

UNOFFICIAL COPY



ILLINOIS

PIN: 14-17-206-023-0000

Commonly known as:
817 W. Lakeside Place
Chicago, IL 60640

This space reserved for Recorder's use only.

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is executed by LAKESIDE PLAZA APARTMENTS, LLC, an Illinois limited liability company ("Assignor") to ALBANY BANK AND TRUST COMPANY, N.A., a national banking association, its successors and/or assigns ("Assignee"), is dated and delivered as of the 5 day of April, 2017.

RECITALS:

A. Pursuant to the terms and conditions of that certain Construction Loan and Security Agreement of even date herewith, by and among Assignee and Assignor (the "Loan Agreement"), Assignee agreed to provide a loan in the maximum principal amount of \$7,900,000 (the "Loan"). The Loan is evidenced by that certain Promissory Note of even date herewith executed by Assignor to the Assignee (the "Note").

B. A condition precedent to the Assignee's making of the Loan to the Assignor is the execution and delivery by the Assignor of this Assignment.

C. This Assignment is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Assignor of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as

PREPARED BY AND
RETURN TO:

Page | 1

4/4/2017 9:14 PM

Howard & Howard Attorneys
200 S. Michigan Ave. #1100
Chicago, IL 60604
Aaron B. Zarkowsky
4838-0099-3350, v. 3

UCRD REVIEW

Freedom Title Corporation
2260 Hicks Road
Suite 415
Rolling Meadows IL 60008

6-716799 7/4

UNOFFICIAL COPY

though set forth in full and shall be considered a part of this Assignment (the Loan Agreement, the Note, this Assignment, that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing of even date herewith made by Assignor in favor of the Assignee (the "Mortgage") and all other documents evidencing or securing the Indebtedness or delivered in connection with the making of the Loan are hereinafter referred to collectively as the "Loan Documents").

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

A G R E E M E N T S:

Definitions and Incorporation. The foregoing recitals constitute an integral part of this Assignment, evidencing the intent of the Assignor and describing the circumstances surrounding its execution. Accordingly, the recitals are, by this express reference, made a part of the covenants hereof, and this Assignment shall be construed in the light thereof. All capitalized terms which are not defined herein shall have the meanings ascribed thereto in the Loan Agreement.

Assignor does hereby absolutely and unconditionally GRANT, CONVEY, ASSIGN, TRANSFER and SET OVER unto Assignee the following:

A. All rights, interests and estates of Assignor in, to and under all leases and other agreements affecting the use, occupancy or possession of all or any portion of the land described on Exhibit A attached hereto and made a part hereof for all purposes and/or any and all improvements now or hereafter located thereon (such land and improvements being herein referred to collectively as the "Premises"); together with all renewals and extensions of such leases and other agreements and all other leases or agreements that may hereafter be entered into which cover all or any portion of the Premises, (such leases and agreements, and any renewals and extensions thereof, being herein referred to collectively as the "Leases" and individually as a "Lease" and the term "Lessee" as used herein meaning any party entitled to the use, occupancy or possession of any portion of the Premises pursuant to any Lease);

B. The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other sums of money that may now and at any time hereafter become due and payable to Assignor under the terms of the Leases (such sums being herein referred to collectively as the "Rents"), arising or issuing from or out of the Leases or from or out of the Premises or any portion thereof, including without limitation, minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises, and all of Assignor's rights to recover monetary amounts from any lessee in bankruptcy, including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under the Federal Bankruptcy Code, subject however to a license hereby granted by Assignee to Assignor to collect and receive all of the Rents, which license is limited as hereinafter provided;

UNOFFICIAL COPY

C. Any and all guaranties of payment of Rents; and

D. 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.

This Assignment is an absolute transfer and assignment of the foregoing interests to the Assignee given to secure:

(a) the payment by the Assignor when due of (i) the Loan 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 the Assignee by the Assignor under or with respect to the Loan Documents (as defined in the Note); and (iii) all costs and expenses paid or incurred by the Assignee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) the observance and performance by the Assignor of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Assignor or any other obligor to or benefiting the 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.

(all of such debts and obligations being collectively referred to herein as the "Indebtedness").

To protect and further the security of this Assignment, the Assignor agrees as follows:

1. Assignor hereby represents and warrants unto Assignee that: (a) Assignor is the sole owner of the lessor's interest in the Leases and has good title and good right to assign the Leases and the Rents hereby assigned and no other person or entity has any right, title or interest therein; (b) in all material respects, Assignor has duly and punctually performed all of the terms, covenants, conditions and warranties of the Leases that were to be kept, observed and performed by it; (c) Assignor has not executed any prior assignments of the Leases or the Rents that remain in effect as of the date of this Assignment; (d) no Rents have been anticipated and no Rents for any period subsequent to the date of this Assignment have been collected in advance of the time when the same became due under the terms of the applicable lease; (e) Assignor has performed no act or executed any other instrument which might prevent Assignee from enjoying and exercising any of its rights and privileges evidenced hereby; (f) there exists no defense, counterclaim or setoff to the payment of any Rents; and (g) there are no defaults now existing under the Leases and no event has occurred which with the passage of time or the giving or both, would constitute such a default.

2. Assignor agrees that, so long as the Indebtedness or any portion thereof shall remain unpaid, Assignor will make no further assignment, pledge, or disposition of the Leases or the Rents, nor will Assignor subordinate any of the Leases to any deed of trust or mortgage or any other

UNOFFICIAL COPY

encumbrance of any kind or permit, consent or agree to such subordination; nor will Assignor, without the Assignee's prior written consent, agree to any amendment or change in the terms of any of the Leases which materially reduces the Rents payable thereunder or increases any risk or liability of the lessor thereunder; nor will Assignor receive or collect any Rents from any present or future lessee of the Premises or any portion thereof for a period of more than one (1) month in advance of the date on which such payment is due; nor will Assignor, without Assignee's prior consent, other than in the ordinary course of business, cancel or terminate any of the Leases, accept a surrender thereof, commence an action of ejectment or any summary proceedings for dispossession of a lessee under any of the Leases; nor will Assignor convey or transfer or suffer or permit a conveyance or transfer of the Premises demised thereby or of any interest therein 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 lessee thereunder; nor will Assignor enter into any Leases or renew or extend the term of any Lease unless the Assignor obtains the Assignee's prior written consent to all aspects of such Lease or extension to Lease.

3. Assignor covenants with Assignee, for so long as the Indebtedness shall remain unpaid to: (a) observe and perform duly and punctually all the obligations imposed upon the lessor under the Leases and not to do or permit to be done anything to impair the security thereof; (b) at Assignee's request to assign and transfer to Assignee by specific Assignment of Leases and Rents, in the form of this Assignment, any and all subsequent Leases upon all or any portion of the Premises (it being understood and agreed that no such specific assignment shall be required for such subsequent Leases to be covered by and included within this Assignment as provided herein); (c) to execute and deliver at the request of Assignee all such further assurances and assignments in the Premises covered by the Leases as Assignee shall from time to time require; and (d) to deliver other records and instruments, including, without limitation, rent rolls and books of account, that Assignee shall from time to time reasonably require.

4. Until the occurrence of an Event of Default specified in the Note, the Loan Agreement or the Mortgage, or until there is a breach by Assignor of any of the covenants, warranties, or representations made by Assignor in this Assignment, Assignor shall be entitled under the license granted hereby, but limited as provided herein, to collect and enjoy the use of all of the Rents, after timely payment of the payments due on the Note. Upon the occurrence of an Event of Default specified in the Note, Loan Agreement or Mortgage, or upon a breach by Assignor of any of the covenants, warranties or representations made by Assignor in this Assignment, Assignee shall have the right, power, and privilege (but shall be under no duty) to terminate the license granted to Assignor hereunder and to exercise and enforce any or all of the following rights and remedies at any time; to take possession of the Premises and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem proper in accordance with the terms and provisions relating to taking possession of the Premises contained in the Mortgage and this Assignment, to require Assignor to transfer all security deposits to Assignee, together with all records evidencing these deposits; and either with or without taking possession of the Premises, Assignee shall have the right, power, and privilege (but shall be under no duty) immediately to demand, collect and sue for, in its own name or in the name of Assignor, all Rents, as they become due and payable, including Rents that are past due and unpaid, and to apply such Rents to the

UNOFFICIAL COPY

payment (in such order as Assignee shall determine) of: (a) all reasonable expenses of managing, operating, and maintaining the Premises, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary or desirable, all taxes, assessments, charges, claims, utility costs and premiums for insurance, the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Premises and/or collecting the Rents; and (b) principal and interest on the Note and other Indebtedness and attorney and collection fees, in such order as Assignee in its sole discretion may determine.

5. In the event Assignee exercises its rights hereunder, Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to lease the Premises, or any portion thereof, or from any other act or omission of Assignee in managing the Premises, unless such loss is caused by the willful misconduct or gross negligence of Assignee. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases by reason of this Assignment or the exercise of rights or remedies hereunder. Assignor shall and does hereby agree to indemnify, defend and hold Assignee harmless from and against any and all liability, loss or damage incurred under the Leases by reason of this Assignment or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever that may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, including, without limitation, any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any lessee under any Lease and not assigned and actually delivered to Assignee, other than any liability, loss or damage caused by the gross negligence or willful misconduct of Assignee, or any liability, loss or damage that occurs after Assignee takes possession of the Premises. Should Assignee incur any such liability under the Leases by reason of this Assignment or the exercise of rights or remedies hereunder, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney fees, shall be secured hereby and Assignor shall reimburse Assignee therefor immediately upon demand, failing which Assignee may, at its option, declare all the Indebtedness to be immediately due and payable. This Assignment shall not operate to place any responsibility upon Assignee for the control, care, management or repair of the Premises, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Premises by the tenants or by any other parties 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, licensee, employee, or stranger.

6. ASSIGNOR HEREBY AUTHORIZES AND DIRECTS THE CURRENT LESSEES OR ANY OTHER OR FUTURE LESSEE OR OCCUPANT OF THE PREMISES OR ANY PART THEREOF, UPON RECEIPT FROM ASSIGNEE OF WRITTEN NOTICE TO THE EFFECT THAT ASSIGNEE IS THEN THE HOLDER OF THE NOTE AND MORTGAGE AND THAT AN EVENT OF DEFAULT HAS OCCURRED UNDER THE NOTE, THE MORTGAGE OR UNDER THIS ASSIGNMENT, TO PAY OVER TO ASSIGNEE ALL RENTS ARISING OR ACCRUING UNDER ANY OF THE LEASES OR FROM THE PREMISES DESCRIBED THEREIN OR ANY OTHER PORTION OF THE

UNOFFICIAL COPY

PREMISES AND TO CONTINUE TO DO SO UNTIL OTHERWISE NOTIFIED BY ASSIGNEE.

7. This Assignment is primary in nature to the obligation evidenced and secured by the Note, the Mortgage and any other document given to secure and collateralize the Indebtedness. Assignor agrees that Assignee may enforce this Assignment without first resorting to or exhausting any other security or collateral; provided, however, that nothing herein contained shall prevent Assignee from suing on the Note, foreclosing the Mortgage or exercising any other right under any document securing the payment of the Note.

8. Nothing contained herein and no act done or omitted by Assignee pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note and Mortgage or a waiver or curing of any default hereunder or under the Note or the Mortgage, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Assignee under the terms of the Note and the Mortgage. The right of Assignee to collect the interest and Indebtedness and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

9. Assignee may at any time and from time to time in writing: (a) waive compliance by Assignor with any covenant herein made by Assignor to the extent and in the manner specified in such writing; (b) consent to Assignor doing any act that Assignor is prohibited from doing hereunder, or consent to Assignor failing to do any act which Assignor is required to do hereunder, to the extent and in the manner specified in such writing; or (c) release any portion of the Premises and/or the Leases, or any interest therein, from this Assignment of Leases and Rents. No such act shall in any way impair the rights of Assignee hereunder except to the extent specifically agreed to by Assignee in such writing.

10. The rights and remedies of Assignee hereunder shall not be impaired by: (a) any renewal, extension, or modification that Assignee may grant with respect to any Indebtedness; (b) any surrender, compromise, release, renewal, extension, exchange, or substitution that Assignee may grant in respect of any item of the Premises and/or the Leases or any part thereof or any interest therein; or (c) any release or indulgence granted to any endorser, guarantor or surety of any Indebtedness.

11. The rights and remedies of Assignee hereunder shall not be impaired by: (a) any renewal, extension, or modification that Assignee may grant with respect to any Indebtedness; (b) any surrender, compromise, release, renewal, extension, exchange, or substitution that Assignee may grant in respect of any item of the Premises and/or the Leases or any part thereof or any interest therein; or (c) any release or indulgence granted to any endorser, guarantor or surety of any Indebtedness. Without limiting the provisions of this Assignment, the assignment of lease and rents granted herein is intended to constitute an assignment of leases and rents pursuant to Illinois law, each as amended, and to grant to the Assignee all rights, privileges and remedies provided under such statutes. These assignments shall run with the land and shall be good and valid against the

UNOFFICIAL COPY

Assignor and all persons claiming by, under, or through the Assignor from the date of recording of this Assignment and shall continue to be operative during foreclosure or any other proceedings taken to enforce this Assignment. If any foreclosure sale results in a deficiency, the assignments shall continue as security during the foreclosure redemption period

12. A determination that any provision of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

13. The terms, provisions, representations, and warranties herein contained shall run with the land and shall inure to the benefit of, and bind, Assignor and Assignee and their respective representatives, successors and assigns, all tenants and their subtenants and assigns, and all subsequent owners of the Premises and subsequent holders of the Note and Mortgage. All references in this Assignment to Assignor or Assignee shall be deemed to include all such representatives, successors and assigns of such respective party.

14. Within this Assignment, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. The provisions of this Assignment are intended to supplement the provisions contained in the Mortgage. In the event of any conflict between the terms of this Assignment and the terms of the Mortgage, the terms of this Assignment shall prevail insofar as the Leases and Rents are concerned, but the terms of the Mortgage shall prevail in all other respects.

15. 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.

16. 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.

17. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

18. 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.

19. ASSIGNOR AND ASSIGNEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVE

UNOFFICIAL COPY

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 AGREE THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. ASSIGNOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST ASSIGNEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

20. Subject to compliance with applicable City of Chicago landlord tenant ordinances then in effect, Assignor shall cause all security deposits from any tenant pursuant to the terms of a Lease to be deposited into an account with Assignee ("Security Deposit Account"), which account is hereby pledged to Assignee as security for Assignor's obligations under the Loan Documents. Assignor acknowledges that, unless and until Assignee exercises exclusive control over the Security Deposit Account, Assignee shall not be deemed to have 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. If Assignee exercises exclusive control over the Security Deposit Account, then Assignee shall only be deemed to have received for its own account any security deposits then on deposit in the Security Deposit Account.

21. The rights and remedies of Assignee hereunder shall not be impaired by: (a) any renewal, extension, or modification that Assignee may grant with respect to any Indebtedness; (b) any surrender, compromise, release, renewal, extension, exchange, or substitution that Assignee may grant in respect of any item of the Premises and/or the Leases or any part thereof or any interest therein; or (c) any release or indulgence granted to any endorser, guarantor or surety of any Indebtedness.

(Signature Page Follows)

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned hereto has duly executed this Assignment of Rents and Leases.

LAKESIDE PLAZA APARTMENTS, LLC, an Illinois limited liability company

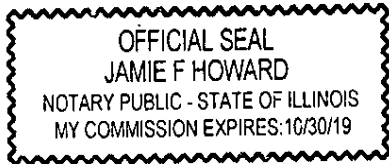
By: *Andrew J. Niewiarowski*
Name: ANDREW J. NIEWIAROWSKI
Its: Manager

STATE OF ILLINOIS _____)
COUNTY OF *Cook*) SS:

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that ANDREW J. NIEWIAROWSKI, the manager of **LAKESIDE PLAZA APARTMENTS, LLC**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal, as of the 5 day of April, 2017.

Jamie F Howard
Notary Public



Commission expires: _____

UNOFFICIAL COPY

EXHIBIT A

Legal Description

LOT 4 AND THE WEST 10 FEET OF LOT 3 IN HORACE A. GOODRICH'S SUBDIVISION OF THE SOUTH 10 RODS OF THE NORTH 30 RODS OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-17-206-023-0000

Commonly known as: 817 W. Lakeside Place, Chicago, IL 60640

Property of Cook County Clerk's Office