



Doc#: 1616615045 Fee: \$58.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/14/2016 02:13 PM Pg: 1 of 11

This instrument was prepared by and,
after recording, return to:

Allen C. Balk
Meltzer, Purtil & Stelle LLC
300 South Wacker Drive, Suite 2300
Chicago, Illinois 60606

Permanent Tax Index No.:
See **Exhibit A** attached hereto

Property Address:
See **Exhibit A** attached hereto

This space reserved for Recorder's use only

ASSIGNMENT OF LEASES AND RENTS

GOLD COAST CITY APARTMENTS

THIS ASSIGNMENT OF LEASES AND RENTS dated as of ~~May~~ ^{June} 3, 2016 ("Assignment"), is executed by GOLD COAST CITY APARTMENTS LLC, a Delaware limited liability company ("Assignor"), to and for the benefit of FIRST MIDWEST BANK, its successors and assigns ("Assignee").

RECITALS:

A. Pursuant to the terms and conditions of that certain Loan Agreement of even date herewith ("Loan Agreement") between Assignor and Assignee, Assignee has extended to Assignor a loan in the principal amount of Twenty-Five Million and No/100 Dollars (\$25,000,000.00) ("Loan").

B. The Loan is evidenced by that certain Promissory Note ("Note") in the principal amount of the Loan, made of even date herewith by Assignor and made payable to the order of and delivered to Assignee.

C. The Note is secured by, *inter alia*, that certain Leasehold Mortgage and Security Agreement ("Mortgage") of even date herewith made by Assignor to Assignee conveying the leasehold interest in certain real estate ("Property") legally described in **Exhibit A** attached hereto. The Loan Agreement, the Note, the Mortgage, this Assignment and all other documents evidencing or securing the Loan are collectively referred to herein as "Loan Documents". All terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

D. As one of the conditions to make the Loan, Assignee is requiring the execution and delivery of this Assignment by Assignor.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

Handwritten notations on the right margin: a vertical list of 'Y' and 'N' characters, some with checkmarks, and a '1/11' at the bottom.

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AGREEMENTS:

1. **Grant of Security Interest.** Subject to Section 4 below, Assignor hereby absolutely and unconditionally grants, transfers, sets over and assigns to Assignee, all of the right, title and interest of Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts, condemnation awards, insurance proceeds, the right to accept or reject any offer made by any Tenant pursuant to its lease to purchase the Property, and other receivables arising out of or from the Property, which together with the property hereinafter described, is collectively referred to herein as "Premises", including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (each, a "Lease", and collectively, "Leases"), now or hereafter existing, of all or any part of the Premises, together with any other obligations of any Tenant or any guarantor of such Lease and all security deposits delivered by Tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is a present and absolute transfer and assignment of the foregoing interests (and not an assignment for additional security only) to Assignee given to secure:

(a) The payment by Assignor when due of (i) the indebtedness evidenced by the Note and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to Assignee by Assignor under or with respect to the Loan Documents; and (iii) all costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) The observance and performance by Assignor of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Assignor or any other obligor to or benefiting Assignee which are evidenced or secured by or otherwise provided in the Note, this Assignment or any of the other Loan Documents, together with all amendments and modifications thereof.

2. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee as of the date hereof that:

(a) This Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor is the lessor under all Leases;

(c) There is no other existing assignment of Assignor's entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has Assignor entered into any agreement to subordinate any of the Leases or Assignor's right to receive any of the rents, issues, income or profits assigned hereunder;

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(d) Assignor has not executed any instrument or performed any act which may prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation; and

(e) To Assignor's current, actual, knowledge, there are no material defaults by Assignor and there are no material defaults under any existing Leases, except to the extent as disclosed to Assignee in the Rent Roll or otherwise disclosed to Assignee in writing.

3. **Covenants of Assignor.** Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Except for the lease of residential apartments to individual tenants in the ordinary course of Assignor's business and consistent with commercially reasonable leasing and property management practices, Assignor shall not lease any portion of the Premises unless Assignor obtains Assignee's prior written consent to all aspects of such Lease, which consent shall not be unreasonably withheld, conditioned or delayed, and which consent shall be deemed to have been granted if Assignee fails to notify the Assignor that the Assignee's consent is being withheld within ten (10) business days after Assignee has received: (i) the Assignor's request for consent, and (ii) all other information reasonably necessary for the Assignee to adequately evaluate such request (including, without limitation, a copy of the proposed lease, credit information regarding the proposed tenant and a statement of the leasing commissions, tenant improvement costs, tenant incentives and other cost and expenses to be incurred in connection with such lease);

(b) Assignor shall, in the ordinary course of Assignor's business, observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. Assignor shall not (i) release the liability of any tenant under any Lease, (ii) release the liability of any guarantor under any guaranty of a Lease; (iii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iv) consent to any tenant's claim of a total or partial eviction, (v) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (vi) enter into any oral leases with respect to all or any portion of the Premises. Notwithstanding the foregoing, Assignor may settle disputes with tenants in default, or claiming a default, under residential leases, so long as such settlements are on commercially reasonable terms that are, in Assignor's reasonable discretion, in the best interest of Assignor and the Property, and will not compromise Assignor's ability to satisfy its payment obligations under the Loan Documents.

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder outside the ordinary course of Assignor's business more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents;

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(e) Except in the exercise of commercially reasonable property management practices, Assignor shall not alter, modify, or change the terms and provisions of any Lease or guaranty of Lease (including the obligation to pay rent), nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease; provided, however, that Assignor may cancel or terminate any Lease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Lease;

(f) Assignor shall not, without the express written consent of Assignee, convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Lease for the early termination or surrender thereof shall be paid jointly to Assignor and Assignee;

(g) Assignor shall enforce the Leases and all rights and remedies of the lessor thereunder in case of default thereunder by any tenant, subject to commercially reasonable property management practices,

(h) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear;

(i) Assignor shall not permit any Lease to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(j) Assignor shall not execute hereafter any commercial Lease unless there shall be included therein a provision providing that the tenant thereunder acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to Assignee as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by Assignee as security for tenant's performance under such Lease, and

(k) If any tenant under any Lease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which shall be applied in accordance with the provisions of Section 7 below.

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4. **Rights Prior to Default.** Prior to an Event of Default (as defined in Section 5), Assignor shall have the right and license to collect, at the time (but in no event more than thirty (30) days in advance) provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same subject to the terms of the Loan Agreement. Upon the occurrence of an Event of Default that is continuing, Assignor's right to collect such rents, issues, income and profits or to prosecute and collect under any guaranty of a Lease shall immediately terminate without further notice thereof to Assignor. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

5. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured within thirty (30) days after notice to Assignor (or such longer period as set forth in the Loan Documents), or (b) any other Event of Default described in the Note, the Mortgage or any of the other Loan Documents.

6. **Rights and Remedies Upon Default.** At any time following an Event of Default that is continuing, Assignee, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder, including under any guaranty of a Lease. This Assignment shall constitute an authorization and direction to the tenants under the Leases and any guarantor to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases and/or any guaranty of a Lease to be observed or performed by the obligors thereunder, and Assignor shall facilitate in all reasonable ways Assignee's collection of such rents, issues,

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income and profits, and upon request will execute written notices to the tenants under the Leases or any guarantor to thereafter pay all such rents and other amounts to Assignee; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate and shall be secured by this Assignment.

7. **Application of Proceeds.** All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises during the existence of any one or more Events of Default shall be applied in accordance with the Illinois Mortgage Foreclosure Law and, unless otherwise specified in such act, in such order as set forth in the Note.

8. **Limitation of Assignee's Liability.** Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default, except due to Assignee's misconduct or gross negligence. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment, except to the extent that Assignee takes actual possession of the Property. Assignor shall and does hereby agree to indemnify, defend (using counsel reasonably satisfactory to Assignee) and hold Assignee harmless from and against any and all liability, loss or damage which Assignee may incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignee incurs as a result of Assignee's gross negligence or willful misconduct. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger, except to the extent occurring after Assignee takes actual possession of the Property. Nothing set forth herein or in the Mortgage, and no exercise by Assignee of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof or of the Mortgage.

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9. **No Waiver**. Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments, and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

10. **Farther Assurances**. Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment, so long as such actions do not increase Assignor's obligations under the Loan Documents.

11. **Security Deposits**. Assignor acknowledges that Assignee has not received for its own account any security deposited by any tenant pursuant to the terms of the Leases and that Assignee assumes no responsibility or liability for any security so deposited.

12. **Severability**. If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Assignee and Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

13. **Successors and Assigns**. This Assignment is binding upon Assignor and its legal representatives, successors and assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns.

14. **Written Modifications**. This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

15. **Duration**. This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

16. **Governing Law**. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

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17. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of Assignor and Assignee, as the case may be, as specified in the Mortgage.

18. **CONSENT TO JURISDICTION.** TO INDUCE ASSIGNEE TO ACCEPT THE NOTE AND ASSIGNOR TO EXECUTE THIS ASSIGNMENT, ASSIGNOR AND ASSIGNEE IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS ASSIGNMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS. ASSIGNOR AND ASSIGNEE HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS, WAIVE PERSONAL SERVICE OF PROCESS UPON ASSIGNOR, AND AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO ASSIGNOR AT THE ADDRESS STATED IN THE MORTGAGE AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

19. **WAIVER OF TRIAL BY JURY.** ASSIGNOR AND ASSIGNEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. ASSIGNOR AND ASSIGNEE AGREE THAT THEY WILL NOT ASSERT ANY CLAIM AGAINST EACH OTHER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

[Signatures on the following page]

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IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment of Leases and Rents as of the day and year first above written.

ASSIGNOR:

GOLD COAST CITY APARTMENTS LLC, a Delaware limited liability company

By: CCA #3 LLC, a Delaware limited liability company, its Managing Member

By: _____
Name: Jonathan Holtzman
Its: Authorized Signatory

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STATE OF Michigan)
) SS.
COUNTY OF Oakland)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Jonathan Holtzman, the Authorized Signatory of CCA #3 LLC, the Managing Member of GOLD COAST CITY APARTMENTS LLC, a Delaware limited liability company ("Assignor"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Signatory, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as the free and voluntary act of said Assignor, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 23rd day of May, 2016.

Kathy L. Souder
Notary Public

KATHY L. SOUDER
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Apr 5, 2017
ACTING IN COUNTY OF Oakland

(SEAL)

My Commission Expires: _____

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EXHIBIT A

LEGAL DESCRIPTION

LAND SITUATED IN THE CITY OF CHICAGO IN THE COUNTY OF COOK IN THE STATE OF ILLINOIS:

LOT 34 (EXCEPT THE WEST 15 1/2 FEET) AND ALL OF LOTS 35 AND 36 IN LAKE SHORE DRIVE ADDITION TO CHICAGO, A SUBDIVISION OF PART OF BLOCKS 14 AND 20 IN CANAL TRUSTEE'S SUBDIVISION OF SOUTH FRACTIONAL 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN NUMBER: 17-03-221-010-0000

ADDRESS 860 NORTH DEWITT PLACE, CHICAGO, ILLINOIS 60611-5781

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When Recorded Return to:
Title Source, Inc. -
Commercial Team
662 Woodward Avenue
Detroit, MI 48226

TSI#: 6134368 jmv