**[DRAFTING NOTE: THIS DOCUMENT MUST BE RECORDED IN THE LAND RECORDS OF THE PROPERTY JURISDICTION AND INCLUDED ON SCHEDULE B2 OF LENDER’S TITLE POLICY; UCC FINANCING STATEMENTS MUST ALSO BE FILED WITH RESPECT TO EACH MASTER LESSEE.]**

**[DRAFTING NOTE: USE THIS FORM FOR SHARIA OR HTC MASTER LEASE STRUCTURES; USE FORM 6446.ML FOR NON-SHARIA, NON-DST OR NON-HTC MASTER LEASE STRUCTURES; USE FORM 6493.DST TOGETHER WITH FORM 6494.DST FOR DELAWARE STATUTORY TRUST MASTER LEASE STRUCTURES.]**

Prepared by, and after recording

return to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**TENANT/LANDLORD SUBORDINATION AND ASSIGNMENT AGREEMENT**

**(Master Lease)**

**[DRAFTING NOTE: USE THIS FORM FOR SHARIA MASTER LEASE STRUCTURES. MODIFY DOCUMENT AS NECESSARY FOR TRANSACTION STRUCTURE AND APPLICABLE PARTIES.]**

**TENANT/LANDLORD SUBORDINATION AND ASSIGNMENT AGREEMENT**

**(Master Lease)**

This TENANT/LANDLORD SUBORDINATION AND ASSIGNMENT AGREEMENT (this “**Assignment**”) dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ is executed by and among (i) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ (“**Lessor**”) and (ii) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ (“**Master Lessee**”).

**Recitals:**

A. Lessor is the owner of the real property described on Exhibit A attached hereto (the “**Land**”).

B. Pursuant to the terms of that certain [**Master Lease**] dated as of \_\_\_\_\_\_\_, 20\_\_ by and between Lessor and Master Lessee (as may be hereinafter amended and modified from time to time, the “**Master Lease**”), Lessor has leased to Master Lessee the Land, the Improvements (as hereinafter defined), all or a portion of the personal property located thereon and all other interests of Lessor related to the Land and the Improvements (collectively, and as more fully described in the Master Lease, the “**Property**”).

C. For purposes of providing assurance to Lessor of the due payment and performance by Master Lessee of its obligations under the Master Lease and the other Master Lease Documents (as hereinafter defined), Master Lessee has agreed to provide for the assignments, grants, security interests, subordination and agreements as set forth pursuant to this Assignment.

**AGREEMENTS:**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Lessor and Master Lessee agree as follows:

Definitions; Parties.

(a) The following terms, when used in this Assignment, have the following meanings:

“**Accounts**” means all money, funds, investment property, accounts, general intangibles, deposit accounts, chattel paper, documents, instruments, judgments, claims, settlements of claims, causes of action, refunds, rebates, reimbursements, reserves, deposits, subsidies, proceeds, products, rents and profits, now or hereafter arising, received or receivable, from or on account of the management and operation of the Property.

“**Contract**” means any contract or other agreement for the provision of goods or services at or otherwise in connection with the operation, use or maintenance of the Property, excluding the Master Lease and including cash deposited to secure performance by parties of their obligations.

“**Event of Default**” has the meaning set forth in Section 10(a).

“**Goods**” means, in connection with the management or operation of the Property or located on the Property, the following: all inventory; furniture; furnishings; machinery, equipment, engines, boilers, incinerators and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors, cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; exercise equipment; supplies; tools; books and records (whether in written or electronic form); websites, URLs, blogs and social network pages; computer equipment (hardware and software); all kitchen or restaurant supplies and facilities; dining room supplies and facilities; medical supplies and facilities; leasehold improvements or related furniture and equipment; including all present and future parts, additions, accessories, replacements, attachments, accessions, replacement parts and substitutions of the foregoing and the proceeds thereof (cash and non-cash, including insurance proceeds); and any other equipment, supplies or furniture owned by Master Lessee and leased to any third party service provider or any other operator or manager of the Property; and other tangible personal property which is used now or in the future in connection with the management or operation of the Property or is located on the Property.

“**Improvements**” means the buildings, structures, improvements and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements, facilities and additions and other construction on the Land.

“**Land**” has the meaning as defined in Recital A above.

“**Leases**” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Property, or any portion of the Property (including proprietary leases or occupancy agreements if Master Lessee or Lessor is a cooperative housing corporation), and all modifications, extensions or renewals thereof, exclusive of the Master Lease.

“**Management Agreement**” means, if applicable, any agreement for management services as amended, restated, replaced, supplemented or otherwise modified from time to time, preapproved in writing by Lessor, under which daily management or operation with respect to the Property has been granted to any individual or entity other than Master Lessee.

“**Master Lease**” has the meaning as defined in Recital B above.

“**Master Lease Documents**” means, collectively (i) the Master Lease, **[Revise as necessary:** (ii) that certain Put Option Letter dated as of \_\_\_\_\_, 20\_\_ by and between Lessor and Master Lessee, (iii) that certain Call Option Letter dated as of \_\_\_\_\_, 20\_\_ by and between Lessor and Master Lessee, (iv) that certain Supplemental Agreement dated as of \_\_\_\_\_, 20\_\_ by and between Lessor and Master Lessee, (v) that certain Tax Matters Agreement dated as of \_\_\_\_\_, 20\_\_ by and between Lessor and Master Lessee, (vi) this Assignment, and (vii) any other document executed in connection with the Master Lease**]**.

“**Master Lease** **Event of Default**”means any default under the Master Lease Documents, subject to any cure period set forth therein.

“**Master Lease Rent**”meansany rent, fees or other amounts payable or to become payable to Lessor under the Master Lease.

“**Master Lessee**” has the meaning as defined in the Preamble above.

“**Personalty**” means all Goods, Accounts, choses in action, chattel paper, documents, general intangibles (including software), payment intangibles, instruments, investment property, letter of credit rights, supporting obligations, computer information, source codes, object codes, records and data, all telephone numbers or listings, claims (including claims for indemnity or breach of warranty), deposit accounts and other property or assets of any kind or nature related to the Property now or in the future, and all other intangible property and rights relating to the operation of, or used in connection with, the Property, including all governmental permits relating to any activities on the Property.

“**Property**” has the meaning as defined in Recital B above.

“**Security Instrument**” has the meaning set forth in Section 6.

“**State**” has the meaning set forth in the Security Instrument.

“**Tenant Rents**” means all rents (whether from residential or non-residential space), revenues and other income from the Land or the Improvements, including subsidy payments received from any sources, including payments under any “Housing Assistance Payments Contract” or other rental subsidy agreement (if any), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Property, whether now due, past due, or to become due, and tenant security deposits, exclusive of Master Lease Rent.

“**UCC**” has the meaning set forth in the Security Instrument.

“**UCC Collateral**” means, collectively, any of the Accounts, Contracts, Leases, Personalty and Tenant Rents which, under applicable law, may be subject to a security interest under the UCC, whether acquired now or in the future and all products and cash and non-cash proceeds thereof.

(b) Any assignment of Leases, Tenant Rents, Personalty, Contracts and Accounts made by Master Lessee under this Assignment shall be to the extent Master Lessee has a present or hereinafter acquired interest in such Leases, Tenant Rents, Personalty, Contracts and Accounts. Any representation, warranty or covenant made by Master Lessee under this Assignment shall be to the extent that Master Lessee has an interest in the subject Property or Master Lease, as applicable.

# Uniform Commercial Code Security Agreement.

## To secure to Lessor the performance of the covenants and agreements of Master Lessee in this Assignment and the Master Lease Documents, to the extent permissible under applicable law and regulation, Master Lessee pledges, grants a security interest in and assigns to Lessor all of Master Lessee’s right, title and interest, if any, in, to and under all UCC Collateral. This Assignment constitutes a security agreement and a financing statement under the UCC. Master Lessee hereby authorizes Lessor to file financing statements, continuation statements and financing statement amendments in such form as Lessor may require to perfect or continue the perfection of this security interest without the signature of Master Lessee. If an Event of Default has occurred and is continuing, Lessor shall have the remedies of a secured party under the UCC or otherwise provided at law or in equity, in addition to all remedies provided by this Assignment. Lessor may exercise any or all of its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability or validity of Lessor’s other remedies. For purposes of the UCC, the debtor is Master Lessee and the secured party is Lessor. The name and address of the debtor and secured party are set forth after Master Lessee’s and Lessor’s signatures below, and are the addresses from which information on the security interest may be obtained.

## Master Lessee represents and warrants that: Master Lessee maintains its chief executive office at the location set forth after Master Lessee’s signature below, and Master Lessee will notify Lessor in writing of any change in its chief executive office within five (5) days of such change; Master Lessee’s state of incorporation, organization or formation, if applicable, is as set forth on Page 1 of this Assignment; Master Lessee’s exact legal name is as set forth on Page 1 of this Assignment; Master Lessee’s organizational identification number, if applicable, is as set forth after Master Lessee’s signature below; Master Lessee is the owner of the UCC Collateral subject to no liens, charges or encumbrances other than the lien hereof; except as expressly provided in the Master Lease, the UCC Collateral will not be removed from the Property without the consent of Lessor; and no financing statement covering any of the UCC Collateral or any proceeds thereof is on file in any public office except pursuant hereto or pursuant to the other Loan Documents.

## All property of every kind acquired by Master Lessee after the date of this Assignment, which by the terms of this Assignment shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Master Lessee and without further conveyance or assignment become subject to the lien and security interest created by this Assignment. Nevertheless, Master Lessee shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further security agreements, financing statements, assignments and assurances as Lessor shall require for accomplishing the purposes of this Assignment and to comply with the re-recording requirements of the UCC.

# Assignment of Leases and Tenant Rents.

## For purposes of providing assurance to Lessor of the due payment and performance by Master Lessee of its obligations under this Assignment and the Master Lease Documents, Master Lessee absolutely and unconditionally assigns and transfers to Lessor any interest it has in all Leases and Tenant Rents. It is the intention of Master Lessee to establish present, absolute and irrevocable transfers and assignments to Lessor of all Tenant Rents and to authorize and empower Lessor to collect and receive all Tenant Rents without the necessity of further action on the part of Master Lessee. Master Lessee and Lessor intend these assignments of Leases and Tenant Rents to be effective immediately and to constitute absolute present assignments, and not assignments for additional security only. However, if these present, absolute and unconditional assignments of Leases and Tenant Rents are not enforceable by their terms under the laws of the State, then it is the intention of Master Lessee that in this circumstance this Assignment create and perfect a lien on Leases and Tenant Rents in favor of Lessor to secure the obligations of Master Lessee under this Assignment and Master Lessee’s obligations under the Master Lease Documents, which lien shall be effective as of the date of this Assignment.

## Until an Event of Default has occurred and is continuing, but subject to the limitations set forth in this Assignment, Master Lessee shall have a revocable license to exercise all rights, power and authority granted to Master Lessee under the Leases (including the right, power and authority to modify the terms of any Lease, extend or terminate any Lease, or enter into a new Lease, subject to the limitations set forth in this Assignment), and to collect and receive all Tenant Rents, to hold all Tenant Rents in trust for the benefit of Lessor, and, if applicable, to apply all Tenant Rents to pay the Master Lease Rent, and to pay the current costs and expenses of managing, operating and maintaining the Property. So long as no Event of Default has occurred and is continuing (and no event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing), the Tenant Rents remaining after application pursuant to the preceding sentence may be retained and distributed by Master Lessee free and clear of, and released from, Lessor’s rights with respect to Tenant Rents under this Assignment.

## If an Event of Default has occurred and is continuing, without the necessity of Lessor entering upon and taking and maintaining control of the Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the State, the revocable license granted to Master Lessee pursuant to Section 3(b) shall automatically terminate, and Lessor shall immediately have all rights, powers and authority granted to Master Lessee under any Lease (including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease) and, without notice, Lessor shall be entitled to all Tenant Rents as they become due and payable, including Tenant Rents then due and unpaid. During the continuance of an Event of Default, Master Lessee authorizes Lessor to collect, sue for and compromise Tenant Rents and directs each resident or tenant of the Property to pay all Tenant Rents to, or as directed by, Lessor, and Master Lessee shall, upon Master Lessee’s receipt of any Tenant Rents from any sources, pay the total amount of such receipts to Lessor. **[INSERT FOR AFFILIATED MASTER LESSEE TRANSACTIONS:** Notwithstanding the foregoing, Lessor and Master Lessee acknowledge and agree that upon the occurrence of an Event of Default, Tenant Rents will be collected and applied as set forth in Section 11 (Lockbox) of this Assignment.**]** Although the foregoing rights of Lessor are self-effecting, at any time during the continuance of an Event of Default, Lessor may make demand for all Tenant Rents, and Lessor may give, and Master Lessee hereby irrevocably authorizes Lessor to give, notice to all residents or tenants of the Property instructing them to pay all Tenant Rents to Lessor. No resident or tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no resident or tenant shall be obligated to pay to Master Lessee any amounts that are actually paid to Lessor in response to such a notice. Any such notice by Lessor shall be delivered to each resident or tenant personally, by mail or by delivering such demand to each rental unit.

## If an Event of Default has occurred and is continuing, Lessor may, regardless of the adequacy of Lessor’s security or the solvency of Master Lessee, and even in the absence of waste, enter upon, take and maintain full control of the Property, and may exclude Master Lessee and its agents and employees therefrom, in order to perform all acts that Lessor, in its discretion, determines to be necessary or desirable for the operation and maintenance of the Property, including the execution, cancellation or modification of Leases, the collection of all Tenant Rents (including through use of a lockbox, at Lessor’s election), the making of repairs to the Property and the execution or termination of Contracts providing for goods or services at or otherwise in connection with the operation, use or maintenance of the Property, paying fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, obtaining (or force-placing) the insurance required by the Master Lease Documents, for the purposes of enforcing the assignments of Leases and Tenant Rents, protecting the Property or the security of this Assignment, or for such other purposes as Lessor in its discretion may deem necessary or desirable.

## The acceptance by Lessor of the assignments of the Leases and Tenant Rents pursuant to this Section 3 3shall not at any time or in any event obligate Lessor to take any action under this Assignment or to expend any money or to incur any expense. Lessor shall not be liable in any way for any injury or damage to person or property sustained by any person or entity in, on or about the Property. Prior to Lessor’s actual entry upon and taking possession and control of the Land and Improvements, Lessor shall not be:

## obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease);

## obligated to appear in or defend any action or proceeding relating to any Lease or the Property; or

## responsible for the operation, control, care, management or repair of the Property or any portion of the Property.

## The execution of this Assignment shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Master Lessee, prior to such actual entry and taking possession and control by Lessor of the Land and Improvements.

## Lessor shall be liable to account only to Master Lessee and only for Tenant Rents actually received by Lessor. Lessor shall not be liable to Master Lessee, anyone claiming under or through Master Lessee or anyone having an interest in the Property by reason of any act or omission of Lessor under this Section 3, and Master Lessee hereby releases and discharges Lessor from any such liability to the fullest extent permitted by law, provided that Lessor shall not be released from liability that occurs as a result of Lessor’s gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final, non-appealable court order. If the Tenant Rents are not sufficient to meet the costs of taking control of and managing the Property and collecting the Tenant Rents, any funds expended by Lessor for such purposes shall be immediately due and payable, and bear interest at the rate as set forth in the Master Lease from the date of disbursement until fully paid. Any entering upon and taking control of the Property by Lessor, and any application of Tenant Rents as provided in this Assignment, shall not cure or waive any Event of Default or invalidate any other right or remedy of Lessor under applicable law or provided for in this Assignment or any Master Lease Document.

# Assignment of Contracts; Contracts Affecting the Property.

## Master Lessee has entered into the Contracts for the provision of goods or services at or otherwise in connection with the operation, use or maintenance of the Property. Master Lessee may in the future enter into Contracts for the provision of additional goods or services at or otherwise in connection with the operation, use or maintenance of the Property.

## To secure to Lessor the performance of the covenants and agreements of Master Lessee in this Assignment and the Master Lease Documents, to the extent permissible under applicable law and regulation, Master Lessee pledges, grants a security interest in and assigns to Lessor all of Master Lessee’s right, title and interest, if any, in, to and under the Contracts, including Master Lessee’s right, power and authority to modify the terms of, extend or terminate any such Contract.  To the extent permitted by applicable law, it is the intention of Master Lessee to establish a present, absolute and irrevocable transfer and assignment to Lessor of all of Master Lessee’s right, title and interest in, to and under the Contracts. To the extent permitted by applicable law, Master Lessee and Lessor intend this assignment of the Contracts to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. If this present, absolute and unconditional assignment of the Contracts is not enforceable by its terms under the laws of the State, then it is the intention of Master Lessee that in this circumstance this Assignment create and perfect a lien on the Contracts in favor of Lessor to secure the obligations of Master Lessee under this Assignment and the Master Lease Documents, which lien shall be effective as of the date of this Assignment. The acceptance by Lessor of this assignment of the Contracts shall not at any time or in any event obligate Lessor to take any action under this Assignment or to expend any money or to incur any expenses.

## Until Lessor gives notice to Master Lessee of Lessor’s exercise of its rights under this Section 44, Master Lessee shall have all rights, power and authority granted to Master Lessee under any Contract (except as otherwise limited by this Section 4 or any other provision of this Assignment or the Master Lease Documents), including the right, power and authority to modify the terms of any Contract or extend or terminate any Contract. If an Event of Default has occurred and is continuing, at the option of Lessor, the permission given to Master Lessee pursuant to the preceding sentence to exercise all rights, power and authority under Contracts shall terminate.

## Upon Lessor’s delivery of notice to Master Lessee of an Event of Default, Lessor shall immediately have all rights, powers and authority granted to Master Lessee under any Contract, including the right, power and authority to modify the terms of, extend or terminate any such Contract.

# [DRAFTING NOTE: INCLUDE THIS SECTION IF THE MASTER LESSEE (AND NOT THE LESSOR) IS THE PARTY TO THE MANAGEMENT AGREEMENT AND THE ASSIGNMENT OF MANAGEMENT AGREEMENT] [Assignment of Management Agreement] [Intentionally Deleted].

## To secure to Lessor the performance of the covenants and agreements of Master Lessee in this Assignment and the Master Lease Documents, to the extent permissible under applicable law and regulation, Master Lessee pledges, grants a security interest in and assigns to Lessor all of Master Lessee’s right, title and interest, if any, in, to and under the Management Agreement. To the extent permitted by applicable law, it is the intention of Master Lessee to establish a present, absolute and irrevocable transfer and assignment to Lessor of all of Master Lessee’s right, title and interest in, to and under the Management Agreement. To the extent permitted by applicable law, Master Lessee and Lessor intend this assignment of the Management Agreement to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. If this present, absolute and unconditional assignment of the Management Agreement is not enforceable by its terms under the laws of the State, then it is the intention of Master Lessee that in this circumstance this Assignment create and perfect a lien on the Management Agreement in favor of Lessor to secure the obligations of Master Lessee under this Assignment and the Master Lease Documents, which lien shall be effective as of the date of this Assignment. The acceptance by Lessor of this assignment of the Management Agreement shall not at any time or in any event obligate Lessor to take any action under this Assignment or to expend any money or to incur any expenses.

## Upon Lessor’s delivery of notice to Master Lessee of an Event of Default, Lessor shall immediately have all rights, powers and authority granted to Master Lessee under the Management Agreement, including the right, power and authority to modify the terms of, extend or terminate the Management Agreement.

# Subordination to Mortgage Lien.

## Master Lessee acknowledges that Lessor has entered into mortgage financing related to its ownership of the Property and as part of such financing, Lessor has pledged, or may in the future pledge, its rights, title and interest in this Assignment, the Master Lease Documents, the Master Lease Rent, any assignment of property management agreement, the Leases and the Tenant Rents and has executed or delivered, or may in the future execute or deliver, such other documents and instruments as Lessor or the provider of such financing (together with its successors and assigns, “**Lender**”) deems necessary or appropriate to consummate such transaction. Notwithstanding anything in the Master Lease or the other Master Lease Documents to the contrary, the Master Lease and the other Master Lease Documents and all estates, rights, options, liens and charges therein contained or created thereunder are and shall be subject and subordinate to any and all fee mortgages, deeds of trusts or other similar instruments (the “**Security Instrument**”), and any other documents executed and delivered in connection therewith as the same may be amended, restated or modified from time to time (together with the Security Instrument, the “**Loan Documents**”), and to all terms, covenants and conditions thereof, and all liens created thereunder, and all renewals, modifications, consolidations, severances, replacements, increases and extensions thereof and to any and all advances made or to be made thereunder, to the full extent of amounts secured thereby, it being understood and agreed that Master Lessee shall have no responsibility under such financing arrangements or any such Security Instrument, and Lender shall have, in its sole and absolute discretion, among other rights with respect to the Property, either the right to terminate the Master Lease and the other Master Lease Documents, and the right to elect to recognize the Master Lease and the other Master Lease Documents, and the interest of Master Lessee thereunder, and not to disturb Master Lessee’s occupancy of the Property during the term of the Master Lease Documents or any extensions or renewals thereof. If Lender or its designee has so elected to recognize the Master Lease Documents and not disturb Master Lessee’s occupancy of the Property, Master Lessee shall be bound to such entity under all of the terms, covenants and conditions of the Master Lease Documents with the same force and effect as if Lender or its designee were the landlord under the Master Lease and Master Lessee shall attorn to Lender or its designee if such Lender or designee succeeds to the interest of Lessor under the Master Lease Documents. Master Lessee further agrees that any fees payable to Master Lessee by Lessor pursuant to the Master Lease shall be subordinated in right to the prior payment in full of the indebtedness evidenced by and secured by the Loan Documents. Notwithstanding the foregoing, Lessor and Master Lessee represent and warrant that there are no fees payable to Master Lessee in connection with the operation and management of the Property.

## Notwithstanding anything contained in the Master Lease Documents, neither Lender nor its designee shall be:

## (1) liable for any act or omission or negligence of, or for the performance of any of the obligations of, Lessor or of any prior landlord which shall have occurred or accrued prior to the date on which Lender or its designee succeeds to Lessor’s interest in the Master Lease Documents;

## (2) bound by any offset right or defense that Master Lessee may have against Lessor;

## (3) bound by any payment of Master Lease Rent that Master Lessee may have made to Lessor before the date such Master Lease Rent was first due and payable hereunder;

## (4) bound by any amendment or modification of the Master Lease that would reduce or shorten any economic obligations of Master Lessee under the Master Lease or materially impair Lessor’s rights under the Master Lease;

## (5) liable for any security deposit paid by Master Lessee to Lessor unless such deposit is delivered to Lender;

## (6) obligated to complete any construction work required to be done by Lessor pursuant to the provisions of the Master Lease or to reimburse Master Lessee for any construction work done by Master Lessee;

## (7) liable for or obligated to pay for repairs, replacements, damages or allowances, including the result of a casualty or condemnation, not made, performed or paid by the Lessor if such performance or payment was due prior to the date on which Lender or its designee succeeds to Lessor’s interest in the Master Lease Documents;

## (8) required to make any capital improvements which the Lessor may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment under the Master Lease;

## (9) liable for the payment of any leasing commissions, the triggering event for which arose or occurred prior to the date on which Lender or its designee succeeds to Lessor’s interest in the Master Lease Documents; or

## (10) liable under any indemnity provision of whatever nature contained in the Master Lease, including any environmental indemnification.

## If the Master Lease Documents terminate as provided in this Section 6, or as permitted under applicable law, Master Lessee shall peaceably quit and surrender the Property to Lessor or its designee, and Lessor or its designee may, without further notice, enter upon, re-enter, possess and repossess the same by summary proceedings, ejectment or other legal proceeding, and again have, possess and enjoy the same as if the Master Lease Documents had not been made, and in any such event neither Master Lessee nor any person or entity claiming through or under Master Lessee by virtue of any applicable law or an order of any court shall be entitled to possession or to remain in possession of the Property but shall forthwith quit and surrender the Property.

## Master Lessee and Lessor each represents, covenants and warrants that it is its express intent that the Master Lease constitute a lease under applicable real property laws and that the sole interest of the Master Lessee in the Property is as a tenant under the Master Lease. In the event that it is determined by a court of competent jurisdiction that the Master Lease is not a lease under applicable real property laws and that the Master Lessee is deemed a guarantor of any obligations secured by the Property rather than a tenant, then the “**springing provisions**” identified below shall take effect automatically without further action or execution. The provisions in this Section 6(d) are contained herein solely to address enforcement issues in the event the Master Lease is re-characterized as a guaranty of obligations secured by the Property. However, it is neither the desire nor the intent of the parties that the Master Lease be re-characterized as such a guaranty. Master Lessee and Lessor covenant that neither Master Lessee nor Lessor, nor any officer, director, partner, manager, member, shareholder, or trustee of Master Lessee or Lessor, shall assert a claim or establish a defense that either party intended the Master Lease to constitute anything other than a lease under applicable real property laws.

**Springing Provisions**: Master Lessee waives:

## (1) the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of the Master Lease Documents (and agrees that Master Lessee’s obligations shall not be affected by any circumstances, whether or not referred to in the Master Lease Documents, which might otherwise constitute a legal or equitable discharge of a surety or a guarantor);

## (2) the benefits of any right of discharge under any and all statutes or other laws relating to guarantors or sureties and any other rights of sureties and guarantors;

## (3) diligence in collecting the Indebtedness (as defined in the Loan Documents), presentment, demand for payment, protest and all notices with respect to the Loan Documents which may be required by statute, rule of law or otherwise to preserve Lender’s rights against Master Lessee, including notice of acceptance, notice of any amendment of the Loan Documents, notice of the occurrence of any “event of default” (as defined in the Loan Documents), notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest and notice of the incurring by Lessor of any obligation or indebtedness; and

## (4) all rights to require Lender to:

(A) proceed against or exhaust any collateral held by or on behalf of Lender to secure the repayment of the Indebtedness (as defined in the Loan Documents);

(B) proceed against or pursue any remedy it may now or hereafter have against Lessor or any master lessee, or, if Lessor or any master lessee is a partnership, any general partner of Lessor or general partner of master lessee; or

(C) demand or require collateral security from Lessor, any other guarantor or any other person or entity as provided by applicable law or otherwise.

# Master Lessee Representations and Warranties.

Master Lessee represents and warrants to Lessor as follows as of the date of this Assignment:

## Master Lessee has unconditionally accepted delivery of the Property pursuant to the terms of the Master Lease and is operating the Property as a multifamily housing project;

## no Master Lease Rent has been paid for more than thirty (30) days in advance;

## Master Lessee has not accepted, and does not expect to receive prepayment of, any Tenant Rents for more than two (2) months prior to the due dates of such Tenant Rents;

## all required payments of Master Lease Rent have been made prior to the date hereof;

## Master Lessee has fully inspected the Property and found the same to be as required by the Master Lease and in good order and repair, and all conditions and duties of an inducement nature under the Master Lease to be performed by Lessor have been satisfied, including but not limited to payment to Master Lessee of any Lessor contributions for improvements, completion by Lessor of the construction of any improvements to be constructed by Lessor, and payment to Master Lessee of any consulting fees;

## Master Lessee has no options to purchase, right of first refusal to purchase or right of first offer to purchase under the Master Lease or with respect to the Property or any part thereof, except as set forth on Exhibit B;

## Master Lessee has not assigned or sublet and is now the sole owner of the interest or leasehold estate created by the Master Lease;

## Master Lessee has not executed any prior assignment of Leases and Tenant Rents that is currently in effect;

## to Master Lessee’s knowledge, no party is in default under any of the terms, conditions, provisions or agreements of the Master Lease and Master Lessee has no offsets, claims or defenses against Lessor with respect to the Master Lease;

## Master Lessee does not and has not used the Property for the storage, treatment, manufacturing, generation, disposal or release into the environment of any petroleum product or substance which is classified as a hazardous substance, pollutant or contaminant under any applicable federal, state and local laws and regulations except for the safe and lawful use and storage of quantities of pre-packaged supplies, cleaning materials, petroleum products, and medical products and devices customarily used in the operation and maintenance of comparable properties;

## the Management Agreement is assignable and no previous assignment of Master Lessee’s interest in the Management Agreement has been made, and the Management Agreement is in full force and effect in accordance with their respective terms and there are no defaults thereunder;

## Master Lessee is not:

## (1) the subject of or a party to any completed or pending bankruptcy, reorganization, including any receivership or other insolvency proceeding;

## (2) preparing or intending to be the subject of a bankruptcy event;

## (3) the subject of any judgment unsatisfied of record or docketed in any court; or

## (4) insolvent;

## there are no claims, actions, suits, or proceedings at law or in equity by or before any governmental authority now pending against or, to Master Lessee’s knowledge, threatened against or affecting Master Lessee or the Property;

## the Contracts are assignable and no previous assignment of Master Lessee’s interest in the Contracts has been made, and the Contracts are in full force and effect in accordance with their respective terms and there are no defaults thereunder [;][.]

## **[INSERT FOR HTC TRANSACTIONS:**

## Master Lessee has received from Lessor and reviewed a fully executed copy of the Loan Agreement and each of the other Loan Documents that set forth the “**Operating Covenants**” (all terms, conditions, provisions, requirements, representations, and affirmative and negative covenants of the Loan Documents relating to the use and operation of the Property, which also shall be deemed to run directly to the Master Lessee).**]**

# Master Lessee Covenants.

Master Lessee covenants with Lessor that during the term of this Assignment:

## Master Lessee shall cooperate with Lessor, including attendance at any meetings requested by Lessor (after reasonable prior notice), furnishing financial statements of Master Lessee (in connection with the operation of the Property) and operating statements for the Property, and allowing Lessor to undertake inspections of the Property;

## if, by reason of its exercise of any right or remedy under the Master Lease, Master Lessee acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Security Instrument and this Assignment;

## after Master Lessee or Lessor receives notice (or otherwise acquires actual knowledge) of an Event of Default, Master Lessee will not accept or retain any payments or fees made pursuant to the Master Lease without Lessor’s prior written consent;

## if, after Master Lessee or Lessor receives notice (or otherwise acquires actual knowledge) of an Event of Default, Master Lessee receives any payments or fees pursuant to the Master Lease other than from Lessor, or if Master Lessee receives any other payment or distribution of any kind from any person or entity in connection with the Master Lease which Master Lessee is not permitted by this Assignment to retain for its own account, such payment or other distribution will be received **[INSERT FOR AFFILIATED MASTER LESSEE TRANSACTIONS:** by Master Lessee and unless Lessor or Lender otherwise notifies Master Lessee, will be handled in accordance with Section 11 (Lockbox) of this Assignment.**][INSERT FOR NON-AFFILIATED MASTER LESSEE TRANSACTIONS:** and held in trust for Lessor and unless Lessor otherwise notifies Master Lessee, will be promptly remitted in readily available funds to Lessor, properly endorsed to Lessor, to be applied to amounts due under the Master Lease Documents in such order and in such manner as Lessor shall determine.**]** Master Lessee hereby irrevocably designates, makes, constitutes and appoints Lessor (and all persons or entities designated by Lessor) as Master Lessee’s true and lawful attorney in fact with power to endorse the name of Master Lessee upon any checks representing payments referred to in this subsection;

## Master Lessee shall not pay Master Lease Rentmore than thirty (30) days in advance of the date on which the same are due or to become due under the Master Lease;

## Master Lessee shall not accept Tenant Rent under any Lease (whether a residential lease or a non-residential lease) for more than two (2) months in advance;

## Master Lessee shall not create, incur, assume or suffer to exist any lien on the Property or any part of the Property or pledge any interest in the Property or any part of the Property, including the Master Lease, the Leases, Tenant Rents and Contracts except as provided herein;

## Master Lessee shall promptly inform Lessor in writing of, and shall deliver to Lessor copies of:

## any related written communications, complaints, orders, judgments and other documents relating to the commencement of any rulemaking or disciplinary proceeding or the promulgation of any proposed or final rule which would have, or may reasonably be expected to have, a material adverse effect on Master Lessee’s ability to operate and manage the Property or on the Property itself; and

## the receipt of notice from any governmental authority having jurisdiction over Master Lessee that Master Lessee is being placed under regulatory supervision, any license, permit, charter, membership or registration material to the conduct of Master Lessee’s business or the Property is to be suspended or revoked or Master Lessee is to cease and desist any practice, procedure or policy employed by Master Lessee in the conduct of its business, if such cessation would have, or may reasonably be expected to have, a material adverse effect on the Property;

## Master Lessee will not use the Property for the storage, treatment, manufacturing, generation, disposal or release into the environment of any petroleum product or substance which is classified as a hazardous substance, pollutant or contaminant under CERCLAor other applicable federal, state and local laws and regulations except for the safe and lawful use and storage of quantities of pre-packaged supplies, cleaning materials, petroleum products, and medical products and devices customarily used in the operation and maintenance of comparable properties;

## Master Lessee shall fully perform all of its obligations under the Contracts, and Master Lessee shall not amend, modify, assign, sell, pledge, transfer, mortgage or otherwise encumber its interests in any of the Contracts so long as this Assignment is in effect, or consent to any transfer, assignment or other disposition thereof without the written approval of Lessor. Each Contract entered into by Master Lessee subsequent to the date hereof, the average annual consideration of which, directly or indirectly, is at least $50,000, shall provide: that it shall be terminable for cause; that it shall be terminable, at Lessor’s option, upon the occurrence and continuance of an Event of Default; and it shall be terminable without penalty upon thirty (30) days written notice;

## Master Lessee covenants and agrees that it shall not perform any acts and has not executed, and shall not execute any instrument which would prevent Lessor from exercising its rights under this Assignment;

## each residential lease entered into by Master Lessee shall be on a form approved by Lessor; and

## Master Lessee agrees to execute an estoppel certifying to Lender such facts regarding the Master Lease Documents as Lender may reasonably require

## [**INSERT (n) and (o) FOR HTC TRANSACTIONS - CONFIRM WITH ORGANIZATIONAL DOCUMENTS AND UPDATE AS APPLICABLE:**

## Except for the acquisition of the **[99.99%]** membership interest in Tenant (“**HTC Put/Call Transfer**”) by **[MANAGING MEMBER]**, a [\_\_\_\_\_\_\_\_\_\_\_\_] limited liability company (“**Managing Member**”), which entity is the managing member of Master Lessee or an entity that Guarantor or Key Principal has a Restricted Ownership Interest (as defined in the Loan Documents) in and Controls (as defined in the Loan Documents) such affiliate, pursuant to the terms of that certain Purchase Agreement dated as of [DATE], by and between Managing Member and **[HTC INVESTOR]**, a [\_\_\_\_\_\_\_\_\_\_\_\_] corporation (“**Historic Investor**”), Master Lessee shall not transfer its leasehold interest in the Master Lease or any of its applicable responsibility for the operation and management of the Property, including permitting the Transfer (as defined in the Loan Documents) of a Restricted Ownership Interest in Master Lessee or a Transfer that results in a change of Control of Master Lessee, to any other Person, without the prior written consent of Lender; or change its name, change its jurisdiction or organization, or cause or permit a conversion of Master Lessee from one type of entity into another type of entity without Lender’s prior written consent, which consent will not be unreasonably withheld. Lessor shall deliver, or cause to be delivered to Lender a copy of any notice issued by the Managing Member or the Historic Investor, as applicable, to initiate the HTC Put/Call Transfer, on the date such notice is provided by the Managing Member or the Historic Investor, as applicable;

## Master Lessee shall comply with all OperatingCovenants set forth in the Loan Documents. In the event Master Lessee fails to use and operate the Property according to the Operating Covenants, Lender shall have the right to enforce the Operating Covenants directly against Master Lessee, and enforce the Operating Covenants directly against Lessor in accordance with the provisions of the Loan Documents.**]**

# Property Management Agreement

Each property manager and each property management agreement must be approved by Lessor. If Lessor waives in writing the requirement that there by a written contract for management of the Property, and Lessor or Master Lessee later elects to enter into a written contract or change the management of the Property, such new property manager or the property management agreement must be approved by Lessor. As a condition to any approval by Lessor, Lessor may require that Master Lessee and such new property manager enter into a collateral assignment of the property management agreement on a form approved by Lessor. For any such property management agreement entered into by Master Lessee rather than Lessor, Master Lessee shall assign its rights under such property management agreement to Lessor as security for Master Lessee’s obligations under the Master Lease Documents, and Master Lessee consents to Lessor’s further assignment of its rights under such assignment to Lender as security for Lessor’s obligations under the Loan Documents.

# Events of Default; Remedies.

## The occurrence of any one or more of the following shall constitute an “**Event of Default**” under this Assignment:

## (1) a default, a breach of a covenant or a failure to perform any obligation under this Assignment;

## (2) the failure of any representation or warranty in this Assignment to be true and correct when made; or

## (3) any Master Lease Event of Default.

## Lessor and Master Lessee hereby acknowledge that any Event of Default by Master Lessee which continues beyond any applicable notice or cure period shall constitute an Event of Default hereunder and a Master Lease Event of Default under the Master Lease.

## Upon receipt by Master Lessee of written notice from Lessor or its designee that an Event of Default has occurred and is continuing, Lessor shall have the right to exercise all rights as owner of the Property under the Master Lease Documents, at law or in equity. Lessor shall be entitled to mandate the use of a lockbox bank account or other depositary account, to be maintained under the control and supervision of Lessor, for all income of the Property, including Tenant Rent, service charges and insurance payments. In order to induce Lessor to enter into the Master Lease or this Assignment, Master Lessee hereby agrees that at the option of Lessor upon the occurrence of an Event of Default, Master Lessee shall continue to maintain and operate the Property. Master Lessee agrees to fully cooperate with Lessor and any receiver as may be appointed by a court, in performing these services until such time as Lessor has arranged for a replacement provider of the necessary services, and in arranging an orderly transition of operating and management responsibilities to the receiver or a replacement provider of the necessary services (the “**Transition Period**”).

## During the Transition Period, if Lessor requires that Master Lessee continue to operate the Property pursuant to the Master Lease so long as no Event of Default by Master Lessee has occurred under this Assignment, Lessor shall, until such time that Lessor terminates the Master Lease, recognize Master Lessee’s right to quiet enjoyment and possession of the Property pursuant to the terms of the Master Lease; provided however, Master Lessee shall remit to Lessor monthly the Post-Default NCF. “**Post-Default** **NCF**” shall mean all revenues generated by the operation of the Property, including Tenant Rents, less costs and expenses for the operation of the Property approved by Lessor, including funds necessary to pay the salaries of Master Lessee’s employees at the Property, and capital expenditures approved by Lessor related to the operation of the Property. Costs and expenses shall not include any fees payable to Master Lessee. Lessor reserves the right to exercise all other remedies hereunder including the imposition of a lockbox arrangement, cash management arrangement or depositary agreement as set forth herein.

## If an Event of Default has occurred and is continuing, Lessor shall have the right any time thereafter to terminate the Master Lease without cause and without liability by giving written notice to Master Lessee of its election to do so. Lessor’s notice shall specify the date of termination, which shall not be less than thirty (30) days after the date of such notice, except such lesser notice as Lessor deems to be appropriate in the event of an emergency or impairment of Lessor’s collateral. Such termination right shall:

## (1) supersede any limitation on termination rights contained in the Master Lease,

## (2) serve as consideration for the material benefit derived by Master Lessee from Lessor’s entering into the Master Lease, and

## (3) become effective pursuant to Lessor’s right after an Event of Default occurs and continues to exercise all rights of Lessor under the Master Lease.

## On the effective date of the termination of the Master Lease, Master Lessee shall turn over to Lessor all books and records relating to the Property and the residents and tenants (copies of which may be retained by Master Lessee, at Master Lessee’s expense), together with such authorizations and letters of direction addressed to residents, tenants, suppliers, employees, banks and other parties as Lessor may reasonably require. A final accounting of unpaid fees (if any) due to Master Lessee under the Master Lease shall be made within sixty (60) days after the effective date of termination, but Lessor shall not have any liability or obligation to Master Lessee for unpaid fees or other amounts payable under the Master Lease which accrue before Lessor acquires possession of the Property.

## If an Event of Default has occurred and is continuing, Master Lessee will furnish promptly to Lessor evidence of deposits and withdrawals from any account held or controlled by Master Lessee relating to the Property.

## If an Event of Default has occurred and is continuing, Lessor shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Assignment or existing under applicable law. In exercising any remedies, Lessor may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lessor’s other remedies.

## From and after the occurrence of an Event of Default, Lessor or its designee may (in Lessor’s sole discretion) terminate Master Lessee’s license and authority to collect Accounts and notify the residents and account debtors that the Accounts have been assigned to Lessor and, either in its own name or that of Master Lessee, or both, demand, collect (including through any lockbox arrangement prescribed by Lessor to be maintained in accordance with the terms of this Assignment), receive, receipt for, sue for or give acquittance for any or all amounts due or to become due in respect of the Accounts, and may also, in its discretion, file any claim, institute any proceeding or take any other action that Lessor may deem necessary or appropriate to protect and realize upon the security interest of Lessor in the Accounts. All of Lessor’s collection expenses shall be charged to Lessor’s account. If Lessor is collecting the Accounts as above provided, Lessor shall have the right to receive, endorse, assign and deliver in Lessor’s name or Master Lessee’s name any and all checks, drafts and other instruments for the payment of money relating to the Accounts, and Master Lesseehereby waives notice of presentment, protest and non-payment of any instrument so endorsed. If Lessor is collecting the Accounts directly as above provided, Master Lesseehereby constitutes Lessor or Lessor’s designee as Master Lessee’s attorney-in-fact with power with respect to the Accounts to: endorse Master Lessee’s name upon all notes, acceptances, checks, drafts, money orders or other evidences of payment that may come into Lessor’s possession; notify the U.S. Post Office to change the address for delivery of mail addressed to Master Lessee for the Property to such address as Lessor may designate; and receive, open and dispose of all such mail addressed to Master Lessee.

## If an Event of Default has occurred and is continuing, Lessor may, without demand and without advertisement or notice, at any time or times, sell and deliver any or all Personalty held by or for it at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as Lessor, in its sole discretion, deems advisable. Subject to the provisions of applicable law, Lessor may postpone or cause the postponement of the sale of all or any portion of the Personalty by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale has been postponed or Lessor may further postpone such sale by announcement made at such time and place. Without in any way limiting the foregoing, Lessor shall, if an Event of Default has occurred and is continuing, have the right, in addition to all other rights provided herein or by law, to enter without legal process upon the Property (provided that such entry be done lawfully) for the purpose of taking possession of the Personalty, and the right to maintain such possession on the Property or to remove the Personalty or any part thereof to such other places as Lessor may desire. Whether or not Lessor exercises its right to take possession of the Personalty, Master Lesseeshall, upon Lessor’s demand, promptly assemble the Personalty and make it available to Lessor at the Property.

# [INSERT FOR AFFILIATED MASTER LESSEE TRANSACTIONS: Lockbox.

## Upon the occurrence of an “event of default” (as defined in the Loan Documents), Lender shall be entitled to mandate the use of lockbox bank accounts or other depositary accounts in the name of Master Lessee, to be maintained under the control and supervision of Lender, for all income of the Property, including all Tenant Rents, service charges and insurance payments, and Lessor, to be maintained under the control and supervision of Lender. If a lockbox is mandated hereunder, the parties hereto agree to enter into a lockbox account control agreement in a form acceptable to Lender.

## In order to induce Lessor to enter into the Master Lease and the Loan Documents, Master Lessee hereby agrees that, at the option of Lender, upon the occurrence of an “event of default” (as defined in the Loan Documents) by Lessor, Master Lessee shall continue to maintain and operate the Property.

## If the Master Lease is in effect, upon the occurrence of an “event of default” (as defined in the Loan Documents), Master Lessee shall deposit all income received by the Master Lessee from the Property into the Master Lessee’s lockbox account, and then transfer to Lessor’s lockbox account funds equal to all amounts due from Master Lessee under the Master Lease. All funds on deposit in the Master Lessee’s lockbox account in excess of such amounts transferred to Lessor’s lockbox account shall be retained in Master Lessee’s lockbox account and not distributed during the continuation of any “event of default” (as defined in the Loan Documents), unless Lender approves any disbursements, which such disbursements shall include amounts to pay expenses related to the Property that are the Master Lessee’s responsibility pursuant to the Master Lease and which are included in a proposed budget provided to Lender by Master Lessee and approved by Lender.

## Other than the application of funds to satisfy Master Lessee’s obligations under the Master Lease and pay expenses related to the Property that are Master Lessee’s responsibility pursuant to the Master Lease, neither Lessor nor any assignee of Lessor may withdraw any funds from the Master Lessee lockbox account until and unless a Master Lease Event of Default by Master Lessee has occurred. Upon the occurrence of a Master Lease Event of Default by Master Lessee, all amounts then on deposit in the Master Lessee lockbox account may be applied by Lender, as assignee of Lessor, to payment obligations of Lessor under the Loan Documents, and all income and Tenant Rents from the Property may be deposited directly into the Lessor lockbox account, maintained under the control and supervision of Lender.**]**

# No Assumption of Obligations.

Lessor and Master Lessee, by executing this Assignment, agree that Lessor does not assume any obligations or duties of Lessor and Master Lesseeconcerning the Master Lease until and unless Lessor shall exercise its rights hereunder.

# Power of Attorney.

## Master Lesseehereby irrevocably constitutes and appoints Lessor as Master Lessee’sattorney-in-fact to demand, receive and enforce its rights with respect to the provisions set forth in this Assignment, to give appropriate receipts, releases and satisfactions for and on Master Lessee’s behalf and to do any and all acts in Master Lessee’s name with the same force and effect as Master Lesseecould do if this Assignment had not been made. The foregoing appointment shall be deemed to be coupled with an interest and irrevocable.

## In connection with Lessor’s mortgage financing relating to its ownership of the Property, Lessor has assigned or will assign to Lender, among other things, the powers of attorney granted in this Assignment and the Master Lease Documents. Master Lessee acknowledges and consents to such assignments and agrees to recognize Lender as Lessor’s attorney-in-fact. Lender’s exercise of such power of attorney shall not cause Lender to be construed as a mortgagee-in-possession, or constitute a waiver of any of Lender’s rights as a mortgagee, except as required by applicable law. Any and all action to be undertaken by Lessor hereunder (including those after an Event of Default) may be taken by Lender in its stead.

# Consideration.

As consideration for the material financial benefit to be derived by Master Lesseeas a result of Lessor’s entering into the Master Lease, Master Lessee acknowledges receipt of good and valuable consideration for Master Lessee’s entry into this Assignment.

# Lessor Requests.

Within ten (10) business days of written request of Lessor, Master Lesseewill promptly furnish to Lessor copies of all Leases, licenses, books, records, monthly reports, statements of account, budgets, third party payment documentation, including reimbursement agreements, surveys, statements of deficiencies and plans of correction, and cost reports related to any payments or the right to receive payments from federal, state or local programs, boards, bureaus or agencies, and other items which Master Lesseeis required to maintain or otherwise maintains under the Master Lease or which Master Lesseemaintains for its own purposes with respect to the Property.

# Notice.

* 1. **Process of Serving Notice.**

All notices under this Assignment shall be:

* + 1. in writing and shall be:
       1. delivered, in person;
       2. mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
       3. sent by overnight courier; or
       4. sent by electronic mail with originals to follow by overnight courier;
    2. addressed to the intended recipient at its respective address set forth at the end of this Assignment; and
    3. deemed given on the earlier to occur of:

(A) the date when the notice is received by the addressee; or

(B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

* 1. **Change of Address.**

Any party to this Assignment may change the address to which notices intended for it are to be directed by means of notice given to the other parties to this Assignment in accordance with this Section 16.

* 1. **Default Method of Notice.**

Any required notice under this Assignment which does not specify how notices are to be given shall be given in accordance with this Section 16.

* 1. **Receipt of Notices.**

Master Lessee and Lessor shall not refuse or reject delivery of any notice given in accordance with this Assignment. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

# Counterparts.

This Assignment may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

# Governing Law.

## This Assignment shall be governed by and construed in accordance with the laws of the State, and applicable federal law, without giving effect to any conflict of law or choice of law rules that would result in the application of laws of another jurisdiction.

## In the administration or litigation of a controversy arising under or in relation to this Assignment, Master Lessee consents to the exercise of personal jurisdiction by any State court or federal court in such State. Master Lessee agrees that the State courts have subject matter jurisdiction over such controversies. If Lender elects to sue in State court, Master Lessee waives any right to remove to federal court or to contest the State court’s jurisdiction. Master Lessee waives any objection to venue in any State court or federal court in such State, and covenants and agrees not to assert any objection to venue, whether based on inconvenience, domicile, habitual residence or other ground.

# Successors and Assigns.

This Assignment shall be binding upon Master Lesseeand Lessor and their respective successors, transferees and assigns, and shall inure to the benefit of and may be enforced by Lessor and its successors, transferees and assigns. Master Lesseeshall not assign any of its rights and obligations under this Assignment without the prior written consent of Lessor.

# Entire Agreement; Amendments and Waivers.

This Assignment contains the complete and entire understanding of the parties as to its subject matter. No amendment to this Assignment will be valid unless it is made in writing and executed by the parties to this Assignment. No specific waiver or forbearance for any breach of any of the terms of this Assignment shall be considered as a general waiver of that or any other term of this Assignment.

# Relationship of Parties.

Nothing contained in this Assignment shall constitute Lessor as a joint venturer, partner or agent of Master Lessee, or render Lessor liable for any debts, obligations, acts, omissions or representations of Master Lesseeexcept as provided herein.

# Enforceability.

The determination of invalidity, illegality or unenforceability of any provision of this Assignment, pursuant to judicial decree, shall not affect the validity or enforceability of any other provision of this Assignment, each of which shall remain in full force and effect.

# Construction.

* 1. The captions and headings of the sections of this Assignment are for convenience only and shall be disregarded in construing this Assignment.
  2. Any reference in this Assignment to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Assignment or to a Section or Article of this Assignment. All exhibits and schedules attached to or referred to in this Assignment, if any, are incorporated by reference into this Assignment.
  3. Any reference in this Assignment to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.
  4. Use of the singular in this Assignment includes the plural and use of the plural includes the singular.
  5. As used in this Assignment, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.
  6. Whenever Lessor’s or Master Lessee’s knowledge is implicated in this Assignment or the phrase “to Lessor’s knowledge,” “to Master Lessee’s knowledge” or a similar phrase is used in this Assignment, Lessor’s or Master Lessee’s knowledge or such phrase(s) shall be interpreted to mean to the best of Lessor’s or Master Lessee’s knowledge after reasonable and diligent inquiry and investigation.
  7. Unless otherwise provided in this Assignment, if Lessor’s approval, designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such approval, designation, determination, selection, estimate, action or decision shall be made in Lessor’s sole and absolute discretion.
  8. All references in this Assignment to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
  9. “Lessor may” shall mean at Lessor’s discretion, but shall not be an obligation.

# Schedules.

The schedules, if any, attached to this Assignment are incorporated fully into this Assignment by this reference and each constitutes a substantive part of this Assignment.

**ATTACHED SCHEDULE.** The following Schedule is attached to this Assignment:

Schedule I State-Specific Provisions

**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF, Lessor and Master Lesseehave executed this Assignment as of the day and year first written above.

|  |
| --- |
| **LESSOR**: |
| By: (SEAL)  Name:  Title: |
| The name and chief executive office of Lessor (as Secured Party) are:  Secured Party Name:  Secured Party Chief Executive Office Address:        **[INSERT LESSOR NOTICE ADDRESS IF DIFFERENT]** |

|  |
| --- |
| **MASTER LESSEE**: |
| By: (SEAL)  Name:  Title: |
| The name, chief executive office and organizational identification number of Master Lessee (as Debtor under any applicable Uniform Commercial Code) are:  Debtor Name/Record Owner:  Debtor Chief Executive Office Address:        Debtor Organizational ID Number:  **[INSERT MASTER LESSEE NOTICE ADDRESS IF DIFFERENT]** |

[INCLUDE APPROPRIATE ACKNOWLEDGMENTS]

**EXHIBIT A**

**TO TENANT/LANDLORD SUBORDINATION AND ASSIGNMENT AGREEMENT**

**Legal Description**

(Insert complete Legal Description of the Property)

**EXHIBIT B**

**TO TENANT/LANDLORD SUBORDINATION AND ASSIGNMENT AGREEMENT**

**(Master Lease Terms)**

|  |  |
| --- | --- |
| **Master Lease Terms** | |
| Agreement Name and Parties |  |
| Master Lease Commencement Date |  |
| Master Lease Rent Commencement Date |  |
| Primary Term of Master Lease |  |
| Renewal Options under Master Lease | \_\_\_\_ ( ) options of \_\_\_\_ ( ) years each |
| Master Lease Security Deposit | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Rights or options to purchase, rights of first refusal to purchase or rights of first offer to purchase | [*Describe any such rights held by Master Lessee with respect to the Property*] |

**SCHEDULE I TO**

**TENANT/LANDLORD SUBORDINATION AND ASSIGNMENT AGREEMENT**

**(MASTER LEASE)**

**State-Specific Provisions**

**[DRAFTING NOTE: INCLUDE AND UNBRACKET ANY OF THE FOLLOWING PROVISIONS APPLICABLE TO THE STATE AND DELETE ALL OTHERS:]**

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in this Assignment to which this Schedule is attached.

2. The additional provision(s) set forth below shall also apply and are incorporated into this Assignment:

ALABAMA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In addition, Master Lessee waives all benefits, rights and/or defenses which might otherwise be available to Master Lessee under Alabama Code Sections 8-3-1 through 8-3-42 and all rights of exemption under the laws of the State of Alabama.**]**

ARIZONA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In addition, Master Lessee waives, to the fullest extent allowed by applicable law, all of Master Lessee’s rights under Sections 12-1566, 12‑1641, et seq., 44-142, 47-3419, and 47-3605 of Arizona Revised Statutes, and Rule 17(e) of the Arizona Rules of Civil Procedure, as now in effect or as modified or amended in the future and any similar or analogous other present or future statutory or common law or procedural rule of any jurisdiction relevant to guarantors, indemnitors, sureties, co‑makers and/or accommodation parties. Master Lessee’s obligations under this Assignment may be enforced by Lender in an action regardless of whether a trustee’s sale is held.**]**

**[DRAFTING NOTE: ADD THE FOLLOWING FOR ANY MASTER LESSEE THAT IS A MARRIED INDIVIDUAL:**

The following provision is hereby added to the end of this Assignment as Section [\_\_]:

**[\_\_]. Arizona Specific Provision.**

Any person signing this Assignment solely as the spouse of Master Lessee consents that this Assignment will bind only Master Lessee’s interest in (i) Master Lessee’s separate property and (ii) all of Master Lessee’s interest in any community property, and such consent by the spouse of Master Lessee will not bind such spouse’s interest in any such marital community property, or such spouse’s separate property to the payment and performance of Master Lessee’s obligations under this Assignment.

Master Lessee Spouse’s Signature:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

Master Lessee Spouse’s Printed Name:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Master Lessee Spouse’s Address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**]**

ARKANSAS: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In recognition of the liability of Master Lessee pursuant to this implied guaranty, Master Lessee waives and relinquishes any and all rights, defenses and benefits limiting or exonerating the liability of Master Lessee including the rights and defenses of an “accommodation party” pursuant to the Arkansas Uniform Commercial Code, Ark. Code Ann. Section 4-3-101 et seq.**]**

CALIFORNIA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) To the extent not addressed elsewhere by this Assignment, Master Lessee expressly waives any and all benefits, rights and/or defenses which might otherwise be available to Master Lessee under the following sections of the California Civil Code: Section 2809 (the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal), Section 2810 (a surety is not liable if, for any reason other than the mere personal disability of the principal, there is no liability upon the part of the principal at the time of execution of the contract, or the liability of the principal thereafter ceases), Section 2819 (a surety is exonerated if the creditor alters the original obligation of the principal without the consent of the surety), Section 2822 (a surety’s right to have the principal designate the portion of any obligation to be satisfied by the surety in the event that the principal provides partial satisfaction of such obligation), Section 2845 (a surety is exonerated to the extent that the creditor fails to proceed against the principal, or to pursue any other remedy in the creditor’s power which the surety cannot pursue and which would lighten the surety’s burden), Section 2846 (a surety may compel the principal to perform the obligation when due), Section 2847 (if a surety satisfies the principal obligation, or any part thereof, the principal is obligated to reimburse the surety for the amounts paid by the surety), Section 2850 (whenever the property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation), Section 2899 (where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in a certain order, on the demand of any party interested) and Section 3433 (where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons).

(f) To the extent not addressed elsewhere by this Assignment, Master Lessee expressly agrees not to exercise or take advantage of any rights, benefits and/or defenses which might be available to Master Lessee under the following California Civil Code Sections, unless and until the guaranteed obligations shall have been indefeasibly paid and satisfied in full: Section 2839 (performance of the principal obligation, or an offer of such performance, duly made as provided in the Civil **Code**, exonerates a surety), Section 2848 (a surety, upon satisfaction of the obligation of the principal, is entitled to enforce remedies which the creditor then has against the principal and to pursue his co-sureties or other third parties after the surety has satisfied the underlying debt, or at least more than his share of it), and Section 2849 (a surety is entitled to the benefit of security held by the creditor for the performance of the principal obligation held by the creditor).

(g) Master Lessee waives any defense that Master Lessee may have by reason of the failure of Lender to provide Master Lessee with any material facts about Lessor, including any information respecting the financial condition of Lessor, Lessor’s ability to perform the obligations in the Loan Documents or the sufficiency of the collateral granted under the Loan documents.

(h) Master Lessee waives any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person, or the failure of Lender to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person.

(i) Master Lessee waives all rights of indemnification and contribution and any other rights and defenses that are or may become available to Master Lessee by reason of Sections 2787 to 2855, inclusive, of the California Civil Code. Master Lessee hereby waives the benefits of any right of discharge under any and all statutes or other laws relating to Master Lessees or sureties and any other rights of Master Lessees or sureties thereunder.

(j) Master Lessee waives all rights and defenses that Master Lessee may have because the debtor’s (Lessor’s) debt is secured by real property. This means, among other things:

(1) The creditor (Lender) may collect from Master Lessee without first foreclosing on any real or personal property collateral pledged by the debtor.

(2) If the creditor forecloses on any real property collateral pledged by the debtor: (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) the creditor may collect from Master Lessee even if the creditor, by foreclosing on the real property collateral, has destroyed any right Master Lessee may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses Master Lessee may have because the debtor’s debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the Code of Civil Procedure.

Master Lessee waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Master Lessee’s rights of subrogation and reimbursement against the principal (Lessor) by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(k) Any summary of statutory provisions is for convenience only, and Master Lessee has read and is familiar with the entirety of such provisions.**]**

COLORADO: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In addition, Master Lessee waives the benefit of C.R.S. Sections 13-50-101 through 13-50-103, inclusive.**]**

CONNECTICUT: **[**The following provision is hereby added to the end of this Assignment as Section [\_\_]:

**[\_\_]. Commercial Transaction.**

MASTER LESSEE ACKNOWLEDGES THAT THIS IS A “COMMERCIAL TRANSACTION” AS SUCH IS DEFINED IN CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, AS AMENDED. MASTER LESSEE FURTHER ACKNOWLEDGES THAT, PURSUANT TO SUCH SECTION, MASTER LESSEE HAS A RIGHT TO NOTICE OF AND HEARING PRIOR TO THE ISSUANCE OF ANY “PREJUDGMENT REMEDY.” NOTWITHSTANDING THE FOREGOING, MASTER LESSEE HEREBY WAIVES ALL RIGHTS TO SUCH NOTICE, JUDICIAL HEARING OR PRIOR COURT ORDER IN CONNECTION WITH ANY SUIT ON THIS ASSIGNMENT.**]**

GEORGIA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In addition, Master Lessee waives the benefit of O.C.G.A. Section 10-7-24.

(f) Master Lessee also waives any and all defenses, claims and discharges of Lessor, or any other obligor, pertaining to the Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing in this subparagraph (f), Master Lessee will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Lessor or any other person liable in respect of any of the Indebtedness, or any setoff available against Lender to Lessor or any such other person, whether or not on account of a related transaction. Master Lessee expressly agrees that Master Lessee shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any deed to secure debt or security interest securing the Indebtedness, whether or not the liability of Lessor or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. Master Lessee shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though Lessor’s obligations had not been discharged.**]**

**[**Section 7 of this Assignment is hereby amended by adding the following new language at the end thereof:

[o][p]Master Lessee acknowledges and agrees that Lender has the right to collect on other collateral and to apply the receipts and proceeds therefrom to the amount due on the Indebtedness and that such application of such receipts and proceeds shall not reduce, affect or impair the liability of Master Lessee under this Assignment.**]**

HAWAII: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In addition, Master Lessee waives the benefit of HRS Chapter 651 to the fullest extent permitted by law.**]**

IDAHO: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) Master Lessee hereby releases, relinquishes and waives, to the fullest extent allowed by law, all rights and benefits, if any, under and by virtue of the homestead exemption laws of the jurisdiction in which the Property is located, if applicable.**]**

IOWA: **[**The following provision is hereby added to the end of this Assignment as Section [\_\_]:

**[\_\_]. No Oral Agreements.**

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS ASSIGNMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS ASSIGNMENT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS ASSIGNMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**]**

KENTUCKY: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

Notwithstanding anything in this Assignment to the contrary, the instruments being guaranteed, within the meaning of K.R.S. 371.065, are the Note, the Loan Agreement and the Security Instrument, but only to the extent of the Indebtedness. “**Indebtedness**” means the principal of, interest on and all other amounts due at any time under the Note (as defined in the Loan Documents), the Loan Agreement (as defined in the Loan Documents), or the Security Instrument, or any or all of them, including Prepayment Premiums (as defined in the Loan Documents), late charges, interest at the Default Rate (as defined in the Loan Documents) and advances as provided in the Loan Agreement to protect the security of the Security Instrument but expressly excludes any obligations under the Environmental Indemnity Agreement (as defined in the Loan Documents) or other Loan Documents (including any obligations of Lessor under such other Loan Documents that are incorporated into or otherwise included in the obligations of Lessor under, the Note, Loan Agreement or Security Instrument). The Security Instrument is from Lessor for benefit of Lender and is as of the date of this Assignment.**]**

LOUISIANA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In addition, Master Lessee waives any right to revoke this Assignment as to any future advances made by Lender to protect Lender’s interest in the Property.**]**

MAINE: **[**Section 20 of this Assignment is hereby amended by adding the following new language to the end thereof:

Further, Master Lessee acknowledges that LESSOR MAY NOT MAINTAIN ANY ACTION ON ANY AGREEMENT WITH LENDER TO LEND MONEY, EXTEND CREDIT, FORBEAR FROM COLLECTION OF THE INDEBTEDNESS OR MAKE ANY OTHER ACCOMMODATION FOR THE REPAYMENT OF THE INDEBTEDNESS FOR MORE THAN $250,000, UNLESS THE AGREEMENT ON WHICH THE ACTION IS BROUGHT, OR SOME MEMORANDUM OF IT, IS IN WRITING AND SIGNED BY AN INDIVIDUAL AUTHORIZED TO SIGN FOR LENDER.**]**

MINNESOTA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In addition, to the extent permitted by applicable law, Master Lessee waives the benefit of Minnesota Statutes Section 582.30, and Master Lessee further specifically agrees that, upon a Foreclosure Event, and in the event the proceeds thereof are not sufficient to pay in full the sums which Master Lessee has herein agreed to pay, Master Lessee shall be and hereby is expressly made liable to Lender for the amount of the deficiency, notwithstanding any provision of any law or contract which may prevent Lender from fully enforcing such deficiency against, or collecting such deficiency from, Lessor, or its successor or assigns, or which provides that the Indebtedness secured by the Security Instrument has been satisfied as the result of the foreclosure thereof or a sale thereunder.**]**

NEVADA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) any and all benefits which might otherwise be available to Master Lessee as guarantor under any applicable laws, including, to the extent permitted in Nevada Revised Statutes Section 40.495(2), the benefits of the one-action rule under Nevada Revised Statutes Section 40.430, and to the extent permitted under Nevada Revised Statutes Section 104.3605(9), discharge under Nevada Revised Statutes Section 104.3605.**]**

NEW MEXICO: **[**The following provision is hereby added to the end of this Assignment as Section [\_\_]:

**[\_\_]. No Oral Agreements.**

Pursuant to Section 58-6-5 NMSA 1978, a contract, promise or commitment to loan money or to grant, extend or renew credit, or any modification thereof, in an amount greater than $25,000 not primarily for personal, family or household purposes made by a financial institution is not enforceable unless made in writing and signed by the party to be charged or that party’s authorized representatives.**]**

NORTH

CAROLINA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) Master Lessee also waives, to the fullest extent permitted by law, all rights, including, without limitation, all rights granted by Sections 26-7 through 26-9, inclusive, of the North Carolina Statutes, to require Lender to:

(1) proceed against or exhaust any collateral held by Lender to secure the repayment of the Indebtedness;

(2) proceed against or pursue any remedy it may now or hereafter have against Lessor or any guarantor, or, if Lessor or any guarantor is a partnership, any general partner of Lessor or general partner of any guarantor; or

(3) demand or require collateral security from Lessor, any other guarantor or any other person or entity as provided by applicable law or otherwise.**]**

OKLAHOMA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) Master Lessee further waives, to the fullest extent permitted by applicable law, any right to revoke this Assignment as to any future advances by Lender under the Security Instrument to protect its interest in the Property. If Lender elects to enforce this Assignment before, or without, enforcing the Security Instrument, Master Lessee waives any right, whether pursuant to 12 Okla. Stat. Section 686 or otherwise, to require Lender to set off the value of the Property against the Indebtedness. Master Lessee also hereby specifically waives all defenses, counterclaims, set-offs, benefits and rights which Master Lessee as guarantor might now or in the future have pursuant to 12 Okla. Stat. Section 686 (1991), 12A Okla. Stat. Section 3-605 (1992) and 15 Okla. Stat. Sections 323, 334, 335, 337, 338, 339, 341 and 344 (1991).**]**

OREGON: **[**The following provision is hereby added to the end of the Guaranty as Section [\_\_]:

**[\_\_]. No Oral Agreements.**

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDER CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY LESSOR’S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY LENDER TO BE ENFORCEABLE.**]**

SOUTH

CAROLINA: **[**The following provision is hereby added to the end of this Assignment as Section [\_\_]:

**[\_\_]. South Carolina State Specific Provision.**

The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty (30) days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE PROPERTY.

**MASTER LESSEE**:

By: (SEAL)

Name:

Title: **]**

TENNESSEE: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In addition, Master Lessee waives (i) the rights and benefits of T.C.A. § 47-12-101 (notice requiring creditor to sue – creditors inaction) and T.C.A. § 47-3-118(f) (action to enforce obligation of a party to pay must be commenced within six (6) years after due date), and (ii) all defenses based on suretyship, impairment of collateral or common-law.**]**

TEXAS: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In addition, Master Lessee waives the benefit of any right of discharge under Chapter 43 of the Texas Civil Practice and Remedies Code and all other rights of sureties and guarantors thereunder.

(f) Master Lessee waives all rights to contest any deficiency asserted by Lender as set forth in Texas Property Code 51.003, 51.004 and 51.005.**]**

VERMONT: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) Master Lessee expressly waives the benefit of Section 9A V.S.A. § 3-605.**]**

VIRGINIA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) Guarantor expressly waives the benefit of Va. Code §§ 49-25 and 49-26.**]**

WASHINGTON: **[**The following provision is hereby added to the end of this Assignment as Section [\_\_]:

**[\_\_]. No Oral Agreements.**

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**]**

WEST VIRGINIA: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) In addition, Master Lessee waives the benefit of W.Va. Code Sections 45-1-1, et seq.**]**

WISCONSIN: **[**Section 6 of this Assignment is hereby amended by adding the following new language to the end thereof:

(e) Master Lessee agrees to the provisions of Section 846.101 or 846.103 of the Wisconsin Statutes, whichever is applicable, or any successor provision, permitting Lender, at its option, upon waiving the right to judgment for deficiency, to hold a foreclosure sale of the Land (as defined in the Loan Documents) and Improvements (as defined in the Loan Documents) three (3) months after a foreclosure judgment is entered (if Section 846.103 is applicable) or six (6) months after a foreclosure judgment is entered (if Section 846.101 is applicable). Upon revocation by written notice or actual notice of death, this Assignment and the Master Lease shall continue in full force and effect as to all obligations contracted for or incurred before revocation, and as to them Lender shall have the rights provided by this Assignment as if no revocation has occurred. Any renewal, extension or increase in the interest rate of any such obligation, whether made before or after revocation, shall constitute an obligation contracted for or incurred before revocation. Obligations contracted for or incurred before such revocation shall also include credit extended after such revocation pursuant to commitments made by Lender before such revocation; and

(f) Master Lessee also waives any and all defenses, claims and discharges of Lessor, or any other obligor, pertaining to the Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing in this subparagraph (f), Master Lessee will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Lessor or any other person liable in respect of any of the Indebtedness, or any setoff available against Lender to Lessor or any such other person, whether or not on account of a related transaction. Master Lessee expressly agrees that Master Lessee shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any deed to secure debt or security interest securing the Indebtedness, whether or not the liability of Lessor or any other obligor for such deficiency is discharged pursuant to statute, judicial decision, waiver or otherwise. Master Lessee shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though Lessor’s obligations had not been discharged and shall only be credited for the amount of proceeds actually received by Lender at the foreclosure sale.**]**

**[DRAFTING NOTE: IF MASTER LESSEE IS A MARRIED WISCONSIN RESIDENT, ADD THE FOLLOWING:**

The following provision is hereby added to the end of this Assignment as Section [\_\_]:

**[\_\_]. Wisconsin Specific Provision.**

**MARITAL PURPOSE STATEMENT**

The undersigned Master Lessee acknowledges and agrees that Master Lessee’s obligations under the foregoing Assignment are incurred in the interest of Master Lessee’s marriage or family.

Print Name:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Master Lessee Initials]