

# COLLATERAL ASSIGNMENT OF LEASES AND RENTS

This Assignment made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, with an office at \_\_\_\_\_ ("Assignor") and \_\_\_\_\_, with an office at \_\_\_\_\_ ("Assignee")

## WITNESSETH:

Assignor is the fee owner of premises known as \_\_\_\_\_, designated tax block \_\_\_\_\_, lot no. \_\_\_\_\_ ("Premises"), and has agreed to make a mortgage note to Assignee in the amount of \$ \_\_\_\_\_ ("Note") secured by a mortgage in like amount secured by the Premises ("Mortgage"), (both the Note and Mortgage collectively referred to as "Loan Documents") dated even date herewith and intended to be recorded simultaneously herewith.

As a condition to making such a loan to Assignor, Assignee requires Assignor to execute and deliver this Collateral Assignment of Rents and Leases further securing Assignor's indebtedness to Assignee.

**NOW THEREFORE**, in order to better secure the payment to the Assignee of the principal amount due under the Loan Documents, with interest now due or hereafter to become due, and of all monetary obligations of the Assignee under and pursuant to the Loan Documents, the Assignor hereby assigns to the Assignee all of the rents, profits and issues due and to become due from the Premises, together with all documents, leases, agreements, service contracts and insurance policies affecting the Premises.

### 1. RENTS

Upon Assignor's default under the Loan Documents, Assignee shall have the power and authority to enter upon and take possession of the Premises and to demand, collect and receive from the tenants, lessees or parties in possession of the Premises or part thereof, rents now due or to become due; to endorse Assignor's name or any subsequent owner of the Premises, on any checks, notes or any other instruments for the payment of money; to deposit same in Assignee's accounts; to give any and all instruments in connection thereto in Assignor's name or in the name of Assignee; to institute, prosecute, settle or discontinue any summary or other legal proceedings for the recovery of rents or profits or to recover the whole or part of the Premises; to institute, prosecute, settle or discontinue any other legal proceeding for the protection and security of the Premises, for damages sustained to the Premises or from any other cause or for the abatement of any nuisance thereon. Assignee shall also have the right and power to defend any legal proceeding brought against Assignor or any subsequent owner of the Premises arising out of the operation of the Premises.

### 2. AUTHORITY TO LEASE

Upon the default by Assignor under the Loan Documents, Assignee shall have the right, power and authority to lease or rent the Premises or any part thereof; to employ an agent to manage and rent the Premises, to make any and all improvements to the Premises deemed solely by Assignee to be necessary for the leasing of the Premises, to maintain and keep the Premises in a rentable condition and in a good state of repair, to purchase any and all supplies, materials and equipment deemed necessary by Assignee in the continued operation and maintenance of the Premises, to pay all utilities, taxes and assessments for the Premises now due and to become due which are or may become liens against the Premises, to pay the principal and interest which are or may become due under the Loan Documents, to pay the premiums on all insurance policies affecting the Premises which are or may become due, to comply with all orders or notices of any governmental authority having jurisdiction over the Premises, to discharge Mechanic's Liens or any other interests or liens filed against the Premises either by payment to the lienor or by filing with the appropriate court a bond pursuant to court order, and to pay all charges and expenses incurred in the operation of the Premises.

### 3. EXPENSES

The Assignee shall have the authority, which is expressly given by Assignor, to pay for all matters from the rents and revenues collected from the Premises. These costs and expenses and any other payment made by Assignee in connection with the operation of the Premises, including reasonable attorneys' fees, shall be a charge to Assignor and for any and all purposes shall be deemed to be secured by the Loan Documents and may be deducted from the rents and profits received from the operation of the Premises.

### 4. ASSIGNEE'S LIABILITY

Except for the willful malfeasance or gross negligence of Assignee, the Assignee shall not be liable for any act or omission but shall only be liable to account for moneys received by Assignee. Notwithstanding the foregoing, nothing herein contained shall be deemed to prejudice Assignee's rights to institute and prosecute the foreclosure of the Mortgage or to enforce any lien on other collateral which the Assignee has or to prejudice any other right of Assignee which may arise due to Assignor's default under the Loan Documents.

## **5. ASSIGNMENT OF LEASES UPON DEFAULT**

In the event of a default under the Loan Documents, Assignor hereby assigns and transfers to Assignee all the leases and subleases, if any, made to the occupants of the Premises and all of its right, title and interest to the security stated in those leases and subleases and the Assignor further authorizes and empowers Assignee to honor the terms, conditions and provisions of the leases and subleases or to rent any one or more of the units in the Premises upon such terms, conditions and provisions as Assignee, in its sole discretion deems prudent and to execute any and all documents necessary to accomplish that end. Assignee shall have the full power and authority to do any and all acts with respect to the Premises as the Assignor might or be permitted to do, with full power and substitution and Assignor hereby expressly ratifies and confirms those acts which might be done by Assignee.

## **6. LEASE MODIFICATION**

Assignor will not, except if expressly permitted in the Loan Documents, without the prior written consent of Assignee cancel, modify or surrender any lease now or in the future existing with respect to any unit in the Premises; abate or reduce any rent due under any lease; modify, alter or amend any of the terms, provisions and conditions of any lease; and/or execute any new lease for any unit in the Premises.

## **7. ACCOUNTABILITY**

Assignee, except for its acts of gross negligence or willful misconduct, shall not be liable or responsible in any way for the failure to account or fraud or defalcation of rents received by Assignee's agent designated to manage the Premises or collect the rents. Assignee shall in no way be liable for its failure or refusal to make repairs to the Premises nor for any debt incurred in connection with the operation of the Premises.

## **8. DEFAULT**

Notwithstanding anything to the contrary contained in this Collateral Assignment of Leases and Rents, the default provisions contained in the Loan Documents shall in no way be affected by the terms, provisions and conditions contained in this document.

## **9. ASSIGNEE'S RIGHT IN THE COLLATERAL**

This Collateral Assignment of Leases and Rents supplements the Loan Documents. It is expressly agreed by the parties hereto that the rights and powers given to Assignee contained in this document shall in no way prejudice or estop the Assignee in the exercise of the rights afforded to it in the Loan Documents or against any other collateral of Assignor that Assignee may have.

## **10. SURPLUS**

Except as required by law, Assignee may but shall be under no obligation to do so, turn over to the Assignor any surplus moneys which the Assignee may have after paying all expenses incurred in connection with the operation of the Premises and establishing a reserve fund necessary for the payment of fixed charges due or to become due for such time as Assignee, in its sole discretion deems reasonable. The tender by Assignee to Assignor of surplus moneys on one occasion shall not obligate Assignee to tender surplus moneys thereafter.

## **11. FURTHER ASSIGNMENT BY ASSIGNEE**

The Assignee may assign all of its right, title and interest in and to this Collateral Assignment of Leases and Rents to any person or entity to whom the Loan Documents are assigned and upon such assignment, the holder of the Loan Documents shall have all the rights and powers contained herein as if an original party hereto.

## **12. CONSENT**

Should the Assignor be a corporation, the Assignor hereby expressly certifies that this Assignment was approved and authorized by the board of directors of such corporation and that there is no requirement under the corporation's certificate of incorporation or by-laws that require the consent of the shareholders.

Should the Assignor be a partnership, the execution and delivery of this Collateral Assignment of Lease and Rents have been duly approved by its partners.

Should the Assignor be a limited liability company, the execution and delivery of this Collateral Assignment of Leases and Rents have been duly approved pursuant to its operating agreement, or if none, by its managing member.

### **13. DESCRIPTION OF PREMISES**

The Premises are more particularly described on Schedule A which is attached hereto and made a part hereof.

### **14. SATISFACTION OF UNDERLYING DEBT**

Upon the payment in full of all indebtedness secured by the Loan Documents, Assignee shall execute and deliver, in recordable form, a release of this Collateral Assignment of Leases and Rents.

### **15. ASSIGNOR'S COLLECTION OF RENTS**

Provided that Assignor is not in default under the Loan Documents, Assignor shall have the right to collect, but not more than thirty (30) days prior to accrual, all rents, issues and profits from the Premises and to retain, use and enjoy same.

### **16. AGREEMENT BINDING**

This Collateral Assignment of Leases and Rents shall be binding on the Assignor and its successors and assigns and shall inure to the benefit of Assignee, its successors and assigns. This Collateral Assignment of Leases and Rents may not be changed orally but only by an agreement in writing signed by the parties hereto.

### **17. LAW GOVERNING**

The terms, conditions and provisions of this Collateral Assignment of Leases and Rents shall be governed by the laws of the State of New York.

### **18. PRIOR ASSIGNMENT**

Assignor represents and warrants that it is the owner in fee of the Premises and has not executed any prior assignment or pledge of any of its rights, nor are its rights encumbered, with respect to the leases assigned hereunder, or any of the rents, income or profits due or to become due from the Premises, except as are encumbered by the Loan Documents. Assignor further represents and warrants that it shall not assign, pledge or encumber the leases to any party or entity during the terms of this Collateral Assignment of Leases and Rents,

### **19. LEASES**

Annexed hereto and made a part hereof as Exhibit B are the existing leases for the Premises.

**IN WITNESS WHEREOF**, the Assignor has executed this Collateral Assignment of Leases and Rents the date and year first written above.

ASSIGNOR:

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

**ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE**

State of New York, County of \_\_\_\_\_, ss:

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

**ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE**

State of New York, County of \_\_\_\_\_, ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

(if the place of residence is in a city, include the street and street number if any, thereof); that he/she/they know(s)

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

**Title No.**

**TO**

**ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE**

State of New York, County of \_\_\_\_\_, ss:

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

**ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE**

\*State of \_\_\_\_\_, County of \_\_\_\_\_, ss:

\*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in the

(add the city or political subdivision and the state or country or other place the acknowledgement was taken).

SECTION:

BLOCK:

LOT:

COUNTY OR TOWN:

**RETURN BY MAIL TO:**

**SCHEDULE A**

**SCHEDULE B**