

UNOFFICIAL COPY

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (Assignment) is made this, December 8, 2017, by Jose R. Villegas 7812 S. Cicero Avenue Burbank, IL 60459 (Assignor), to Seggio Development LLC (Assignee).

WITNESSETH:

Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers, sets over, and assigns to Assignee, the entire interest in and to any and all leases and subleases (including all extensions and renewals thereof), now or hereafter existing (Leases), and any and all rents, issues, income, and profits of and from that certain real estate located in Cook County, Illinois, commonly known as 7800-7812 S Cicero, Burbank, IL, and legally described in Exhibit A attached hereto and made a part hereof, and all buildings, structures, and improvements now or hereafter constructed thereon (Premises).

THIS ASSIGNMENT OF RENTS IS GIVEN TO SECURE:

(a) Payment by Assignor of the indebtedness evidenced by, and observance and performance by Assignor of, each and every one of the covenants, terms, conditions, and agreements contained in a certain Mortgage Note of even date herewith (Note) in the principal sum of Two Hundred Fifty Thousand & No/100 (\$250,000) Dollars made by Assignor in favor of Assignee, and delivered to Assignee simultaneously with the execution and delivery of this Assignment; and

(b) Observance and performance by Assignor of the covenants, terms, conditions, and agreements contained in this Assignment, the Note, the Mortgage (Mortgage) of even date herewith made by Assignor to Assignee and creating a first priority mortgage lien on the Assignor's fee-simple interest in the Premises, the Continuing Guarantee (Guarantee) of even date herewith made by Jose R. (Guarantor), the Environmental Indemnity Agreement of even date herewith made by Assignor and Guarantor to Assignee, the Security Agreement of even date herewith made by Assignor to Assignee, and such other documents as are executed in connection with the Note (collectively, the "Loan Documents").

AND ASSIGNOR HEREBY COVENANTS, AGREES, REPRESENTS, AND WARRANTS AS FOLLOWS:

1. Representations of Assignor. Assignor represents and warrants to Assignee that:

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



1735429018

Doc# 1735429018 Fee \$52.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 12/20/2017 10:11 AM PG: 1 OF 8

J.P. TILLY 17-00 1491
30/5

BW

8

UNOFFICIAL COPY

(b) Assignor has not heretofore made any other assignment of its entire or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income, or profits assigned hereunder or 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; and

(c) Assignor has not heretofore executed any instrument or performed any act that may or might prevent Assignee from operating under any of the terms and provisions hereof or that would limit Assignee in such operation.

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

(a) Assignor shall not enter into any Lease on less favorable terms than the previous lease or approve, consent, or acquiesce to any sublease, written or oral, for all or any portion of the Premises, without the prior written consent of Assignee, except for a Lease or sublease that is (i) an arm's-length transaction, (ii) at a market rental rate, (iii) with respect to rental space of less than 5,000 square feet, and (iv) for a term that does not exceed two (2) years in duration (collectively, the "Approved Lease Terms").

(b) Assignor shall observe and perform all of the material covenants, terms, conditions, and agreements contained in the Leases to be observed or performed by the lessor thereunder, and shall not do or suffer to be done anything to materially impair the security thereof, or, without the express written consent of Assignee, (i) except with respect to Permitted Leases, release the liability of any tenant thereunder; or (ii) permit any tenants thereunder to withhold the payment of rent or to make monetary advances and offset the same against future rentals; or (iii) permit any tenant thereunder to claim a total or partial eviction; or (iv) except with respect to Permitted Leases, permit any tenant thereunder to terminate or cancel any Lease;

(c) Assignor shall not collect any of the rents, issues, income, or profits assigned hereunder 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 of the Leases, or any or all rents, issues, income, or profit assigned hereunder without the prior written consent of Assignee;

(e) Assignor shall not alter, modify, or change the terms and provisions of any Lease on less favorable terms than the existing lease or give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease) or approval, required or permitted by such terms and provisions, or cancel or terminate any Lease without the prior written consent of Assignee, except to the extent the foregoing comply with the Approved Lease Terms;

(f) Assignor shall not accept a surrender of any Lease, or convey or transfer, or suffer or permit a conveyance or transfer of the Premises demised under any Lease or 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;

UNOFFICIAL COPY

(g) Assignor shall not alter, modify, or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or suffer to be done anything that would terminate any such guaranty as a matter of law, without the prior written consent of Assignee, except to the extent the foregoing comply with the Approved Lease Terms;

(h) Assignor shall not waive or excuse the obligation to pay rent under any Lease;

(i) Assignor shall enforce the Leases and all rights and remedies of the lessor thereunder in case of default thereunder by any tenant;

(j) 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 of any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including attorneys' fees, in any such action or proceeding in which Assignee may appear;

(k) Assignor shall give prompt notice to Assignee of any notice of any material default on the part of the lessor with respect to any Lease received from any tenant or guarantor thereunder; and

(l) Assignor shall enforce the observance and performance of each and every material covenant, term, condition, and agreement contained in each and every Lease to be observed and performed by the tenant(s) thereunder.

3. Rights Prior to Default. So long as Assignor is not in default hereunder, Assignor shall have the right to collect at the time, but not more than [thirty (30)] days in advance, of the date provided for the payment thereof, all rents, issues, income, or profits assigned hereunder (other than security or similar deposits), and to retain, use, and enjoy the same. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

4. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Assignment:

(a) Failure by Assignor to pay any installment of the principal sum of the Note and/or any interest thereon when due under the Note;

(b) Breach of any material representation, warranty, covenant, or agreement made by Assignor in this Assignment;

(c) Any misrepresentation made by Assignor or Guarantor in any of the Loan Documents; and

(d) Any other event of default under the Note or any of the other Loan Documents, subject to any applicable cure period contained therein.

5. Rights and Remedies upon Default. Upon being granted possession of the Premises, [*] Assignee may, at its option and without any obligation to do so, without in any way waiving such Event or Events of Default, without notice to or demand on Assignor, without regard to the

UNOFFICIAL COPY

adequacy of the security for the obligations secured hereby, without releasing Assignor from any obligation hereunder, and with or without bringing any action or proceeding:

[*COMMENT: In Illinois, lenders must take actual or constructive possession of the premises before they can enforce an assignment of rents. Comerica Bank-Illinois, supra; Fidelity Mutual Life Insurance Co., supra.]

(a) Declare a default under the Guarantee and enforce all rights and remedies available to Assignor under the Guarantee and Loan Documents secured thereby;

(b) Enter upon and take possession of the Premises, either in person or by an 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, and 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 or acts that Assignee deems necessary or proper;

(c) Upon taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income, or profits of or from the Premises, and pursue all remedies for enforcement of the Leases and all of the lessor's rights therein or thereunder, provided that, for such purpose, this Assignment shall constitute an authorization and direction to the tenants under the Leases 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 thereafter to 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 to be observed or performed by the tenants thereunder, and provided, further, that Assignor will facilitate in all reasonable ways Assignee's collection of such rents, issues, income, or profits, and upon request will execute written notices to the tenants under the Leases thereafter to 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 or proper, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at an annual rate equal to the "Default Rate" (as defined in the Note) and shall be secured by this Assignment.

6. Application of Proceeds. All sums collected and received by Assignee out of the rents, issues, income, or profits of the Premises following the occurrence of any one or more Events of Default shall be applied as follows:

(a) First, to reimbursement of Assignee for and of all expenses of taking and retaining possession of the Premises; managing the Premises and collecting the rents, issues, income, or profits thereof or therefrom, including, without limitation, salaries, fees, or wages of a managing agent and such other employees as Assignee may deem necessary or proper, and attorneys' fees; operating and maintaining the Premises, including, without limitation, taxes, charges, claims, assessments, water rents, sewer rents, and other liens, and premiums for any insurance provided for in the Mortgage; and the cost of all alterations, renovations, repairs, or

UNOFFICIAL COPY

replacements of or to the Premises that Assignee may deem necessary or proper, with interest thereon at the Default Rate;

(b) Second, to reimbursement of Assignee for and of all sums expended by Assignee pursuant to Paragraph 5(d) hereof to make any payment or do any act required herein of Assignor, together with interest thereon at the Default Rate;

(c) Third, to reimbursement of Assignee for and of all other sums with respect to which Assignee is indemnified pursuant to Paragraph 7 hereof, together with interest thereon at the Default Rate;

(d) Fourth, to reimbursement of Assignee for and of all other sums expended or advanced by Assignee pursuant to the terms and provisions of, or constituting additional indebtedness under, any of the Loan Documents, with interest thereon at the Default Rate;

(e) Fifth, to the payment of all accrued and unpaid interest on the principal sum of the Note;

(f) Sixth, to the payment of the unpaid balance of the principal sum of the Note; and

(g) Seventh, any balance remaining to Assignor, its successors, and assigns.

7. **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 following the occurrence of any one or more Events of Default or from any other act or omission of Assignee in managing, operating, or maintaining the Premises following the occurrence of any one or more Events of Default. Assignee shall not be obligated to observe, perform, or discharge, nor does Assignee hereby undertake to observe, perform, or discharge any covenants, terms, conditions, or agreements 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, and Assignor shall and does hereby agree to indemnify Assignee for, and to hold Assignee harmless of or from, any and all liability, loss, or damage that Assignee may or might incur under any Lease or under or by reason of this Assignment and of or from any and all claims and demands whatsoever that 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, or agreements contained in any Lease. 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 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 for the care, control, management, or repair of the Premises or for the carrying out of any of the covenants, terms, conditions, or agreements contained in any Lease on Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed on 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.

8. **Non-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 the Note, the guaranties thereof, or any of the Assignment of Rents 7812 S Cicero

UNOFFICIAL COPY

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.

9. Further Assurances. Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, such 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.

10. Severability. The invalidity or unenforceability of any particular provision of this Assignment shall not affect the other provisions, and this Assignment shall be construed in all respects as if such invalid or unenforceable provision were not contained herein.

11. Benefit. This Assignment is binding on Assignor, its 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.

12. 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.

13. 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 evidenced or secured hereby and by the other Loan Documents.

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

15. Notices. All notices permitted or required pursuant to this Assignment shall be in writing and shall be deemed to have been properly given (a) upon delivery, if served in person or sent by facsimile with receipt acknowledged; (b) on the [third (3rd)] business day following the day such notice is deposited in any post office station or letter box if mailed by certified mail, return receipt requested, postage prepaid; or (c) on the [first (1st)] business day following the day such notice is delivered to the carrier if sent via a nationally recognized overnight delivery service (e.g., Federal Express) and addressed to the party to whom such notice is intended as set forth below:

To Assignee:
Seggio Development LLC
Gino Battaglia, Manager
P.O. Box 10122 Chicago, IL 60610-0122
Attn: Loan Department

Assignment of Rents 7812 S Cicero

UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

Parcel 1:

Lot 29 In First Addition to Cicero Avenue 78th Street Subdivision, Being A Subdivision Of The South 1/9 Of The North 9/12 Of The South 60 Acres Of The East 1/2 Of The South East 1/4 Of Section 28, Township 38 North, Range 13 East Of The Third Principal Meridian, (Except the West 1170.28 Feet) In Cook County, Illinois

Permanent Index Number: 19-28-423-009-0000

Parcel 2:

Lots 30, 31, 32 And 33 In First Addition to Cicero Avenue 78th Street Subdivision Being A Subdivision Of The West 1170.28 Feet Of The South 1/9 Of The North 9/12 Of The South 60 Acres Of The East 1/2 Of The South East 1/4 Of Section 28, Township 38 North, Range 13 East Of The Third Principal Meridian, In Cook County, Illinois

Permanent Index Numbers: 19-28-423-010-0000; 19-28-423-011-0000; 19-28-423-012-0000 & 19-28-423-013-0000

**COOK COUNTY
RECORDER OF DEEDS**