

# UNOFFICIAL COPY

Doc#: 1830619243 Fee: \$60.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 11/02/2018 10:32 AM Pg: 1 of 7

1830619243  
PREPARED BY/RETURN TO:

5 Arch Funding Corp.  
19800 MacArthur Boulevard, Ste. 1150  
Irvine, California 92612

## ABSOLUTE ASSIGNMENT OF LESSOR'S INTEREST IN LEASES AND RENTS

**THIS ABSOLUTE ASSIGNMENT OF LESSOR'S INTEREST IN LEASES AND RENTS** (hereinafter referred to as "*Assignment*"), is made October 23, 2018 by and between by SR 6032 S. Elizabeth LLC ("*Assignor*") and 5 APCH FUNDING CORP., a California corporation, whose address is 19800 MacArthur Boulevard, Suite 1150 Irvine, California 92612 ("*Lender*").

### WITNESSETH:

Assignor is obligated to Lender (collectively the "*Obligations*") under a Note (the "*Note*") dated of even date herewith, in the amount of \$172,250.00 made by Assignor payable to Lender, this Assignment, other loan documents as defined in the Note (the "*Loan Documents*") and all other indebtedness of Assignor to Lender whenever borrowed or incurred, and any renewals, extensions, novations, or modifications of the foregoing.

**FOR VALUE RECEIVED**, Assignor hereby absolutely and presently assigns and transfers to Lender (for itself and its affiliates) all of Assignor's right, title and interest in and to: (1) all present and future leases, subleases, licenses, or occupancy agreements of all or any portion of the real property more particularly described on Exhibit A attached hereto (the "*Property*"), together with any renewals, modifications or replacements thereof, and any options, rights of first refusal or guarantees of any lease now or hereafter in effect (collectively, the "*Leases*"); (2) all rents, income, receipts, revenues, reserves, issues and profits arising under any Lease (together with the items described in 3, 4 and 5, below, the "*Rents*"); (3) all security deposits and escrow accounts made by any tenant or subtenant under any Lease; (4) all awards and payments of any kind derived from or relating to any Lease including, without limitation, claims for the recovery of damages to the Property by proceeds of any insurance policy or otherwise, claims for damages resulting from acts of insolvency or bankruptcy, lump sum payments for the cancellation or termination of any Lease, awards payable by reason of condemnation action or the exercise of any right of first refusal or option to purchase, and the return of any insurance premiums or ad valorem tax payments made in advance and subsequently refunded; and (5) the proceeds of any rental insurance carried by Assignor on the Property. Assignor appoints Lender as its irrevocable attorney in fact to appear in any actions and to collect any awards or payments.

Prior to an event of default hereunder or under the Note or under any other Obligations and demand by Lender for delivery of the security deposits to Lender or Lender's designee, Assignor shall maintain the

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security deposits in accordance with the terms and conditions of the applicable Leases. After default and upon demand by Lender, Assignor shall deliver the security deposits to Lender or Lender's designee. Upon delivery of the security deposits to Lender, the Lender will hold the security deposits pursuant to the terms of the Leases in respect of which such security deposits were obtained by Assignor. Provided, however, in no event shall Lender be liable under any Lease of any part of the Property for the return of any security deposit in any amount in excess of the amount delivered to Lender by Assignor.

**Absolute Assignment; License to Collect.** This Assignment is intended to be and shall constitute an unconditional, absolute and present assignment from Assignor to Lender of all of Assignor's right, title and interest in and to the Leases and Rents (subject to the terms and conditions hereof), and not an assignment in the nature of a pledge of such Leases and Rents or the mere grant of a security interest therein. Notwithstanding that this Assignment is effective immediately, so long as there shall exist no default by Assignor in the payment and performance of the Obligations or in the performance of any obligation or agreement in any Lease (each, a "*Default*"), Assignor shall have the privilege under a revocable license to collect as they become due, but not prior to accrual, all Rents from the Property and to receive and hold the same. Assignor shall receive and hold such Rents in trust as a fund to be applied to the payment of real estate taxes, insurance, maintenance, repair and Lease obligations with respect to the Property and to the payment of interest and principal and other sums becoming due under the Obligations, before retaining and/or disbursing any part of the Rents for any other purpose.

**Representations and Warranties.** Assignor represents and warrants to Lender as follows: (i) Assignor is the sole owner of the entire lessor's interest in the Leases and the Rents thereunder and such interest is free and clear of all liens and encumbrances; (ii) no other assignment of any interest in any of the Leases or Rents has been made; (iii) the Leases submitted to Lender are true and complete copies of all of the Leases now existing, and there have been no written or oral modifications thereto; (iv) except as otherwise disclosed to Lender in writing prior to the date hereof, the Leases are in full force and effect and there is no existing default by Assignor or by any tenant under any of the Leases; (v) Assignor has not accepted Rent under any Lease more than thirty (30) days in advance of its accrual (except for *bona fide* security deposits and any rents thereunder which have been prepaid and accepted by Assignor in the ordinary course of Assignor's business practices and except as previously disclosed to Lender in writing prior to the date hereof), and payment thereof has not otherwise been forgiven, discounted or compromised; (vi) Assignor has not received any funds or deposits from any tenant except as expressly provided for in a Lease; and (vii) to the best of Assignor's knowledge, no tenant has used or placed on the Property oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances, hazardous air pollutants or other hazardous materials in violation of any federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time.

**Covenants.** Assignor agrees that from the date of this Assignment and until final payment of all of the Obligations, unless Lender shall otherwise consent (which consent shall not be unreasonably withheld, conditioned or delayed) in writing, Assignor will: (i) perform all of the obligations imposed upon Assignor under the Leases; (ii) not collect any of the Rents in advance of the time when the same become due (except for *bona-fide* security deposits) unless such collection is economically prudent based on the financial condition of the tenant; (iii) not discount any future accruing Rents except in the exercise of Assignor's prudent property management practices based upon current market conditions; (iv) not execute any other assignment of Leases or Rents unless such collection is economically prudent based on the financial condition of the tenant; (v) not materially change the terms of or terminate the Leases; (vi) not subordinate the Leases to any other mortgage or other encumbrance; (vii) not consent to any assignment of or subletting under the Leases (except as expressly set forth in any such Leases or except in the ordinary course of Assignor's business and in keeping with prudent property management practices; and (viii) not enter into any Lease subsequent to the date hereof. Any attempted amendment, cancellation or other modification of any Lease without the prior written consent of Lender shall be null and void. Assignor further covenants

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and agrees to furnish to Lender, on demand, certified true copies and/or originals of all existing Leases and any subsequent Leases, and any modifications or amendments thereto.

**Future Assurances.** Notwithstanding the automatic applicability of this Assignment to all future Leases, Assignor agrees to assign to Lender all future Leases and to execute and/or deliver to Lender all such Leases and, if requested by Lender, assignments thereof in form acceptable to Lender.

**Lender's Obligations and Liability.** Notwithstanding any legal presumption to the contrary, Lender shall not be obligated by reason of its acceptance of this Assignment to perform any obligation of Assignor under any of the Leases, and Lender shall not, prior to entry upon and actually taking physical possession of the Property, be deemed a mortgagee in possession. This Assignment shall not operate to place responsibility upon Lender for the control, care, management or repair of the Property or for the carrying out of any of the terms and conditions of the Leases or to make Lender responsible or liable for any waste committed on the Property by any lessee or any other party, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Lender assumes no liability for any security deposited or rent prepaid by any lessee with Assignor, unless and until such deposits or prepaid rents are delivered to Lender.

**Indemnification.** Assignor shall, and does hereby agree, to indemnify Lender for, and to hold Lender 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 which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases prior to the date which Assignee shall exercise its rights hereunder. Assignor hereby agrees to defend, at its own cost and expense, any action brought against itself or Lender relative to the Leases or this Assignment.

**Remedies of Lender on Default.** Notwithstanding anything to the contrary set forth in the Note, or any other document executed in connection therewith, there shall be no further cure or grace period (other than those expressly set forth in the Loan Documents) with respect to Assignor's Default which must expire prior to Lender's right to collect the rents, issues, income and profits and there shall be no condition precedent other than Assignor's further Default to Lender's right to collect such rents, issues, income and profits. Upon any occurrence of a Default, the license granted to Assignor herein shall be immediately and automatically revoked without further notice to or demand upon Assignor, and Lender shall have the right, in its discretion, without notice, by agent or by a receiver appointed by the court, and without regard to the adequacy of any security for the Obligations, to: (i) enter upon and take possession of the Property; (ii) notify tenants, subtenants and any property manager to pay Rents to Lender or its designee, and upon receipt or such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Assignor; (iii) sue in its own name for or otherwise collect the Rents, including those past due; (iv) have, hold, manage, lease and operate the Property with respect to the Leases; (v) collect and receive all Rents; (vi) make from time to time all alterations, renovations, repairs or replacements to the Property as Lender may deem proper. Assignor hereby irrevocably authorizes and directs the tenants under the Leases, upon receipt of written notice from Lender, to pay all Rents due under the Leases to Lender without the necessity of any inquiry to Assignor and without any liability respecting the determination of the actual existence of any default claimed by Lender or any claim by Assignor to the contrary. Lender may apply such Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees, (b) all taxes, charges, claims, assessments, water rents, sewer rents and any other liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items, and (c) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Lender in its sole discretion may determine. Lender may: (1) endorse as Assignor's attorney-in-fact the name of Assignor or any subsequent owner of the Property on any checks, drafts or other instruments

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received in payment of the Rents, and deposit the same in bank accounts, which power of attorney is coupled with an interest and shall be irrevocable; (2) give proper receipts, releases and acquittances in relation thereto in the name of Assignor; (3) institute, prosecute, settle or compromise any summary or legal proceedings in the name of Assignor for the recovery of the Rents, or for damage to the Property, or for the abatement of any nuisance thereon; and (4) defend any legal proceedings brought against Assignor arising out of the operation of the Property. Any charges, expenses or fees, including reasonable attorneys' fees and costs, incurred by Lender in connection with any of the foregoing shall be included in the Obligations, and shall be due and payable on demand, together with interest at the default rate set forth in the Note, such interest to be calculated from the date of such advance to the date of repayment thereof.

**Estoppel Certificates.** Assignor shall, from time to time, without charge and within 10 days after requested in writing by Lender, execute, acknowledge and deliver, and use reasonable efforts to cause each tenant under the Leases to execute, acknowledge and deliver to Lender a written statement, in form and substance satisfactory to Lender, certifying to certain matters relating to the Leases, including without limitation: (i) the commencement and expiration dates of the Leases and the dates when any rents, charges and other sums commenced to be payable thereunder; (ii) that the Leases are unmodified and in full force and effect (or, if modified, stating the nature of such modifications and that the Leases as so modified are in full force and effect); (iii) the amount of Rents (including a breakdown thereof) payable under the Leases and the dates to which the Rents and other charges under the Leases have been paid in advance; and (iv) whether there are any uncured defaults by Assignor or tenant or any setoffs or defenses against enforcement of any terms or conditions under any Lease.

**Lender as Creditor of Tenants.** Notwithstanding the privilege and license granted by Lender herein, Lender, and not Assignor, shall be deemed to be the creditor of each tenant in respect of any assignment for the benefit of creditors, bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant. Lender shall have the option to have any money received by Lender as such creditor applied to reduce the Obligations or paid over to Assignor. Lender shall have the right to file claims in any such proceedings and to otherwise pursue creditor's rights therein. If Assignor learns that any tenant has become the subject of such a proceeding, Assignor shall give Lender prompt notice thereof.

**Miscellaneous Provisions.** Assignor agrees to the following: (i) all remedies available to Lender with respect to this Assignment or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Lender in exercising any remedy shall operate as a waiver of that remedy or of any default if Assignor is an entity, then, release Guarantor from the Guaranteed Obligations. **Organization; Powers.** (ii) Assignor represents that Assignor: (a) is a adult individual and is sui juris, (b) has the power and authority to own his/her respective properties and assets and to carry on his/her respective business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of his/her obligations under this Assignment and any other Loan Document to which they are a party. (iii) Assignor represents that Assignor: (a) is a LLC, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such authorization; (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary Company action has authorized the execution, delivery and performance of, all of its obligations under this Assignment and any other Loan Document to which it is a party; (iii) The provisions hereof shall be binding upon and inure to the benefit of Assignor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Lender, its successors and assigns and any future holder of the Note or other Obligations; (iv) Any notices to: (1) Assignor shall be in writing and either (a) mailed via certified mail, return receipt requested, to Assignor at Assignor's address shown above or such

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other physical address (i.e. not a P.O. Box) as provided hereunder, and delivery is deemed sufficient upon the early of actual receipt by Assignor or upon refusal to accept by Assignor, or (b) personally delivered to the Assignor's address shown above or such other address as provided hereunder; and (2) Lender shall be in writing and either (a) mailed via certified mail, return receipt requested, to; or (b) personally delivered to Lender's office address shown above or such other address as Lender may specify in writing from time to time. In the event that Assignor changes Assignor's address at any time prior to the date the Obligations are paid in full, Assignor agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid; (v) This Assignment may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (vi) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Assignment; (vii) If this Assignment is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations; (viii) This Assignment shall be governed by and construed under the laws of the jurisdiction where this Assignment is recorded; (ix) Assignor by execution and Lender by acceptance of this Assignment agree to be bound by the terms and provisions hereof; (x) In case of any conflict between the terms of this Assignment and the terms of any Security Instrument described in the Note, the terms of this Assignment shall prevail; and (xi) this Assignment may be executed in two or more counterparts, and (if there is more than one party) by each party on separate counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

[Signature page follows]

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IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first above written.

**"ASSIGNOR":**

SR 6032 S. Elizabeth LLC,  
a Illinois Limited Liability Company

By: Steeve Raymond

Name: Steeve Raymond

Title: Member

\_\_\_\_\_  
(Space Below This Line for Acknowledgment/)

STATE OF ILLINOIS )

) ss

COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid, hereby certify that Steeve Raymond, the above named Member of SR 6032 S. ELIZABETH LLC, a Illinois Limited Liability Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Member, appeared before me this day in person and acknowledged that he/she signed and delivered the above instrument as his/her own free and voluntary act and as the free and voluntary act of the Company.

Given under my hand and notarial seal this 24<sup>th</sup> day of October, 2018.



Joseph R. Ziccardi  
Notary Public

My Commission Expires:

10-29-2021

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Exhibit A

**Legal Description**

LOT 42 AND THE SOUTH 4 FEET OF LOT 43 IN BLOCK 14 IN JOHNSTON AND CLEMENT'S SUBDIVISION OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN# 80-09-421-034-0000

Property of Cook County Clerk's Office