

14004949 B: 11366 P: 8442 Total Pages: 11
08/23/2022 04:31 PM By: dsalazar Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

This instrument was prepared by,
and after recordation should be returned to:

Greer, Herz & Adams, LLP
Attn: Darryl H. Levy
2525 South Shore Blvd., Suite 203
League City, Texas 77573
CT- 158450-UNTF
Assessor's Parcel No. 16-06-226-001

ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

This Absolute Assignment of Leases and Rents (this "Assignment") is executed effective as of Aug 23, 2022, by SOUTH TEMPLE APARTMENTS LLC, a Utah limited liability company ("Assignor") for the benefit of AMERICAN NATIONAL INSURANCE COMPANY as Administrative Agent ("Agent") for itself ("American National") and American United Life Insurance Company ("AUL"). Agent is sometimes hereinafter called "Assignee".

This Assignment relates to the loan made to Assignor in the aggregate amount of \$40,000,000.00 comprised of that certain Secured Promissory Note (together with all renewals, modifications, increases, extensions, consolidations and rearrangements, thereof, the "American National Note") in the original principal sum of \$25,000,000.00 in favor of American National Insurance Company, a Texas insurance company ("American National"), and that certain Secured Promissory Note (together with all renewals, extensions, modifications, increases, consolidations or rearrangements thereof, the "AUL Note") in the original principal sum of \$15,000,000.00 in favor of American United Life Insurance Company, an Indiana corporation ("AUL"), each dated on or about the date herewith executed by Assignor.

The American National Note and AUL Note are individually and collectively referred to as the "Note" and are described in and secured by that certain Deed of Trust, Security Agreement and Financing Statement [together with all renewals, modifications, increases, extensions, consolidations and rearrangements, thereof, the "Deed of Trust") dated on or about the date hereof executed by Assignor for the benefit of Assignee covering the real property described in Exhibit "A" attached hereto and made a part hereof by reference for all purposes, and which, together with any and all buildings, improvements, fixtures and equipment located thereon owned by Assignor and any and all

easements and appurtenances thereto, is hereinafter individually and collectively referred to as the "Mortgaged Property".

The Note, the Deed of Trust, that certain Construction Loan Agreement (together with any renewals, extensions, modifications, increases, consolidations and rearrangements thereof, the "Loan Agreement") dated of or about even date herewith by and between Assignor, Assignee, American National and AUL concerning the Mortgaged Property, and all other documents evidencing, securing or relating to the Note are sometimes individually referred to as a "Loan Document" and collectively as the "Loan Documents".

FOR AND IN CONSIDERATION of the loan in the aggregate amount of \$40,000,000.00 made to Assignor by American National and AUL as evidenced by the Note and the Loan Documents, Assignor, (a) has GRANTED, TRANSFERRED and ASSIGNED, and (b) by these presents does GRANT, TRANSFER and ASSIGN unto Assignee, the following:

1. any and all leases, written or oral, and all agreements for use or occupancy of any portion of the Mortgaged Property, and any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, including 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 referred to as a "Lease" and collectively referred to as the "Leases" and such lessees, sublessees and tenants under any Lease being hereinafter individually referred to as a "Lessee";
2. any and all guaranties of the performance, payment and/or collection of any of the Leases (individually referred to as a "Guaranty" and collectively referred to as "Guaranties") by any guarantor, surety or other liable party thereunder (collectively referred to as a "Guarantor"); and
3. the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due, or to which Assignor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or Guaranties or from or out of the Mortgaged Property, or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any Lessee under any Lease upon the exercise of any cancellation privilege provided for in any of the Leases, payments from any Guarantor and all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by destruction or damage to the Mortgaged Property, together with any and all rights and claims of any kind which Assignor may have against any Lessee or Guarantor in connection with the Leases or against any subtenants, occupants or users of the Mortgaged Property, all such monies, rights and claims in this paragraph described being hereinafter referred to as the "Rents".

To induce American National and AUL to lend the funds evidenced by the American National Note and AUL Note, Assignor hereby makes the following REPRESENTATIONS AND WARRANTIES:

That Assignor has good title to the Leases, Guaranties and Rents hereby assigned and good right to assign the same, and that no other person, corporation or entity has any right, title or interest to the lessor's interest therein; that Assignor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the existing Leases on Assignor's part to be kept, observed and performed the failure of which would adversely affect Assignor; that Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Leases, Guaranties or the Rents, whether now due or hereafter to become due; that any of the Rents due for any period subsequent to the date hereof have not been collected more than one month in advance and that payment of any of the Rents has not otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised except in the ordinary course of business; that Assignor has not received any funds or deposits from any Lessee in excess of one (1) month's rent for which credit has not already been made on account of accrued rents; and that to Assignor's knowledge the lessee under any existing Lease is not in default of any of the terms thereof except as otherwise previously disclosed in writing to Assignee.

Assignor further COVENANTS AND AGREES:

1. to observe, perform and discharge all material obligations, covenants and warranties provided for under the terms of the Leases and Guaranties to be kept, observed and performed by Assignor, the failure of which would adversely affect Assignor, and to give prompt notice to Assignee, in the event Assignor fails to observe, perform and discharge same;
2. [Intentionally omitted.]
3. to enforce or secure, in the name of the Assignee, the performance of each and every material obligation, term, covenant, condition and agreement to be performed the failure of which would adversely affect Assignor by (a) any Lessee under the terms of the Leases and (b) any Guarantor under the terms of the Guaranties;
4. to appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases, the Guaranties or the obligations, duties or liabilities of Assignor and any Lessee thereunder, and, upon request by Assignee, to do so in the name and on behalf of Assignee but at the expense of the Assignor, and to pay all costs and expenses of Assignee, including reasonable attorneys' fees, in any action or proceeding in which the Assignee may appear;
5. except in good faith and the ordinary course of business with residential tenants who are not affiliated with Assignor or as otherwise not in violation of the Deed of Trust, not to receive or collect any Rents from any present or future Lessee of the Mortgaged Property or any part thereof or from any Guarantor for a period of more than one (1) month in advance (other than

rent for the last month of the lease term collected at the time of lease execution), or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents;

6. except in good faith and the ordinary course of business with residential tenants who are not affiliated with Assignor or as otherwise not in violation of the Deed of Trust, not to waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any Guarantor or Lessee of the Mortgaged Property of and from any obligations, covenants, conditions and agreements by said Lessee or Guarantor to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Lease;

7. except in good faith and the ordinary course of business with residential tenants who are not affiliated with Assignor or as otherwise not in violation of the Deed of Trust, not to enter into any new Lease and, except in good faith and the ordinary course of business with residential tenants who are not affiliated with Assignor or as otherwise not in violation of the Deed of Trust, not to cancel, terminate or consent to any surrender of any Lease or any Guaranty, or to modify or in any way alter the terms of any Lease or any Guaranty, without, in each such instance, the prior written consent of Assignee, as provided, which consent shall not be unreasonably withheld, conditioned or delayed;

8. within five (5) business days after written request by Assignee, to notify each Lessee, Guarantor and occupant of the Mortgaged Property under a Lease in writing of the rights granted to Assignee hereunder, and, immediately upon receipt of demand from Assignee, to direct, in writing, each Lessee, Guarantor and occupant of the Mortgaged Property under a Lease to pay all Rents then due or to become due from such Lessee, Guarantor; and/or occupant directly to Assignee upon such Lessee's, Guarantor's or occupant's receipt of written notice from Assignee of the exercise of Assignee's rights under this Assignment;

9. to provide Assignee with copies of all notices, complaints, demands and petitions regarding (a) any actual, potential or alleged default on the part of the landlord or the tenant under all Leases or (b) any Hazardous Materials, as such term is defined in the Mortgage, sent or received by Assignor immediately upon Assignor's sending same or within five (5) days of Assignor's receipt of same, as applicable; and

10. to promptly remit to Assignee any and all Rents received by Assignor after Assignor's receipt from Assignee, of termination of Assignor's license to collect Rents granted herein.

So long as no Event of Default (as defined under any Loan Document) shall have occurred, Assignor shall have the right under a license granted hereby (but limited as provided in the following paragraphs) to collect, receive, retain, use and disburse, but not prior to accrual, all of the Rents arising from or out of the Leases or the Mortgaged Property.

Upon the occurrence of an Event of Default, Assignee, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies: (a) to terminate the license hereby granted to Assignor to collect the Rents as aforesaid, and, without taking possession of the Mortgaged Property, in Assignee's own name, demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and, after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof, together with any funds of Assignor deposited with Assignee, upon any indebtedness secured hereby or obligation provided for in any of the Loan Documents and in such order as Assignee may determine; (b) to declare all sums secured hereby immediately due and payable and, at Assignee's option, to exercise all of the rights and remedies provided for in the Loan Documents or under the terms hereof; and (c) without any action or proceeding, through any person or by agent, or by the trustee(s) or successor trustee under the Deed of Trust, or by a receiver to be appointed by a court, to enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof, and irrespective of Assignor's possession of the Mortgaged Property, to make, modify, enforce, cancel or accept surrender of any of the Leases and Guaranties, to remove and evict any Lessee or other occupant (to the extent permitted by applicable law and the terms of the applicable Lease), to increase or reduce rents, to decorate, clean and make repairs, and to otherwise do any act or incur any cost or expenses Assignee shall deem proper to protect the Leases, Guaranties and the Mortgaged Property, as fully and to the same extent as Assignor could do if in possession, and in such event to apply any funds so collected to the operation and management of the Mortgaged Property, but in such order as Assignee shall deem proper, and including payment of reasonable management, brokerage and attorney's fees, and then, to the extent funds are available and to the extent deemed appropriate by Assignee, to the maintenance, without interest thereon, of a reserve for replacement of items on the Mortgaged Property, and then, if any of such funds remain, to the payment of any outstanding indebtedness evidencing, securing or relating to the terms of the Loan Documents.

The exercise by Assignee of any of the rights and remedies described above, including collection of the Rents and application thereof as aforesaid and/or the entry upon and taking possession of the Mortgaged Property, shall not cure or waive any Event of Default or waive, modify or affect any notice of default under the Loan Documents or hereunder, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect, notwithstanding that the collection and application as aforesaid of the Rents may have cured the original Event of Default. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time and from time to time following any subsequent Event of Default.

Notwithstanding the aforesaid license of Assignor to collect the Rents accruing under the Leases prior to an Event of Default, Assignee shall at all times be the creditor of each Lessee under the Leases and Guaranties in respect of assignments for the benefit of creditors, bankruptcy, reorganization, rearrangement, insolvency, dissolution, or receivership proceedings, with Assignee having the option to apply any monies received by the Assignee as such creditor to reduction of the

principal or interest or other indebtedness evidencing, securing or relating to the Loan Documents in any order or manner as Assignee elects.

This Assignment shall remain in effect as long as any part of the indebtedness evidencing, securing or relating to the Loan Documents remains unpaid, and upon payment in full of said indebtedness, Assignee shall execute a release of this Assignment upon request of Assignor and at the expense of Assignor.

If an Event of Default shall have occurred, and if there is any law requiring Assignee to take actual possession of the Mortgaged Property (or some action equivalent thereto, such as securing the appointment of a receiver) in order for Assignee to "perfect" or "activate" its rights and remedies as set forth herein, then to the maximum extent permitted by law Assignor waives the benefits of such law and agrees that such law shall be satisfied solely by: (1) Assignee sending Assignor written notice that Assignee intends to enforce, and is enforcing, its rights in and to the Mortgaged Property and the rents, revenues, profits, and other items assigned herein; and (2) Assignee sending written notice to any or all tenants on the Mortgaged Property that said tenants should commence making payments under the Leases directly to Assignee or its designee.

In case any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

This Assignment shall be interpreted, construed and enforced in accordance with the internal laws of the State of Utah, without regard to its internal laws with respect to conflict of laws.

This Assignment shall run with the land and shall inure to the benefit of and bind all parties hereto and their respective successors and assigns.

Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

All liability and obligations of all parties constituting the Assignor under this Assignment shall be joint and several, whether or not otherwise expressly specified and notwithstanding anything seemingly to the contrary contained in this Assignment or any other Loan Document.

This Assignment may be executed in multiple counterparts, each of which shall be an original instrument and which, taken together, constitutes one and the same agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY RESERVED]

The undersigned has caused this Absolute Assignment of Leases and Rents to be executed as of the date set forth in the acknowledgement below, and to be effective as of the date set forth above.

ASSIGNOR:

SOUTH TEMPLE APARTMENTS LLC
a Utah limited liability company

By: The Ritchie Group, L.C.,
a Utah limited liability company
Its: Manager

By: 
Paul W. Ritchie
Its: Manager

By: United Solutions Group, Inc.,
a Wyoming corporation
Its: Manager

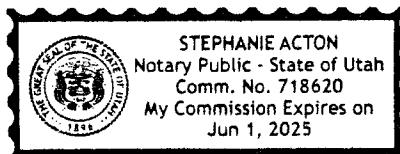
By: 
Chris Webb
Its: Vice President

Signature/Notary Page(s) to Absolute Assignment of Leases and Rents

STATE OF UTAH §
COUNTY OF Salt Lake §

Before me, the undersigned authority, a Notary Public, on this day personally appeared PAUL W. RITCHIE, as Manager of THE RITCHIE GROUP, L.C., a Utah limited liability company, as Manager of SOUTH TEMPLE APARTMENTS LLC, a Utah limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said limited liability company.

Given under my hand and notarial seal this 2nd day of August, 2022.



Stephanie Acton
Notary Public, State of Utah

STATE OF UTAH §
COUNTY OF _____ §

Before me, the undersigned authority, a Notary Public, on this day personally appeared CHRIS WEBB, as Vice President of UNITED SOLUTIONS GROUP, INC., a Wyoming corporation, as Manager of SOUTH TEMPLE APARTMENTS LLC, a Utah limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said limited liability company.

Given under my hand and notarial seal this _____ day of _____, 2022.

Notary Public, State of _____

Signature/Notary Page(s) to Absolute Assignment of Leases and Rents

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ASSIGNOR:

SOUTH TEMPLE APARTMENTS LLC
a Utah limited liability company

By: The Ritchie Group, L.C.,
a Utah limited liability company
Its: Manager

By: _____
Paul W. Ritchie
Its: Manager

By: United Solutions Group, Inc.,
a Wyoming corporation
Its: Manager

By: _____
Chris Webb
Its: Vice President

Signature/Notary Page(s) to Absolute Assignment of Leases and Rents

STATE OF UTAH §
COUNTY OF _____ §
§

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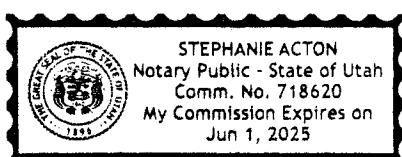
Given under my hand and notarial seal this _____ day of _____, 2022.

Notary Public, State of _____

STATE OF UTAH §
COUNTY OF Salt Lake §
§

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Given under my hand and notarial seal this 2nd day of August, 2022.



Stephanie Acton
Notary Public, State of Utah

Signature/Notary Page(s) to Absolute Assignment of Leases and Rents

EXHIBIT "A"

MORTGAGED PROPERTY

PARCEL 1:

Beginning at the Northwest corner of Lot 5, Block 61, Plat "B", Salt Lake City Survey and running thence South 330.20 feet to the North line of the parcel conveyed to Eaton Properties Corporation and Eaton Utah Corporation by that certain Warranty Deed recorded April 6, 1982 as Entry No. 3699978 in Book 5401 at Page 1547 of official records; thence along said line East 220.00 feet; thence North 140.20 feet to a boundary line of the parcel conveyed to Sinclair Oil Corporation by that certain Warranty Deed recorded July 2, 1982 as Entry No. 3689912 in Book 5390 at Page 909 of official records; thence along said boundary line West 85 feet to the Southwest corner of the said Sinclair Oil Corporation parcel; thence North 190 feet along the West line of the said Sinclair Oil Corporation parcel; thence West 135 feet to the point of beginning.

PARCEL 2:

A non-exclusive leasehold interest and the rights thereto, as established by and defined in that certain unrecorded Lease Agreement To Occupy Public Property, effective as of May 11, 2022, by and between Salt Lake City Corporation, a Utah municipal corporation ("City"), and South Temple Apartments, LLC, a Utah limited liability company (Lessee"), and disclosed by that certain Memorandum of Lease Agreement To Occupy Public Property, recorded June 9, 2022 as Entry No. 13967300 in Book 11346 at Page 9789, in the Official Records, Salt Lake County, State of Utah.