Prepared by, and after recording

return to:

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

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

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**PROPERTY LEVEL ASSIGNMENT OF LEASES AND RENTS**

**(Delaware Statutory Trust)**

**PROPERTY LEVEL ASSIGNMENT OF LEASES AND RENTS  
(Delaware Statutory Trust)**

This PROPERTY LEVEL ASSIGNMENT OF LEASES AND RENTS (Delaware Statutory Trust) (this “**Assignment**”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_, by (a) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (together with its successors and assigns, “**Master Lessee**”), to (b) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (together with its successors and assigns, “**Lessor**”).

**Recitals:**

A. Lessor [owns] [is acquiring] a multifamily residential property known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and located in **[INSERT COUNTY AND STATE]** (the “**State**”) as more particularly described on Exhibit A attached hereto (the “**Mortgaged Property**”).

B. Master Lessee is the tenant under that certain **[**Lease Agreement or Master Lease – **DRAFTING NOTE: ADD TITLE OF LEASE]**, between Master Lessee, as tenant and Lessor, as landlord, for the lease and operation of the Mortgaged Property (as the same may have been amended to date and as may be further amended and modified from time to time, the “**Master Lease**”).

C. Master Lessee is a party to or otherwise has rights with respect to and interests in the Leases, Rents and UCC Collateral (collectively, the “**Assigned Property**”).

D. As a condition to Lessor agreeing to master lease the Mortgaged Property to Master Lessee, Lessor requires Master Lessee, and Master Lessee is willing to, assign all of its interest in the Assigned Property to Lessor.

E. Master Lessee is willing to consent to this Assignment and to perform its obligations under this Assignment for Lessor, and Lessor’s successors and assigns in interest.

**AGREEMENTS:**

NOW, THEREFORE, for good and valuable consideration, including the material financial benefit to be derived by Master Lessee as a result of Lessor’s approval of the Master Lease, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Master Lessee and Lessor agree as follows:

Definitions; Parties.

Capitalized terms used in this Agreement shall have the meanings set forth in Schedule 1 attached hereto. Any capitalized terms used and not specifically defined herein shall have the meanings given to such terms in the Subordination Agreement (DST Master Lease), the Loan Agreement (as defined in the Subordination Agreement (DST Master Lease)), or the Security Instrument (as defined in the Subordination Agreement (DST 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, Master Lessee hereby pledges, assigns, and grants to Lessor a continuing security interest in the 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 a Master Lease Termination Event 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 Lessor’s and Master Lessee’s signatures below which 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 Documents and the Subordination Agreement (DST Master Lease), the UCC Collateral will not be removed from the Mortgaged 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.

## 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 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, notwithstanding anything to the contrary contained in the Master Lease, Master Lessee absolutely and unconditionally assigns and transfers to Lessor any interest it has in all Leases and Rents. It is the intention of Master Lessee to establish present, absolute and irrevocable transfers and assignments to Lessor of all Rents and to authorize and empower Lessor to collect and receive all Rents without the necessity of further action on the part of Master Lessee. Master Lessee and Lessor intend these assignments of Leases and 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 Rents are not enforceable by their terms under the laws of the Property Jurisdiction, then it is the intention of Master Lessee that in this circumstance this Assignment create and perfect a lien on Leases and Rents in favor of Lessor to secure the obligations of Master Lessee under this Assignment and under the other Master Lease Documents, which lien shall be effective as of the date of this Assignment.

## Until a Master Lease Termination Event has occurred, 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 the Master Lease Documents), and to collect and receive all Rents, to hold all Rents in trust for the benefit of Lessor, and, if applicable, to apply all Rents to pay the Master Lease Rent, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property. So long as no Master Lease Termination Event has occurred (and no event which, with the giving of notice or the passage of time, or both, would constitute a Master Lease Event of Default has occurred and is continuing), the 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 Rents under this Assignment; provided that Rents shall be subject to the provisions of the Subordination Agreement (DST Master Lease) including the lockbox provisions in Section 11 of the Subordination Agreement (DST Master Lease) and the requirement that all Rents be deposited into the Clearing Account.

## The acceptance by Lessor of the assignment of the Leases and Rents pursuant to this Section 3 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 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 Mortgaged Property. Prior to Lessor’s actual entry upon and taking possession and control of the Mortgaged Property, 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 Mortgaged Property; or

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

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

## Lessor shall be liable to account only to Master Lessee and only for 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 Mortgaged 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. Any entering upon and taking control of the Mortgaged Property by Lessor, and any application of Rents as provided in this Assignment, shall not cure or waive any Default or invalidate any other right or remedy of Lessor under applicable law or provided for in this Assignment or any other Master Lease Document.

# Master Lessee Representations and Warranties.

Master Lessee hereby represents and warrants that all representations and warranties with respect to the Mortgaged Property and the Master Lessee set forth in the Loan Documents are true and correct as of the date hereof.

# Master Lessee Covenants.

Master Lessee acknowledges and agrees to comply with all the Operating Covenants, and all covenants set forth in the Subordination Agreement (DST Master Lease) (including the lockbox requirements described in Section 11 thereof), and shall cooperate with Lessor to allow Lessor to comply with the Operating Covenants. Master Lessee acknowledges and agrees that pursuant to the Guaranty and the other Loan Documents, Lessor and Guarantor shall be liable to Lender (as defined in the Subordination Agreement (DST Master Lease)) for certain recourse events as further described in Article 3 of the Loan Agreement.

# Default; Remedies.

## Upon the occurrence of a Master Lease Termination Event, Lessor shall have the right to exercise all rights and remedies under this Assignment and the Master Lease Documents, at law or in equity, including the remedies of a secured party under the UCC. In exercising any remedies, Lessor may exercise its remedies against the Assigned Property separately or together, and in any order, without in any way affecting the availability of Lessor’s other remedies.

## If a Master Lease Termination Event has occurred, Lessor shall have the right any time thereafter to terminate the Master Lease without cause and without liability or payment of any cancellation or termination fee, penalty or other liability, by giving written notice to Master Lessee of its election to do so. Lessor’s notice shall specify the date of termination. Such termination right shall supersede any limitation on termination rights contained in the Master Lease, and serve as consideration for the material benefit derived by Master Lessee from Lessor’s entering into 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 Mortgaged 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 Mortgaged Property. If a Master Lease Termination Event has occurred, without the necessity of Lessor entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, the revocable license granted to Master Lessee pursuant to Section 3(b) above 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 Rents as they become due and payable, including Rents then due and unpaid. After a Master Lease Termination Event has occurred, Master Lessee authorizes Lessor to collect, sue for and compromise Rents. All Rents shall be subject to the lockbox provisions described in Section 11 of the Subordination Agreement (DST Master Lease).

## After a Master Lease Termination Event has occurred or any action or proceeding is commenced which purports to affect the Mortgaged Property, including Lessor’s obligations to Lender under the Loan Documents (including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of environmental laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent), 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 Mortgaged 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 Mortgaged Property, including the execution, cancellation or modification of the Leases, the collection of all Rents (subject to the terms of the Subordination Agreement (DST Master Lease)), the making of repairs to the Mortgaged 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 Mortgaged 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 Rents, protecting the Mortgaged Property or the security of this Assignment, or for such other purposes as Lessor in its discretion may deem necessary or desirable. Any amounts disbursed by Lessor under this Section 6(c), or under any other provision of this Assignment that treats such disbursement as being made under this Section 6(c) due to Master Lessee’s failure to perform its obligations under this Assignment or the Master Lease Documents, shall be immediately due and payable to Lessor from Master Lessee.

## Subject to the terms of the Subordination Agreement (DST Master Lease), if a Master Lease Termination Event has occurred, Lessor or its designee may (in Lessor’s sole discretion) direct Master Lessee to pay Lender directly all Master Lease Rent and other payments due under the Master Lease, and terminate Master Lessee’s authority to collect Accounts and notify the account debtors that the Accounts have been assigned to Lender and, either in its own name or that of Master Lessee, or both, demand, collect (including, through any lockbox arrangement, cash management arrangement or depositary agreement prescribed by Lender pursuant to the Loan Documents), receive, give 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 immediately due and payable to Lessor from Master Lessee. If Lender is collecting the Accounts as above provided, Lender shall have the right to receive, endorse, assign and deliver in Lender’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 Lessee hereby waives notice of presentment, protest and non-payment of any instrument so endorsed. If Lender is collecting the Accounts directly as above provided, Master Lessee hereby constitutes Lender or Lender’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 Lender’s possession; notify the U.S. Post Office to change the address for delivery of mail addressed to Master Lessee for the Mortgaged Property to such address as Lender may designate; and receive, open and dispose of all such mail addressed to Master Lessee.

## If a Master Lease Termination Event has occurred, 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 a Master Lease Termination Event has occurred, have the right, in addition to all other rights provided herein or by law, to enter without legal process upon the Mortgaged 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 Mortgaged 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 Mortgaged Property.

# No Assumption of Obligations.

Master Lessee agrees that Lessor does not assume any obligations or duties of Master Lesseeconcerning the Master Lease until and unless Lessor shall exercise its rights hereunder.

# Power of Attorney.

Master Lessee hereby 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 or in the name of Lessor 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.

# Indemnification.

By executing this Assignment, Master Lessee agrees to indemnify and hold harmless Lessor and its successors and assigns from and against any and all losses, claims, damages, liabilities and expenses including attorneys’ fees and costs, which may be imposed or incurred in connection with Master Lessee’s obligation under this Assignment, other than to the extent arising as a result of the willful misconduct or gross negligence of Lessor as determined by a court of competent jurisdiction pursuant to a final non-appealable court order.

# 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 10.

* 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 10.

* 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; Venue and Consent to Jurisdiction.

* 1. **Governing Law.**

The validity, enforceability, interpretation, and performance of this Assignment shall be governed by the laws of the State without giving effect to any conflict of law or choice of law rules that would result in the application of the laws of another jurisdiction.

* 1. **Venue; Consent to Jurisdiction.**

In the administration or litigation of a controversy arising under or in relation to this Assignment or the security for the Indebtedness, Master Lessee and Lessor each consents to the exercise of personal jurisdiction by State court or federal court in such State. Master Lessee and Lessor each agrees that the State courts have subject matter jurisdiction over such controversies. If Lender elects to sue in State court, Master Lessee and Lessor each waive any right to remove to federal court or to contest the State court’s jurisdiction. Master Lessee and Lessor waive 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 their respective 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 Master Lessee’s knowledge is implicated in this Assignment or the phrase “to Master Lessee’s knowledge” or a similar phrase is used in this Assignment, Master Lessee’s knowledge or such phrase(s) shall be interpreted to mean to the best of 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 and Exhibits.

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

**ATTACHED EXHIBITS.** The following Exhibits are attached to this Agreement:

Exhibit A Legal Description

**ATTACHED SCHEDULES.** The following Schedules are attached to this Agreement:

Schedule 1 Definitions

Schedule 2 Exceptions

**[Remainder of Page Intentionally Blank]**

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

|  |  |  |
| --- | --- | --- |
|  | **MASTER LESSEE**: | |
|  | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] |

**[ADD APPROPRIATE NOTARY BLOCK]**

|  |  |
| --- | --- |
|  | 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

|  |  |  |
| --- | --- | --- |
|  | **LESSOR**: | |
|  | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] |

**[ADD APPROPRIATE NOTARY BLOCK]**

|  |  |
| --- | --- |
|  | The name and chief executive office of Lessor (as Secured Party) are:  Secured Party Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Secured Party Chief Executive Office Address:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Debtor Organizational ID Number: \_\_\_\_\_\_\_\_\_\_\_\_\_ |

**EXHIBIT A**

**Legal Description**

**SCHEDULE 1**

**Definitions**

“**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 Mortgaged Property.

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

“**Bankruptcy Event**” means any one or more of the following:

(a) the commencement, filing or continuation of a voluntary case or proceeding under one or more of the Insolvency Laws by Master Lessee;

(b) the acknowledgment in writing by Master Lessee (other than to Lender in connection with a workout)that it is unable to pay its debts generally as they mature;

(c) the making of a general assignment for the benefit of creditors by Master Lessee;

(d) the commencement, filing or continuation of an involuntary case or proceeding under one or more Insolvency Laws against Master Lessee; or

(e) the appointment of a receiver (other than a receiver appointed at the direction or request of Lender), liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over Master Lessee or any substantial part of the assets of Master Lessee;

provided, however, that any proceeding or case under (d) or (e) above shall not be a Bankruptcy Event until the ninetieth day after filing (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement or active participation of (1) Lessor, Master Lessee, Guarantor, or Key Principal, (2) any Person Controlling Lessor, Master Lessee, Guarantor, or Key Principal, or (3) any Person Controlled by or under common Control with Lessor, Master Lessee, Guarantor, or Key Principal (in which event such case or proceeding shall be a Bankruptcy Event immediately).

“**Default**” means:

## a default, a breach of a covenant or a failure to perform any obligation under this Assignment or any other Master Lease Document beyond the period, if any, specified in such Master Lease Document within which Master Lessee may cure such default;

## the failure of any representation or warranty in this Assignment or any other Master Lease Document to be true and correct when made; and

## any other Master Lease Event of Default.

“**Goods**” means all of the following that are (a) located on the Mortgaged Property, (b) used or intended to be used now or in the future in connection with the management or operation of the Mortgaged Property, or (c) held or generated by Master Lessee with respect to the Mortgaged Property: 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); and other tangible personal property which is used now or in the future in connection with the management or operation of the Mortgaged Property or is located on the Mortgaged Property.

“**Land**” means the land described in Exhibit A.

“**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 Mortgaged Property, or any portion of the Mortgaged 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.

“**Lessor**” has the meaning as defined in the Preamble.

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

“**Master Lease Event of Default**” has the meaning set forth in the Subordination Agreement (DST Master Lease).

“**Master Lease Rent**” means, individually and collectively, any rent, fees or other sums due or to become due by Master Lessee to Lessor under the Master Lease.

“**Master Lease Termination Event**” has the meaning set forth in the Subordination Agreement (DST Master Lease).

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

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

“**Operating Covenants**” has the meaning set forth in the Loan Agreement.

“**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 Mortgaged Property now or in the future, including operating agreements, surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Mortgaged Property, and all other intangible property and rights relating to the operation of, or used in connection with, the Mortgaged Property, including all governmental permits relating to any activities on the Mortgaged Property.

“**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 other services provided at the Mortgaged Property, whether now due, past due, or to become due, and tenant security deposits, exclusive of Master Lease Rent.

“**Subordination Agreement (DST Master Lease)**” means that certain Subordination Agreement (Delaware Statutory Trust Master Lease) entered into as of the date of this Assignment among Master Lessee, Lessor, and Lender, as the same may be amended, restated or modified from time to time.

“**UCC Collateral**” means, collectively, Master Lessee’s present and hereafter acquired right, title and interest in the Leases, Personalty, Rents, Accounts and contracts which, under applicable law, may be subject to a security interest under the UCC, and all products and cash and non-cash proceeds thereof.

**SCHEDULE 2**

**Exceptions**