by Lender.
- i. Not to terminate, cancel, or accept a surrender of any of the Leases, or transfer, convey, or permit a transfer or conveyance of the Property so as to cause a termination or changing of the obligations of any tenant under the Leases without the prior written consent of Lender.
- j. Not to agree or consent to any amendment, assignment or subletting of any of the Leases without the prior written consent of Lender, except in accordance with any heretofore terms of the written existing Leases and not to execute any other assignment of Grantor's interest in the Leases or the Rents and not to alter, modify, or change the terms of the Leases or give up any right or option under or pursuant to the Leases or any interest therein so as to affect directly or indirectly, proximately or remotely, the rights of or a termination or diminution in the value of Grantor's interest thereunder.
- k. To deliver to Lender complete, true and correct copies of all current and future Leases for any part of the Property now in force or made subsequent hereto, and to execute and deliver to Lender such assignments to any future Leases and such other documents as Lender may from time to time reasonably require to effectuate the terms of this Assignment.
- l. To furnish Lender from time to time now or hereafter, upon Lender's request, with acknowledgments and/or estoppel certificates from any tenant under the Leases. All such acknowledgments or estoppel certificates shall be in form and manner acceptable to or prepared by Lender in its sole discretion and shall, in each case, be duly executed by the appropriate tenant or tenants and evidence no defaults under the Lease(s).

**Reassignment By Lender.** Lender will re-assign upon written request by Grantor the rights, title, and interest in the Rents, Leases and Property assigned herein when the Indebtedness is fully satisfied and performed. However, any full and complete release of the Deed of Trust and full satisfaction of all sums payable to Lender pursuant to the Indebtedness including, but not limited to, all sums under the Note and all the Related Documents shall automatically release this Assignment and Lender's liens and rights hereunder without the need for any other release, conveyance or reassignment.

**Lender's Rights to Collect Rents and Enforce Leases.** Grantor agrees that, subject to applicable law, even though no event of default shall have occurred hereunder, Lender may at any time receive and collect the Rents, including any Rents which may be past due and unpaid, all Rents and Leases being absolutely assigned hereby to Lender. Grantor hereby authorizes Lender to enter upon the Property, either by the appointment of a receiver or by Lender's agents or employees, for the purpose of collection of such Rents and for the management, protection, preservation, operation, and maintenance of the Property and to make demand on the tenants under the Leases to pay the Rents to Lender. Grantor absolutely and unconditionally authorizes and directs the tenants of the Property under the Leases to make all payments under the Leases directly to Lender upon Lender's request therefore, and Grantor hereby releases said tenants from any liability to Grantor by reason of any

payments which are made to Lender pursuant to this Assignment. Grantor authorizes Lender to perform all acts deemed by Lender to be necessary for the management, protection, preservation, operation, and maintenance of the Property in the same manner and to the same extent that Grantor could so act. Grantor also authorizes Lender upon such entry, at the option of Lender, to take over and assume the management, operation, protection, preservation, and maintenance of the Property and to perform all acts necessary and proper for such purposes without any obligation to do so. In such event, Lender may expend such sums out of the Rents of the Property as shall or may be required in that connection, including, without limitation, expenses incurred in maintaining, protecting, and preserving the Property and expenses incurred in acquiring reasonably necessary substitutions or additions to the improvements, furnishings, or equipment used on the Property, in the same manner and to the same extent as Grantor could do (with Lender's consent), including the right to effect any new Lease, to cancel or surrender any existing Lease, to alter or amend the terms of any existing Lease, to renew any existing Lease, to make concessions to tenants, or to take any other action to enforce the terms of the Leases as provided herein or by law. Grantor waives and hereby releases all claims (known or unknown, present or future) against Lender arising out of all such management, operations and maintenance, except for any liability of Lender to account for the Rents in the required order of priority as provided herein and except for any liability of Lender for damages occasioned by Lender's gross negligence or intentional misconduct. The exercise of any of rights granted to Lender under this Assignment in accordance with the terms of this Assignment shall not be deemed to be negligence or gross negligence for any reason or purpose.

**Limitation on Lender's Duty.** In applying Rents in the required order of priority set forth above, Lender shall not be accountable to Grantor for more monies than Lender actually received by Lender. Lender shall not be liable for any failure to collect Rents on its part or due to the failure of any receiver. Lender shall not be required to make any effort to collect Rents or to bring legal action to enforce the Leases. All rights exercisable by Lender under this Assignment are hereby reserved to and are in the full discretion of Lender subject to the application of the Rents in the required order of priority set forth above.

**Lender Not Obligated; No Waiver.** Lender shall be under no obligation to exercise any of the rights, remedies, or powers hereby granted to it and any failure or delay in exercising any of said rights, remedies, or powers shall not constitute a waiver thereof, or a waiver of any default by Grantor hereunder. Lender may take possession of the Property, Leases and Rents and hold, lease, and manage the same on such terms and for such a period of time as Lender in its sole discretion deems proper.

**Lender Not Responsible for Terms of Leases.** It is further understood that this Assignment shall not operate to place responsibility for the control, care, management, or repair of the Property as described in the Leases upon Lender, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by Grantor or any other party, or for any dangerous or defective condition of or at the Property, or for any negligence in the use, occupancy, management, upkeep, repair, or control of the Property resulting in loss or injury or death to any party whatsoever, including, but not limited to, Grantor or its licensees, employees, or agents.

**Indemnification.** Grantor shall, and does hereby agree to, indemnify Lender for and to hold Lender harmless from any and all liabilities, losses, or damages which may or might be incurred under the Leases or under or by reason of this Assignment or in connection with the Property and from any and all claims and demands whatsoever which may be asserted against Lender 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. Provided, however, this indemnity from Grantor shall not apply to any liability caused solely by the intentional misconduct or gross negligence of Lender.

**Power of Attorney.** Grantor appoints Lender its attorney-in-fact to demand, receive, and enforce payment of all Rents from the Property and to give receipts, releases, and satisfactions and to sue for

all sums payable either in the name of Grantor or in the name of Lender, with the same force and effect as Grantor could have done if this Assignment had not been made.

**DOCUMENT IMAGING.** Lender shall be entitled, in its sole discretion, to image or make copies of all or any selection of the agreements, instruments, documents, and items and records governing, arising from or relating to any of Borrower's loans, including, without limitation, this document and the Related Documents, and Lender may destroy or archive the paper originals. The parties hereto (i) waive any right to insist or require that Lender produce paper originals, (ii) agree that such images shall be accorded the same force and effect as the paper originals, (iii) agree that Lender is entitled to use such images in lieu of destroyed or archived originals for any purpose, including as admissible evidence in any demand, presentment or other proceedings, and (iv) further agree that any executed facsimile (faxed), scanned, or other imaged copy of this document or any Related Document shall be deemed to be of the same force and effect as the original manually executed document.

**ADDITIONAL PROVISION: DEED OF TRUST, MORTGAGE OR SECURITY DEED TO GOVERN DUE ON SALE AND CHANGE OF CONTROL LANGUAGE.** For any Loan secured by real estate under a deed of trust, mortgage or security deed that includes a section entitled "Assignment, Due On Sale or Change of Control" (or similar heading), that section shall (1) establish additional events of default under the Loan, and (2) govern, control, cancel, supersede and replace for all purposes any conflicting provision in this document, any Related Document, or any other loan document, that might otherwise permit a direct or indirect transfer of any percentage interest in the Real Property, or in the ownership or control of the Borrower.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Assignment:

**Amendments.** This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Caption Headings.** Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

**Governing Law.** This Assignment will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Utah without regard to its conflicts of law provisions. This Assignment has been accepted by Lender in the State of Utah.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Salt Lake County, State of Utah.

**Joint and Several Liability.** All obligations of Borrower and Grantor under this Assignment shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Grantor signing below is responsible for all obligations in this Assignment. Where any one or more of the parties is a corporation, partnership, limited liability company or similar entity, it is not necessary for Lender to inquire into the powers of any of the officers, directors, partners, members, or other agents acting or purporting to act on the entity's behalf, and any obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Assignment.

**Merger.** There shall be no merger of the interest or estate created by this Assignment with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Interpretation.** (1) In all cases where there is more than one Borrower or Grantor, then all words used in this Assignment in the singular shall be deemed to have been used in the plural where the context and construction so require. (2) If more than one person signs this Assignment as "Grantor," the obligations of each Grantor are joint and several. This means that if Lender brings

a lawsuit, Lender may sue any one or more of the Grantors. If Borrower and Grantor are not the same person, Lender need not sue Borrower first, and that Borrower need not be joined in any lawsuit. (3) The names given to paragraphs or sections in this Assignment are for convenience purposes only. They are not to be used to interpret or define the provisions of this Assignment.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Assignment shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Assignment. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Assignment, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Notices.** Unless otherwise provided by applicable law, any notice required to be given under this Assignment or required by law shall be given in writing, and shall be effective when actually delivered in accordance with the law or with this Assignment, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Assignment. Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided by applicable law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Powers of Attorney.** The various agencies and powers of attorney conveyed on Lender under this Assignment are granted for purposes of security and may not be revoked by Grantor until such time as the same are renounced by Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Assignment to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Assignment. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Assignment shall not affect the legality, validity or enforceability of any other provision of this Assignment.

**Successors and Assigns.** Subject to any limitations stated in this Assignment on transfer of Grantor's interest, this Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Assignment and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Assignment or liability under the Indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Assignment.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Utah as to all Indebtedness secured by this Assignment.

**Waiver of Right of Redemption.** NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS ASSIGNMENT, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF

FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS ASSIGNMENT.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Assignment. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Assignment shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Assignment.** The word "Assignment" means this ASSIGNMENT OF RENTS, as this ASSIGNMENT OF RENTS may be amended or modified from time to time, together with all exhibits and schedules attached to this ASSIGNMENT OF RENTS from time to time.

**Borrower.** The word "Borrower" means 440 Main, LLC; and SQC Commercial, LLC.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Assignment in the default section of this Assignment.

**Grantor.** The word "Grantor" means 440 Main, LLC.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note and/or Hedging Transactions.

**Hedging Transaction Documents.** The words "Hedging Transaction Documents" mean and include any ISDA Master Agreement and Schedule thereto between Borrower and Lender, and all Confirmations (as such term is defined in such ISDA Master Agreement) between Borrower and Lender, executed in connection with any Hedging Transactions entered into between Borrower and Lender, now or in the future, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for any of the foregoing.

**Hedging Transaction.** The words "Hedging Transaction" mean and include any transaction now existing or hereafter entered into between Borrower and Lender which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures, including without limitation the interest rate hedging transactions entered into pursuant to the Hedging Transaction Documents.**Indebtedness.** The word "Indebtedness" means and includes without limitation all Loans, together with all other obligations, debts and liabilities of Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower, or any one or more of them; whether now or hereafter existing, voluntary or involuntary, due or not due, absolute or contingent, liquidated or unliquidated; whether Borrower may be liable individually or jointly with others; whether Borrower may be obligated as a guarantor, surety, or otherwise; whether recovery upon such indebtedness may be or hereafter may become barred by any statute of limitations; and whether such indebtedness may be or hereafter may become otherwise unenforceable. The word "Indebtedness" also includes any and all obligations of Borrower to Lender arising under or in connection with any Hedging Transaction, including without limitation the interest rate hedging transactions entered into pursuant to the Hedging Transaction Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for any of the foregoing.**Lender.** The word "Lender" means Zions Bancorporation, N.A. dba Zions First National Bank, its successors and assigns.

**Note.** The word "Note" means the promissory note dated October 30, 2023, **in the original principal amount of \$4,250,000.00** from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Property.** The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, interest rate hedging transaction agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness; except that the words do not mean any guaranty or environmental agreement, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.



THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT, AND NOT PERSONALLY BUT AS AN AUTHORIZED SIGNER, HAS CAUSED THIS ASSIGNMENT TO BE SIGNED AND EXECUTED ON BEHALF OF GRANTOR ON OCTOBER 30, 2023.

GRANTOR:

440 MAIN, LLC

SQCC MANAGER, LLC, Manager of 440 Main, LLC

By: Jeffrey S. McKibben

Jeffrey S. McKibben, Manager of SQCC MANAGER, LLC

**LIMITED LIABILITY COMPANY ACKNOWLEDGMENT**

STATE OF New York

COUNTY OF New York

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) SS  
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On this 31st day of October, 20 23, before me, the undersigned Notary Public, personally appeared **Jeffrey S. McKibben, Manager of SQCC MANAGER, LLC, Manager of 440 Main, LLC**, and known to me to be a member or designated agent of the limited liability company that executed the ASSIGNMENT OF RENTS and acknowledged the Assignment to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Assignment and in fact executed the Assignment on behalf of the limited liability company.

By [Signature]

Residing  
at Queens County, NY

Notary Public in and for the State  
of New York

My  
expires 05.23.2024 commission

ANDREW M. SIEGLER  
Notary Public - State of New York  
NO. 01516342337  
Qualified in Queens County  
My Commission Expires May 23, 2024

**EXHIBIT A  
PROPERTY DESCRIPTION**

Lot "A", 440 MAIN STREET PLAT AMENDMENT, according to the official plat thereof, as recorded October 2, 2019 as Entry No. 1118959 in the office of the Summit County Recorder, State of Utah.

Tax Id No.: 440-MAIN-A