

# UNOFFICIAL COPY

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Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 05/21/2018 11:53 AM Pg: 1 of 7

To be Recorded in  
Cook County, \_\_\_\_\_

PREPARED BY,  
RECORD AND RETURN TO:

LaRocca, Hornik, Rosen, Greenberg & Blaha  
83 South Street  
Freehold, New Jersey 07728  
Attention: Jonathan L. Hornik, Esq.

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (the "Assignment") made as of **April 20, 2018**, by **DARXSON INVESTMENT GROUP, LLC**, an Illinois limited liability company having its principal place of **15348 Royal Fox Hunt Rd., Orland Park, IL 60462** ("Assignor"), and **CMN REAL ESTATE GROUP, INC** a New York corporation having an address at **1510 Central Ave, Suite 380, Albany, NY 12205** ("Assignee").

### WITNESSETH

**FOR VALUE RECEIVED**, Assignor does hereby irrevocably grant, sell, assign, transfer, set over and deliver unto Assignee all of the leases covering or affecting all or any part of that certain real property more particularly described in Schedule "A", annexed hereto and made a part hereof, together with the improvements now or hereafter located thereon (hereinafter collectively referred to as the "Property"), together with the immediate and continuing right to collect and receive all of the rents, income, receipt and revenues arising from those certain leases covering the Property;

**TOGETHER WITH** all other leases and other rental agreements now or hereafter made covering the Property or any portion thereof, together with any extension or renewal of same, and all present and future leases and present and future rental agreements and rents, income and profits arising therefrom (hereinafter collectively referred to as the "Leases"), being effective without further or supplemental assignment;

**TOGETHER WITH** all rents, room and occupancy charges, income and profits arising from the leases and renewals thereof and together with all rents, income and profits for the use, enjoyment and occupation of the Property (hereinafter collectively referred to as the "Rents").

This Assignment is intended, and shall be construed and enforced as an absolute, present assignment of the Leases and Rents, not merely as an assignment for security, subject only to the license granted to Assignor in the next paragraph hereof.

Until notice from Assignee, Assignor shall have the right under a temporary, revocable license granted hereby to collect upon all of said Rents arising from or out of the Leases or any renewals or extensions thereof, and Assignor shall receive said Rents, and shall hold same, as a trust fund to be applied in the following priority, and Assignor hereby covenants to so apply same, (1) first, to the payment of all taxes and assessments upon said Property; (2) then, to the payment of the entire cost of all insurance and maintenance and repairs for said Property; (3) then, to the satisfaction of all obligations

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under the Leases; and (4) then, to the payment (in such order as Assignee determines) of late charges, interest and principal and all other amounts and other obligations becoming due on the Commercial Promissory Note from Assignor to Assignee in the principal amount of **Three Hundred Thirty Thousand and 00/100 dollars (\$330,000.00)** dated the date hereof, (as may be amended, restated or modified from time to time, the "Note") and under that certain Mortgage and Security Agreement (as may be amended, restated or modified from time to time, the "Mortgage") of even date, (together with this Assignment and all other agreements, instruments and documents executed and delivered in connection therewith, collectively, the "Loan Documents") before using any part of the same for any other purpose; and (5) then, the balance, if any, to Assignor's use and enjoyment.

**ASSIGNOR WARRANTS** that (i) Assignor is the sole owner of the entire Lessor's interest in the Leases; (ii) to the best of Assignor's knowledge, the Leases are valid and enforceable and have not been altered, modified or amended in any manner whatsoever except as herein set forth; (iii) to the best of Assignor's knowledge, none of the Rents reserved in the Leases have been assigned or anticipated; (iv) to the best of Assignor's knowledge, no Rents have been collected more than one (1) month in advance; (v) Assignor has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Property; (vi) Assignor is not in default of its obligation under the Leases; and (vii) to the best of Assignor's knowledge, there exist no offsets or defenses to the payment of any portion of the Rents.

**ASSIGNOR COVENANTS** with Assignee that Assignor (a) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the security thereof; (b) shall not collect any of the Rents more than one (1) month in advance; (c) shall not execute any other assignment of Lessor's interest in the Leases or the Rents; (d) shall not alter, modify or change the terms of the Leases to reduce the rentals earned thereby or Assignee's rights expressed therein without the prior written consent of Assignee, or cancel or terminate the Leases or accept a surrender thereof, or convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein; (e) shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Assignee; (f) shall not consent to any assignment of or subletting under the Leases not in accordance with its terms, without the prior written consent of Assignee; (g) shall execute and deliver at the request of Assignee all such further assurances, confirmations and assignments in connection with the Property as Assignee shall from time to time require; (h) shall not enter into any new leases without prior written approval from Assignee and except on a form of lease approved by Assignee. With respect to each of the Leases, Assignor shall (A) fulfill or perform in timely fashion each and every provision thereof on the part of the lessor thereunder to be fulfilled or performed; (B) promptly send copies to Assignee of all notices of default which Assignor shall send or receive thereunder; and (C) enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessor thereunder to be observed or performed, short of termination thereof.

**THIS ASSIGNMENT** is made on the following terms, covenants and conditions:

Upon the occurrence of an Event of Default (hereinafter defined), Assignee may, at its option, upon notice, terminate and revoke the license granted hereunder and, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take immediate and unconditional possession of the Property and have, hold, manage, lease and operate the Property on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee and apply the

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Rents to the payment of the following in such order and proportion as Assignee in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all reasonable expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the payment of the principal sum, interest and all other sums (hereinafter collectively referred to as the "Debt") evidenced by or arising under the Note and/or other Loan Documents, together with all costs and reasonable attorneys' fees. The aforesaid notice shall be effective retroactively as of the date on which the Event of Default occurs. In addition to the rights which Assignee may have herein, upon the occurrence of a default under the Mortgage or an Event of Default under any other Loan Document ("Event of Default"), Assignee, at its option, may require Assignor to pay monthly in advance to Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in possession of Assignor or, at Assignee's option, in lieu thereof may require Assignor to vacate and surrender possession of the Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise (Assignor remaining liable for such use and occupancy charges incurred after an Event of Default and prior to surrender of possession). For purposes of this Paragraph 1, Assignor grants to Assignee its irrevocable power of attorney, coupled with an interest, to take any and all of the aforementioned actions and any or all other actions designated by Assignee for the proper management and preservation of the Property. The exercise by Assignee of the option granted it in this Paragraph 1 and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under this Assignment, the Note or any other Loan Document or the Leases. The rights and remedies reserved to Assignee herein are in addition to all other rights and remedies available to Assignee hereunder or under the other Loan Documents or applicable law or equitable principles and all such rights and remedies may, at Assignee's option, be exercised concurrently.

Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property after an Event of Default or from any other act or omission of Assignee in managing the Property after default unless such loss is caused by the gross negligence, willful misconduct or bad faith of Assignee. So long as Assignor's license hereunder remains in effect, Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment and Assignor shall, and hereby agrees, to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, Assignor shall reimburse Assignee the amount thereof, including costs, expenses and reasonable attorneys' fees, immediately upon demand and upon the failure of Assignor so to do Assignee may, at its option, declare all sums evidenced by the Note immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Assignee, 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 Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

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Upon payment in full of the Debt and satisfaction of all Assignor's obligations to Assignee hereunder, this Assignment shall become and be void and of no effect but the affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee showing any part of the Debt to remain unpaid or any obligation of Assignor hereunder not fully satisfied shall be conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. Assignor hereby authorizes and directs the lessees named in the Leases or any other or future lessee or occupant of the Property, upon receipt from Assignee of written notices, to pay over to Assignee all Rents and to continue so to do until otherwise notified by Assignee.

Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note or the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Debt may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. In the event of any conflict between this Assignment and the Mortgage, the terms of this Assignment shall take precedence and control.

Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee pursuant to the provisions herein contained. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

This Assignment may not be modified, amended, changed, discharged or terminated orally, but only in writing signed by the person against whom the enforcement of the modification, amendment, change, discharge or termination is sought.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment shall be used interchangeably in singular or plural form and the word "Assignor" shall mean "each Assignor and/or any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Assignee" shall mean "Assignee or any subsequent holder of the Note," the word "Note" shall mean "the Note or any other evidence of indebtedness," the word "person" shall include an individual, corporation, limited liability company, partnership, joint venture, trust, unincorporated association, government, governmental authority, or other entity, the word "Property" shall include any portion of the Property or interest therein, and the word "Debt" shall mean the principal balance of the Note with interest thereon as provided in the Note and all other sums due pursuant to the Note, this Assignment and the other Loan Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (i) failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Note or the Loan Documents, or (ii) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note or the other Loan Documents. Assignee may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

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If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

This Assignment shall be governed and construed in accordance with the laws of the State of New York without regard to choice of law considerations. This Assignment shall be construed without regard to any presumption or rule requiring construction against the party causing the Assignment or any portion hereof to be drafted.

Notwithstanding anything contained herein to the contrary, if there is more than one Assignor, each Assignor shall be jointly and severally liable for a breach of any and all covenants, representations, warranties, obligations and liabilities under this Assignment.

**THIS ASSIGNMENT**, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Note and the Loan Documents and shall be binding upon Assignor, its successors and assigns and any subsequent owner of the Property.

**JURY TRIAL WAIVER.** ASSIGNOR AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY ASSIGNOR OR ASSIGNEE ON OR WITH RESPECT TO THIS ASSIGNMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. ASSIGNEE AND ASSIGNOR EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, ASSIGNOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. ASSIGNOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS ASSIGNMENT AND THAT ASSIGNEE WOULD NOT EXTEND CREDIT TO ASSIGNOR IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS ASSIGNMENT.

**SIGNATURE PAGE TO FOLLOW.**

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IN WITNESS WHEREOF, Assignor has executed this Assignment on the date first above set forth.

ASSIGNOR HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED A TRUE COPY OF THIS ASSIGNMENT WITHOUT CHARGE.

Signed in the Presence of:

BORROWER  
DARXSON INVESTMENT GROUP,  
LLC

Name: \_\_\_\_\_

By: Eric D. Burnson

Name: Eric D. Burnson

Title: Sole Member and Operating

Manager  
Name: \_\_\_\_\_

STATE OF

Ill. No 15

COUNTY OF

Cook )ss.:  
)

I certify that on April 20, 2018 Eric D. Burnson , came before me in person and stated to my satisfaction that he/she:

(a) made the attached instrument; and

(b) was authorized to and did execute this instrument on behalf of and as Sole Member and Operating Manager of DARXSON INVESTMENT GROUP, LLC (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its operating agreement and members.



Stella Parhas  
NOTARY PUBLIC Stella Parhas

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## SCHEDULE "A"

### LEGAL DESCRIPTION OF THE PROPERTY

#### Legal Description

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the County of Cook, in the State of Illinois, being more particularly described as follows:

#### LEGAL DESCRIPTION:

Lots 1 and 2 in Block 7 in Cobe and McKinnon's 63rd Street and California Avenue Subdivision of the West 1/2 of the Southeast 1/4 of Section 13, Township 38 North, Range 13 East of the Third Principal Meridian, In Cook County, Illinois.

Street Address: 6000-04 S Talman

City: Chicago

County: Cook

Parcel Number: 19-13-410-021-0000

Property of Cook County Clerk's Office