

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

GREER, HERZ & ADAMS, LLP  
Attn: Laura A. Lerma  
2525 South Shore Blvd., Ste. 203  
League City, Texas 77573

APN(S): 27-36-376-021

11572-ETF

(Space Above For Recorder's Use)

**ASSIGNMENT, ASSUMPTION AND MODIFICATION OF NOTE, DEED OF TRUST  
AND OTHER AGREEMENTS**

THIS ASSIGNMENT, ASSUMPTION AND MODIFICATION OF NOTE, DEED OF TRUST AND OTHER AGREEMENTS (this "**Agreement**") is entered into as of the 26<sup>th</sup> day of June, 2019 by BG DRAPER POINTE OFFICE I, L.C., a Utah limited liability company ("**Assignor**"), TREA VISTA STATION I, LLC, a Delaware limited liability company ("**Assignee**"), and AMERICAN NATIONAL INSURANCE COMPANY, a Texas insurance company ("**Lender**"), with reference to the following facts:

RECITALS

A. Assignor and Lender entered into a loan in the original principal amount of \$22,425,000.00 ("**Loan**") evidenced by that certain Secured Promissory Note dated June 25, 2015, made by Assignor in favor of Lender, in the amount of the Loan (the "**Note**").

B. The Note is secured by: (i) that certain Deed of Trust, Security Agreement and Financing Statement dated on or about June 25, 2015 and recorded June 25, 2015 in the office of the Recorder of Salt Lake County, Utah (the "**Official Records**") at Book 10337, Page 5891-5936 from Assignor to the Trustee named therein for the benefit of Lender (the "**Deed of Trust**"); (ii) that certain Absolute Assignment of Leases and Rents dated on or about June 25, 2015 and recorded June 25, 2015 in the Official Records at Book 10337, Page 5937-5944 from Assignor to Lender (the "**Lease Assignment**"); and (iii) that certain UCC-1 Financing Statement showing Assignor as debtor and Lender as secured party and recorded in the Utah Department of Commerce's Office as Filing Number 471882201545 (the "**Financing Statement**"). The Note, the Deed of Trust, the Lease Assignment, the Financing Statement and those certain other loan documents listed on more particularly described in **Exhibit "B"** attached hereto and incorporated herein by reference are collectively referred to as the "**Loan Documents**".

C. The Deed of Trust encumbers that certain real property located in Salt Lake County, Utah, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Property**").

D. The Deed of Trust provides that Assignor has a one-time right to transfer its interests in and to the Property with Lender's prior consent subject to certain terms and conditions contained in the Deed of Trust (the "**One Time Permitted Transfer**").

E. Assignor intends to transfer Assignor's interests in and to the Property, the improvements and fixtures located thereon, the leases relating to the Property and all personal property encumbered by the Financing Statement to Assignee.

F. Assignor and Assignee have requested Lender's consent to the sale and transfer of the interests in the Property, the improvements and fixtures located thereon, the leases and the personal property, and to the assumption by Assignee of Assignor's obligations under the Note, Deed of Trust and other Loan Documents in each instance solely with respect to all matters accruing on and after the date of this Agreement, as the One Time Permitted Transfer and Lender is willing to consent to said transfer of title and assumption of said indebtedness in accordance with the terms and conditions of this Agreement. In connection with such transfer and assumption, Assignee has executed and delivered to Lender that certain Certificate and Indemnity Regarding Hazardous Substances (the "**Assignee's Environmental Indemnity**").

G. Assignor and Assignee acknowledge that the execution of this Agreement shall confer a real and substantial benefit upon each of them.

NOW, THEREFORE, in consideration of the foregoing facts and the covenants contained herein and for \$10.00 dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor, Assignee and Lender hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and incorporated by reference herein. Unless otherwise defined herein, capitalized terms shall have the meaning and definition set forth in the Note and the Loan Documents.

2. **Assumption of the Loan.** Assignee unconditionally assumes all the duties, obligations, covenants, agreements, and liabilities of Assignor under the Note and the other Loan Documents in each instance solely with respect to all matters accruing on and after the date of this Agreement, as modified hereby. In connection therewith, without limiting the generality of the foregoing, Assignee agrees, as of the date of this Agreement, to pay the Note at the time, in the manner and in all other respects as therein provided, to perform all of the duties, covenants and obligations, in each instance solely with respect to all matters accruing on and after the date of this Agreement, provided in the Note and the other Loan Documents to be performed by Assignor thereunder at the time, in the manner, and in all other respects as therein provided, and to be bound by all the terms of the Note and other Loan Documents, in each instance solely with respect to all matters accruing on and after the date of this Agreement, as fully and to the same extent as if such Note and the other Loan Documents were originally made, executed and delivered to Lender by Assignee. Accordingly, as to all performances arising on and after the date of this Agreement, the Note and the other Loan Documents shall include Assignee as an obligor thereunder including, without limitation, the substitution of Assignee as "Maker" under the Note and under the Deed of Trust. The release of Assignor contained in this Agreement is

not intended to, nor shall be deemed or interpreted in any way, to release, relieve or otherwise dismiss or modify the assumption and agreements by Assignee contained in this Section 2.

3. **Release of Assignor.** Lender hereby releases Assignor from all obligations and liability under the Note and all obligations and liabilities under the other Loan Documents and that certain Certificate and Indemnity Regarding Hazardous Substances executed by Assignor in favor of Lender, in each instance solely with respect to all matters accruing and related to the period of time after the date of this Agreement.

4. **Loan Balance.** Assignor, Assignee and Lender acknowledge and agree that after application of the June 1, 2019 payment due on the Note, the outstanding principal balance of the Note on June 30, 2019 will be \$20,808,624.46 (the "**Outstanding Principal Balance**") at the interest rate of four percent (4%) per annum, with monthly payments of principal and interest in the amount of ONE HUNDRED EIGHTEEN THOUSAND THREE HUNDRED SIXTY-SEVEN AND 41/100 DOLLARS (\$118,367.41) each due on the first (1st) day of each and every month to the Scheduled Maturity Date, as defined in the Note, at which time all principal, interest accrued but unpaid thereon, and all other sums due to Lender under the Loan Documents shall be due and payable.

5. **Acknowledgement of Debt.** Assignor represents and warrants that as of the date of execution hereof, no defaults of any and all obligations pursuant to the Loan Documents (the "**Obligations**") have occurred which are continuing or remain uncured. Assignor and Assignee (to the best of Assignee's actual knowledge) hereby acknowledge, by their execution hereof, that as of the date of execution hereof the Obligations are unconditionally due and owing to Lender as provided in the Loan Documents and this Agreement, and that neither Assignor nor Assignee have any actions, defenses, demands and/or claims of set-off or deduction whatsoever against (a) Lender, (b) the indebtedness evidenced by the Note and owed to Lender, or (c) the Loan Documents. Furthermore, Assignor and Assignee (to the best of Assignee's actual knowledge) acknowledge that as of the date of execution hereof, Lender has in no way defaulted or performed, or failed to perform, any act or omission under the Note or the other Loan Documents or any other agreements between or among Assignor and/or Assignee and Lender which would or could give rise to any action or actions, cause or causes of actions, suits, debts, sums of money, damages, claims, costs, expenses and/or demands whatsoever, in law or in equity or otherwise by Assignor and/or Assignee against Lender.

6. **Modification to the Deed of Trust.** The Deed of Trust is hereby modified as follows:

(a) The following is hereby added to the end of Section III(B) of the Deed of Trust:

"Further, and notwithstanding anything to the contrary in this Agreement, in the event of a condemnation of the Mortgaged Property that renders it unable to be used in the same manner as its use immediately prior to such condemnation, Trustor shall have the right to prepay the outstanding Indebtedness (less any amount of condemnation award applied to the Indebtedness by Beneficiary pursuant to the terms of this Agreement) without prepayment premium or penalty

thereon, provided that the foregoing shall not in any way limit or waive Beneficiary's right to apply any condemnation award to the Indebtedness and any expenses incurred by Beneficiary in the collection of any such condemnation award pursuant to the terms of this Agreement."

(b) The provisions of Section V(F) of the Deed of Trust are hereby deleted in their entirety and replaced with the following:

"F. Representations, Warranties and Covenants of a Limited Liability Company Trustor. Trustor hereby represents, warrants and covenants that:

(1) Trustor is a Delaware limited liability company formed pursuant to Certificate of Formation filed with the Office of the Delaware Department of State, Division of Corporation, on March 22, 2019 (as amended, the "Certificate"), and operates pursuant to that certain Limited Liability Company Agreement dated effective on or about March 22, 2019 (as amended, the "Company Agreement"; with the Certificate, individually and collectively, the "Governing Documents") and there is no other operating agreement or amendments thereto or to the Company Agreement.

(2) Trustor is managed by its Sole Member, Teachers Insurance and Annuity Association of America, a New York corporation, for the benefit of the Real Estate Account ("Manager").

(3) The Authorized Signatories of Manager (as defined in that certain Written Consent of Member of the Company dated on or about June \_\_\_\_, 2019), acting alone and without joinder of any other person or entity, are each authorized to execute and deliver any and all documents necessary to assume the Note, this Agreement and any and all other documents which Beneficiary may now or from time to time hereafter require to be executed on behalf of Trustor in connection with the Note, this Agreement or the Indebtedness, including but not limited to renewals, extensions, modifications, increases, consolidations and rearrangements of the Note and this Agreement, and no signature or any other action of any other person or entity shall be required to bind Trustor.

(4) Trustor will not modify, amend or terminate the Governing Documents in any way adverse to Beneficiary nor, except for Permitted Transfers (as defined herein), permit any interest of any member to be sold, transferred, conveyed, encumbered or otherwise the subject of any sale, trade, conveyance, transfer, mortgage, assignment, exchange, pledge, or encumbrance (one or more of the preceding a "Transaction"). The term "Transaction" shall also include any voluntary or involuntary act or omission of Trustor.

(5) Except for Permitted Transfers, Trustor will not permit any interest of any shareholder, partner, member, Trustee or beneficiary of Trustor or any shareholder, partner, member, trustee or beneficiary of any of the foregoing to be

sold, transferred, conveyed, encumbered or otherwise the subject of any Transaction.”

(c) The first paragraph of Section VI(C) of the Deed of Trust is hereby deleted in its entirety and replaced with the following:

“C. Insurance. Trustor shall keep the Mortgaged Property insured against loss or damage by fire, windstorm, extended coverage perils, flood (in the event any of the Mortgaged Premises is within a 100-year flood plain and flood insurance is available pursuant to the United States Flood Disaster Protection Act of 1973 or any similar or successor statute or successor governmental authority), vandalism, malicious mischief and such other hazards, casualties or other contingencies and in such amounts (but in no event less than the greater of the amount of the Indebtedness from time to time secured hereby or the full replacement value thereof) as from time to time may be reasonably required by Beneficiary, and maintain rents or rental value insurance coverage, in an amount at least adequate to cover twelve (12) months’ principal and interest installments on the Note and together with twelve (12) months’ property taxes and insurance premiums, with respect to the Mortgaged Property covering the risk of loss due to the occurrence of any of the foregoing hazards, in each case and in such amounts, in such manner and in such companies as Beneficiary may approve in writing, with insurance companies that maintain an A.M. Best financial rating of at least A – VII, and all such policies shall contain a waiver of subrogation and provide that any losses payable thereunder shall (pursuant to standard mortgagee clauses without contribution, including one providing that such insurance as to the interest of Beneficiary shall not be invalidated by any act or omission or neglect of Trustor, to be attached to each policy) be payable to Beneficiary. Trustor shall cause duplicate originals of any and all such insurance policies to be deposited with Beneficiary. Trustor will also carry public liability insurance, in such form, amounts and with such companies as Beneficiary may from time to time reasonably require, with Beneficiary included thereon as an additional insured. Any or all of such policies may be provided under a blanket policy or policies.”

(d) The first paragraph of Section V(H) of the Deed of Trust is hereby deleted in its entirety and replaced with the following:

“H. Hazardous Waste. Trustor hereby represents and warrants that to Trustor’s knowledge, and except as disclosed in any environmental report delivered to Beneficiary in connection with the Loan including, without limitation, that certain Phase I Environmental Assessment and Regulatory Compliance Supplement, dated as of April 10, 2019, issued by Property Solutions, Inc. (individually and collectively, the “Environmental Report”), Trustor is not aware of any facts or circumstances which may give rise to any litigation, proceedings, investigations, citations or notices of violations resulting from the use, presence, generation, manufacture, storage, discovery or disposition of, on, under or about the Mortgaged Property or the transport to or from the Mortgaged Property of any Hazardous Materials (as defined below) in violation

of applicable law. Trustor hereby represents and warrants that, to Trustor's knowledge, and except as disclosed in the Environmental Report, the Mortgaged Property is not in violation of and Trustor covenants and agrees not to use and to use commercially reasonable efforts to prohibit the use of the Mortgaged Property for any purpose which would be in violation of, any Environmental Laws, as defined below, including, without limitation, with respect to industrial hygiene or to health or environmental conditions on, under or about the Mortgaged Property (including, but not limited to, soil and ground water conditions) or with respect to the owner's or occupant's thereof. The foregoing representations and warranties shall survive foreclosure under this Agreement and shall constitute continuing representations and warranties to Beneficiary, its successors and assigns, as to conditions existing prior to foreclosure or in deed in lieu of foreclosure only. The term "Hazardous Materials" as used in this Agreement shall include but not be limited to:"

(e) The provisions of Section VI(I) of the Deed of Trust are hereby deleted in their entirety and replaced with the following:

"I. Restrictions upon Sale, Transfer or Mortgaging the Mortgaged Property or the Interest in Trustor.

(a) No Transfer without Consent. Except as otherwise expressly permitted in this Section VI.I, without Beneficiary's prior written consent, which consent may be granted or withheld in Beneficiary's reasonable discretion, Trustor shall not (i) sell, assign, convey, transfer or otherwise dispose of more than forty-nine percent (49%), in the aggregate, of any legal, beneficial or equitable interest in all or any part of the Property, (ii) permit or suffer any owner, directly or indirectly, of any beneficial interest in the Property or Trustor to transfer such interest, which such transferred interest in the aggregate is more than forty-nine percent (49%) of the interest in the Property or Trustor, whether by transfer of partnership, membership, stock or other beneficial interest in any entity or otherwise, or (iii) mortgage, hypothecate or otherwise encumber or permit to be encumbered or grant or permit to be granted a security interest in all or any part of, or any interest in, the Property or Trustor. The provisions of this Section VI(I) shall not prohibit transfers of title or interest under any will or testament or applicable law of descent or any transfers for estate planning purposes.

(b) Separate Account Transfers. In no event shall trading, sale or other similar transfers of units in the Separate Account (as defined below) to and from the annuitant customers of Teachers Insurance and Annuity Association of America for the benefit of the Real Estate Account ("**Manager**") in the ordinary course of Manager's business require the consent of Beneficiary or otherwise be subject to any of the Transfer Conditions (as defined below) so long as the Separate Account continues to be managed and controlled by Manager and no single individual or entity through the Separate Account owns or controls an ownership in Trustor or Guarantor, directly or indirectly, in excess of 20%.

(c) Permitted Transfer of Chattel and Personal Property. Notwithstanding the foregoing to the contrary, it shall not be a violation of the due on sale provisions of the Loan Documents if Trustor sells, transfer, or removes personal property and chattel from the Property in the ordinary course of operation and management of the Property as a prudent owner, operator and manager of similar properties would own, operate, and manage the Property, (i) if the same is contemporaneously replaced with similar items of equal or greater value and of similar utility or (ii) if such item is immaterial and obsolete, has no material value, or is non-essential and non-material to the use, management, and operation of the Property.

(d) Public Trading Transfers. Notwithstanding subsection (a) above or the "due on sale" provisions of the Loan Documents to the contrary, and provided that Transfer Conditions (2) and (3) remain satisfied, the public trading of shares of stock in publicly traded companies above Trustor in Trustor's ownership structure on a nationally recognized and reputable stock exchange in the United States of America, Canada, Japan, or a country of the European Union shall not be a breach or violation of subsection (a) above.

(e) Permitted Transfers of Direct or Indirect Ownership Interest in Trustor. Notwithstanding subsection (a) above or the "due on sale" provisions of the Loan Documents to the contrary, and provided that the Transfer Conditions are satisfied, the following transfers are permitted without Beneficiary's prior written consent:

(i) (x) a transfer of all of the interest in Trustor, whether a direct interest or indirect interest, to an entity which is controlled by Manager and in which at least fifty-one percent (51%) of the ownership interest in such entity is, directly or indirectly, owned by Manager, or (y) a transfer of the Property to such an entity, but subject to all of the conditions in Section 5.4(g) below, except for (g)(ii), (g)(x), and (g)(xi); provided, however, that only one such transfer of the Property under the foregoing subsection (y) shall be permitted during the term of the Loan; and

(ii) a transfer (before or after a transfer under (i) above) of a non-controlling interest in Trustor to an entity controlled directly or indirectly by and majority owned by: (1) Guarantor, (2) Trustor, (3) Manager, whether through the Separate Account or otherwise, or (4) a Qualified Transferee (as defined below).

(f) Definitions.

(i) "Transfer Conditions" mean all of the following:

(1) no Default or Event of Default under any Loan Document has occurred and is continuing;

(2) after the proposed transfer:

(A) Trustor and Guarantor shall be controlled by: (i) Manager, through the Separate Account or otherwise; or (ii) a Qualified Asset Manager that was appointed by Manager; and

(B) Manager, whether through the Separate Account or otherwise, shall continue to own, directly or indirectly, at least fifty-one percent (51%) of the ownership interest in Guarantor and Trustor.

(3) Trustor delivers to Beneficiary at least thirty (30) days' prior written notice of the proposed transfer, together with organizational charts illustrating the upstream ownership structure both before and after the proposed change in ownership (an "**Organizational Chart**"), which Organizational Chart shall set forth Trustor's (and if applicable, the Qualified Asset Manager) direct and indirect upstream ownership, percentage interests held by each upstream entity or person and type of each such entity;

(4) within thirty (30) days after the transfer has occurred, Trustor delivers to Beneficiary a final Organizational Chart confirming the new ownership structure;

(5) Trustor pays all costs, fees and expenses (including attorneys' fees) incurred by Beneficiary in connection with reviewing the proposed transfer, whether or not the transfer is consummated;

(6) the proposed transferee (and, if applicable, the Additional Approved Guarantor) (A) shall comply with Section V(E) herein as if such transferee were the Trustor therein and (B) if Beneficiary requests, sign a certificate in form and substance satisfactory to Beneficiary evidencing such compliance and identifying the transferees with sufficient information to enable Beneficiary to perform searches confirming the foregoing (except that identifying information need not be provided for any transfers made in the ordinary course of business over a national securities exchange); and

(7) concurrently with delivery of the notice required in Transfer Condition (3), Trustor pays Beneficiary an administrative review fee, not to exceed \$2,500.00.



(ii) **“Control”** or **“controlled”** or **“controlling”** means the power or authority, directly or indirectly through one or more intermediaries, through the ownership of voting securities, by contract or otherwise, to direct the management, activities and policies of such person or entity; provided, however, the mere requirement to obtain the consent of limited partners or non-managing members for actions that would ordinarily and customarily be considered “major decisions” shall not, in and of itself, be deemed “control” by such limited partners or non-managing members.

(iii) **“Separate Account”** means that certain variable annuity account under Manager that is managed and controlled by Manager for the benefit of its “Separate Real Estate Account”, also known as the “Manager Real Estate Account” which is the TIAA fund listed under the symbol QREARX.

(iv) **“Qualified Transferee”** means an entity that (i) was created or formed by a Qualified Transferee Sponsor, and (ii) is controlled by the Qualified Transferee Sponsor (and will continued to be controlled by said Qualified Transferee Sponsor for the remainder of the term of the Loan).

(v) **“Qualified Transferee Sponsor”** means a bank, trust company, insurance company, pension fund, credit union, real estate investment trust, publicly traded real estate corporation, private equity fund or other similar institutional investor.

(vi) **“Qualified Asset Manager”** means an entity that (i) has assumed control of Guarantor and/or Trustor; and (ii) serves in such capacity of control of Guarantor and Trustor at the discretion of Manager.

(vii) **“Liquid Assets”** shall mean, without duplication: (A) cash; (B) certificates of deposit or time deposits with terms of six (6) months or less; (C) A-1/P-1 commercial paper with a term of six (6) months or less; (D) U.S. treasury bills and other obligations of the federal government, all with terms of six (6) months or less; (E) readily marketable securities excluding “margin stock” (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System); (F) bankers’ acceptances issued for terms of six (6) months or less issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any state thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000; (G) repurchase agreements with terms of six (6) months or less covering U.S. government securities; and (H) publicly traded funds substantially all of the assets of which are invested in assets satisfying the requirements of any of clauses (A) through (G) of this definition.

(viii) In the event Guarantor and/or Trustor are controlled by a Qualified Asset Manager, then Trustor must engage and maintain a Qualified Property

Manager to manage the day-to-day operations at the Property pursuant to a property management agreement that is reasonably acceptable to Beneficiary. The term “**Qualified Property Manager**” means a reputable professional property management company.

(f) The last sentence of Section X(A)(2)(c) of the Deed of Trust is hereby deleted in its entirety and replaced with the following:

“If at any time during the course of the restoration work, Beneficiary learns of facts concerning the restoration work which have caused Beneficiary to incur any actual costs and expenses including, without limitation, reasonable attorneys’ fees, Beneficiary may withhold the disbursement of funds until such time as it is prudent to continue to disburse the Construction Funds or may determine not to make any further disbursements of the Construction Funds and instead to apply all such funds remaining to the payment of the Indebtedness then outstanding, whether due or not at such time, without any prepayment premium, and in such order as determined by Beneficiary, provided that Beneficiary shall not withhold disbursement of any such funds to Trustor for payment of costs already incurred by Trustor to date with respect to such restoration work.”

(g) The following provision is added as a new Section X(A)(4) of the Deed of Trust:

“(4) In the event Beneficiary elects to apply any insurance proceeds to the Indebtedness pursuant to the terms of this Section X(A) of the Agreement, then the same shall be so applied without any prepayment premium or penalty. Further, and notwithstanding anything to the contrary in this Agreement, in the event of a casualty of the Mortgaged Property that renders it unable to be used in the same manner as its use immediately prior to such casualty, Trustor shall have the right to prepay the outstanding Indebtedness (less any amount of insurance proceeds applied to the Indebtedness by Beneficiary pursuant to the terms of this Agreement) without prepayment premium or penalty thereon, provided that the foregoing shall not in any way limit or waive Beneficiary’s right to apply any insurance proceeds to the Indebtedness and any expenses incurred by Beneficiary in the collection of any such insurance proceeds pursuant to the terms of this Agreement.”

**7. Modification to the Note.** The twelfth (12<sup>th</sup>) paragraph of the Note is hereby deleted in its entirety and replaced with the following:

“For purposes of this Note, the term “loan year” is defined as any period of one (1) year commencing on August 1, 2015 or of any anniversary of such date.”

**8. Modification to the Lease Assignment.** The Lease Assignment is hereby modified as follows:

(a) From and after the Effective Date hereof, any and all references to the Closing Certificate in the Lease Assignment shall refer to the Closing Certificate being executed on or about the Effective Date hereof by Assignee.

(b) Section 1 of the Lease Assignment shall be deleted in its entirety and replaced with the following:

“any and all leases, written or oral, and all agreements for use or occupancy of any portion of the Mortgaged Property, including but not limited to, those lease(s) more particularly described in that certain Closing Certificate of even date herewith executed by Assignor for the benefit of Assignee, which is incorporated herein by reference for all purposes, any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, including, without limitation, subleases thereunder, upon or covering use or occupancy of all or any part of the Mortgaged Property, all such leases, agreements, subleases and tenancies heretofore mentioned being hereinafter individually and collectively referred to as the “Lease” and such parties, lessees, sublessees and tenants under any Lease being hereinafter individually and collectively referred to as a “Lessee”; provided however, the definition of “Lease” shall not include any oral agreements that may have been made by a previous borrower or landlord prior to Assignor”

(c) Lender and Assignee hereby agree and acknowledge that any prepayment of the Loan pursuant to the first and/or fourth paragraphs of Section 10 of the Lease Assignment shall be without prepayment premium or penalty.

**9. Release of Lender.** Assignor and Assignee by their execution below, do hereby release Lender, its affiliates, agents, representatives, officers, directors, attorneys, successors and assigns from any and all claims, demands, actions, debts, controversies, liabilities, and damages, including court costs and attorneys’ fees, arising from or related to any act or omission on the part of Lender prior to the date hereof with respect to any of the Loan Documents. Assignor and Assignee represent and warrant that they: (a) have been advised by legal counsel in the execution of this Agreement; (b) are fully aware and clearly understand all of the terms and provisions contained in this Agreement; and (c) have voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Agreement.

**10. Representations.**

(a) Assignee represents and warrants to Lender that the Assignee: (i) is fully aware of and clearly understands all of the terms and provisions contained in this Agreement; (ii) is not relying on any representation, whether written or oral, express or implied, made by Lender other than as set forth in this Agreement or any other Loan Document; and (iii) has received actual and adequate consideration to enter into this Agreement.

(b) Lender represents and warrants to Assignee that Lender: (i) has not issued any notice of default to Assignor in connection with the Loan which remains uncured, and no

monetary default, or to the current actual knowledge of Lender without independent investigation, non-monetary default under the Loan Documents exists; and (ii) holds \$0.00 on account of taxes and insurance premiums pursuant to Article VI.D of the Deed of Trust.

**11. Additional Conditions Precedent.** Upon or before the recordation hereof, and as additional conditions precedent to the effectiveness of this Agreement: (i) Assignor shall pay or cause to be paid to Lender a fee equal to one percent (1%) of the Outstanding Principal Balance for consenting to the transfer and assumption provided herein; (ii) Assignor and Assignee shall provide copies of resolutions and/or authorizations with respect to the execution of this Agreement, or certificates certifying such resolutions and authorizations, and evidence of good standing of Assignee reasonably satisfactory to Lender; (iii) Assignee shall execute the Assignee's Environmental Indemnity, a No Oral Agreements Letter, and an Acknowledgment of Non-Representation in favor of Lender in a form and substance satisfactory to Lender; (iv) Assignor shall pay or cause to be paid all costs and expenses incurred by Lender in connection with the assignment and modifications described herein, including, without limitation, the reasonable fees and expenses of Lender's legal counsel(s), title costs and recording and filing fees and premiums for any title insurance endorsements required by Lender in connection with this Agreement, as well as any and all other costs and expenses described in Section 15 hereof, and (v) Lender and Assignor shall have consented in writing to the termination of that certain tenant improvement letter agreement, dated as of June 25, 2019 by and between The Boyer Company, L.C., and KC Gardner Company, L.C. for the benefit of Lender ("**TI Agreement**"), and the parties hereby acknowledge and agree that Assignee shall not assume any obligations arising from such TI Agreement. The foregoing shall not in any way modify the allocation of the foregoing fees and expenses between Assignor and Assignee as set forth in a separate agreement between Assignor and Assignee.

**12. Legal and Tax Counsel.** Assignor and Assignee acknowledge and agree that Lender has requested that Assignor and Assignee each retain the services and advice of legal counsel, and any other applicable experts, including tax advisors (collectively "counsel"), prior to the execution and delivery of this Agreement and all documents to be executed and delivered in connection herewith, and that Assignor and Assignee have had the opportunity to retain such counsel, and have either done so, or have elected to proceed with or without such counsel. Assignor and Assignee represent that they have executed and delivered this Agreement, and all documents related thereto, with a clear understanding of the agreements contained herein and therein and the effect of such agreements, and that such execution and delivery is done freely and voluntarily and not as a result of any duress, fraud or undue influence.

**13. Ratification of Loan Documents.** Except as herein specifically modified hereby, the terms, covenants and conditions of the Note and the Loan Documents shall remain in full force and effect without any further modifications.

**14. No Waiver of Future Consent.** This consent to transfer shall not be a waiver of the right of Lender to require such consent to future or successive transfers, Lender reserving all such rights in the Note and the Loan Documents.

15. **Authority.** In order to induce Lender to execute this Agreement, Assignee represents and warrants: (a) that Assignee is validly organized and in existence in accordance with the laws of the State of Delaware and is duly qualified and authorized to transact business in the State of Utah in accordance with the laws of the State Utah; (b) the undersigned officer(s) of Assignee executing this Agreement has the full right, power and authority to execute and deliver this Agreement and Assignee's Environmental Indemnity on behalf of and in the name of the Assignee without the consent, agreement or joinder of any other person; (c) Assignee has the power and authority to observe and perform its duties hereunder and under the Note, Deed of Trust, this Agreement and Assignee's Environmental Indemnity and no signature or any other action of any other person or entity shall be required to bind Assignee; (d) Assignee has not caused or permitted to be filed any lien or encumbrance against the Mortgaged Property or any part thereof or any interest therein, other than the liens and encumbrances in favor of Lender; and (e) the officer(s) of Assignee executing this Agreement is the legally elected, qualified and acting officer of such entity and has been expressly authorized to execute this Agreement in accordance with its articles of incorporation and bylaws applicable governing documents.

16. **Costs.** Assignee and Assignor (in such proportions as mutually agreed to between the parties) shall pay or cause to be paid for all costs of Lender relating to the assignment and assumption made pursuant hereto, including without limitation, Lender's reasonable attorneys' fees and costs, recording fees and premiums for any title insurance endorsements required by Lender in connection with this Agreement. Failure to pay the costs set forth herein upon demand shall operate as an Event of Default under the Note and the Deed of Trust and the other Loan Documents, and shall entitle Lender to exercise all available remedies, including, without limitation, the right to add such unpaid costs to the outstanding principal balance of the Note.

17. **Notices.** The address of Assignee for purposes of notices, demands and other communication under the Note, Deed of Trust and other Loan Documents shall be:

TREA Vista Station I LLC  
c/o Teachers Insurance and Annuity Association of America  
For the Benefit of the Real Estate Account  
560 Mission Street, Suite 1000  
San Francisco, CA 94105  
Attention: Asset Management

The Note, Deed of Trust and the other Loan Documents are hereby modified such that the foregoing address shall be deemed to be the address for all notices required to be given to Assignee pursuant to the Note, Deed of Trust and the other Loan Documents.

18. **No Waiver.** Assignor, Assignee and Lender hereby acknowledge and agree that, except to the extent expressly provided in Section 3 hereof, nothing contained herein or in the modification documents arising herefrom shall be deemed or shall operate to waive or affect in any way whatsoever the rights of Lender to enforce the Loan Documents and Lender expressly reserves all rights to pursue any and all available remedies existing at law, in equity and under the Loan Documents. No course of dealing or conduct shall be effective, per se, to amend, waive, release or change any provisions of the Loan Documents.

19. **Further Documentation.** Assignee agrees to execute, contemporaneously herewith, in favor of Lender, the Assignee's Environmental Indemnity, as well as any and all other documents reasonably required by Lender to retain its perfected security interest in the Property. Assignee hereby covenants that it will, at any time, upon written request therefore, execute and deliver to Lender any new or confirmatory instruments which Lender may request in order to evidence Assignee's assumption of the Note and the Loan Documents so long as such additional documents are consistent with the terms of this Agreement.

20. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors and assigns.

21. **Captions.** The captions and headings in this Agreement are for convenience only and are not to be used to interpret, define or limit the provisions hereof.

22. **Severability.** If any one or more of the provisions of this Agreement shall be held invalid or unenforceable, the validity and enforceability of all other provisions of this Agreement shall not be affected.

23. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts each of which shall be an original part, but all of which shall constitute one instrument.


**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY RESERVED.]**

IN WITNESS WHEREOF, the parties have executed this Assignment, Assumption and Modification of Note, Deed of Trust and Other Agreements as of the date hereinabove set forth.

**ASSIGNOR:**

**BG DRAPER POINTE OFFICE 1, L.C.,**  
a Utah limited liability company

By: The Boyer Company, L.C.,  
a Utah Limited liability company  
Its: Manager

By:   
Name: Nathan R. Boyer  
Its: Manager

STATE OF UTAH            )  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me on 24 June, 2019, by Nathan R. Boyer, the Manager of The Boyer Company, L.C., a Utah limited liability company, as Manager of BG DRAPER POINTE OFFICE 1, L.C., a Utah limited liability company, on behalf of said limited liability company, for the purposes and consideration therein stated.

  
NOTARY PUBLIC



[Signature/Notary Pages(s) to Assignment, Assumption and Modification of Note, Deed of Trust and Other Agreements]

**ASSIGNEE:**

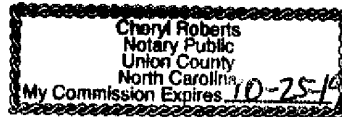
**TREA VISTA STATION I LLC,**  
a Delaware limited liability company

By: *Tim Goeke*  
Name: Timothy Goeke  
Its: Authorized Signer

STATE OF North Carolina )  
COUNTY OF Buncombe )

The foregoing instrument was acknowledged before me on June 18, 2019, by Timothy Goeke, the Authorized Signer of TREA VISTA STATION I LLC, a Delaware limited liability company, on behalf of said limited liability company, for the purposes and consideration therein stated.

*Cheryl Roberts*  
NOTARY PUBLIC



[Signature/Notary Pages(s) to Assignment, Assumption and  
Modification of Note, Deed of Trust and Other Agreements]



**LENDER:**

**AMERICAN NATIONAL INSURANCE COMPANY**, a Texas insurance company

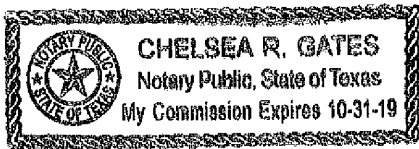
*ETK*

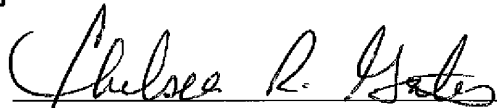
By:   
Name: Robert J. Kirchner  
Its: Vice President

THE STATE OF TEXAS           §  
  §  
COUNTY OF GALVESTON       §

Before me, a Notary Public in and for said County and State, personally appeared Robert J. Kirchner, as Vice President of AMERICAN NATIONAL INSURANCE COMPANY, a Texas insurance company, who, being first duly sworn upon his oath, has executed the foregoing instrument as his voluntary act and deed for and on behalf of said insurance company.

IN WITNESS WHEREOF, I hereunto have set my hand and seal at League City, TX this 19 day of June, 2019.



  
Notary Public

My commission expires: 10/31/19

[Signature/Notary Pages(s) to Assignment, Assumption and Modification of Note, Deed of Trust and Other Agreements]

**EXHIBIT "A"**

**THE PROPERTY**

**PARCEL 1:**

Lot 1, DRAPER POINTE OFFICE PARK SUBDIVISION, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder, State of Utah on September 18, 2014 as Entry No. 11915614 in Book 2014P at Page 244.

**PARCEL 1A:**

A reciprocal, non-exclusive, perpetual easement for both pedestrian and vehicular access, parking and utilities upon, over and across the Access Areas, Parking Areas and Common Areas on each parcel within said subdivision, as more particularly defined and disclosed in that certain Declaration of Covenants, Restrictions and Easements recorded September 18, 2014 as Entry No. 11915615 in Book 10261 at Page 1779 of official records.

[Exhibit "A" to Assignment, Assumption and  
Modification of Note, Deed of Trust and Other Agreements]

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**EXHIBIT "B"**

**LIST OF LOAN DOCUMENTS BEING ASSUMED**

1. Promissory Note in the original principal sum of \$22,425,000.00
2. Deed of Trust, Security Agreement and Financing Statement
3. Absolute Assignment of Leases and Rents

[Exhibit "B" to Assignment, Assumption and  
Modification of Note, Deed of Trust and Other Agreements]

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