

UNOFFICIAL COPY

Doc#: 2006347079 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 03/03/2020 10:51 AM Pg: 1 of 9

Prepared by, and when recorded
mail to:

Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067-3012
Attention: Adam J. Engel, Esq.

LOCATION: 17928, 17932, and 17960 South Halsted Street
17750, 17800, 17830, and 17852 Halsted Street
Homewood, Illinois 60430

COUNTY: Cook

AMENDED AND RESTATED ASSIGNMENT OF LEASES AND RENTS

THIS AMENDED AND RESTATED ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is given as of February 27, 2020, by **WASHINGTON PARK PLAZA LLC**, a Delaware limited liability company ("Assignor"), to **CONTINENTAL CASUALTY COMPANY**, an Illinois insurance company ("Assignee").

RECITALS

A. Assignor is the owner of a fee simple estate in the real property described in Exhibit A attached hereto. Such real property, together with all improvements now or hereafter located thereon and all appurtenances thereto, is referred to as the "Property."

B. On July 1, 2016 (the "Original Closing Date"), Assignee made a loan to Assignor in the original principal amount of \$23,200,000.00 (the "Original Loan").

C. The Original Loan was (i) evidenced by that certain Promissory Note, dated as of the Original Closing Date made by Assignor in favor of Assignee, as amended by that certain Omnibus Amendment dated as of June 28, 2019, by and among Borrower, Binyamin Beitel, an individual, and Assignee (collectively, the "Prior Note") and (ii) secured by, among other things, (a) that certain Mortgage, Security Agreement, Fixture Filing, Financing Statement and Assignment of Leases and Rents, dated as of the Original Closing Date, granted by Assignor to and for the benefit of Assignee, and recorded with the Cook County Register of Deeds, Cook County, Illinois as Document No. 168316067 on July 1, 2016, as amended by that certain First Amendment of Mortgage, Security Agreement, Fixture Filing, Financing Statement and Assignment of Leases and Rents, dated as of June 28, 2019 and recorded with the Cook County Register of Deeds, Cook County, Illinois as Document No. 1918945036 on July 8, 2019 (collectively, the "Prior Mortgage"), covering the Property and (b) that certain Assignment of Leases and Rents, dated as of the Original Closing Date, granted by Borrower for the benefit of

UNOFFICIAL COPY

Lender and recorded with the Cook County Register of Deeds, Cook County, Illinois as Document No. 168316068 on July 1, 2016 (the "Prior ALR").

D. Assignor has requested and Assignee has agreed to increase the principal amount of the Original Loan by an amount equal to \$1,000,000.00.

E. Assignor has executed an Amended and Restated Promissory Note (as the same may be modified, extended, renewed, rearranged or replaced from time to time, the "Note"), of even date herewith, in the original principal amount of \$24,200,000.00. The Note is secured by, among other things, an Amended and Restated Mortgage, Security Agreement, Fixture Filing, Financing Statement, and Assignment of Leases and Rents, of even date herewith from Assignor to and for the benefit of Assignee (as the same may be amended, supplemented, restated or replaced from time to time, the "Security Instrument"), encumbering the Property.

F. The Note, the Security Instrument, this Assignment, and all other documents now or hereafter executed or delivered by Assignor in connection with the loan evidenced by the Note (the "Loan"), as any or all such documents may be amended, substituted for, or replaced from time to time, are referred to collectively as the "Loan Documents."

ASSIGNMENT

NOW, THEREFORE, to induce Assignee to make the Loan, as a partial source of repayment of the Loan and as additional security for the payment and performance of all obligations of Assignor to Assignee evidenced by or referred to in the Loan Documents, whether now existing or subsequently incurred, Assignor hereby undertakes and agrees as follows:

1. **Definitions.** Any initially capitalized terms not otherwise defined herein shall have the same meaning in this Assignment as ascribed to such term in the Security Instrument.

2. **Assignment of Leases and Rents.** Assignor hereby unconditionally, presently, absolutely and irrevocably grants, transfers and assigns unto Assignee all Gross Revenue (as such term is defined in the Security Instrument now or hereafter due or payable to Assignor for the occupancy or use of the Property, and all Leases (as such term is defined in the Security Instrument), whether written or oral, with all security therefor, including all guaranties thereof, now or hereafter affecting the Property. The aforesaid assignment shall be effective immediately upon Assignor's execution of this Assignment and is not conditioned upon the occurrence of an Event of Default or any other contingency or event; provided, however, that Assignee hereby grants to Assignor a license to collect, retain and enjoy such Gross Revenue and all security for the Leases and to exercise all rights, remedies and options as the landlord or lessee thereunder (subject to the provisions of the Security Instrument and the other Loan Documents) provided that no Event of Default has occurred and is continuing. Such license shall be revocable by Assignee without notice to Assignor at any time after the occurrence of an Event of Default, provided, however, that such license shall be reinstated following a cure of any Event of Default accepted by Assignee (provided, that Assignee shall in no event or under no circumstances be obligated or required to accept a cure by Assignor or by any other Person of an Event of Default). Assignor represents that the Gross Revenue payable to Assignor and Assignor's right, title, and interest in and to the Leases have not been heretofore sold, assigned, transferred or set

UNOFFICIAL COPY

over by any instrument now in force and shall not at any time, so long as the Secured Obligations evidenced by the Loan Documents remain outstanding, be sold, assigned, transferred or set over by Assignor. Assignor has good right to sell, assign, transfer and set over the same and to grant to and confer upon Assignee the rights, interest, powers and authorities herein granted and conferred. Failure of Assignee at any time or from time to time to enforce the assignment of Gross Revenue and Leases under this section shall not in any manner prevent its subsequent enforcement, and Assignee is not obligated to collect anything hereunder, but is accountable only for sums actually collected.

3. **Further Assignments.** Assignor shall give Assignee at any time upon demand any further or additional customary forms of assignment or transfer of such Gross Revenue and Leases and security as may be requested by Assignee, and shall deliver to Assignee executed copies of all such Leases and security.

4. **Application of Rents.** Following an Event of Default, Assignee shall be entitled to deduct and retain a just and reasonable compensation from monies received hereunder for the services of Assignee or that of the agents of Assignee in collecting such monies. Subject to the terms and conditions set forth in the Security Instrument and the other Loan Documents, any monies received by Assignee hereunder may be applied when received from time to time in payment of any taxes, assessments or other liens affecting the Property regardless of any delinquency, such application to be in such order as Assignee may determine. The acceptance of this Assignment by Assignee or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any Lease nor an assumption of any liability under any Lease.

5. **Collection of Rents.** Upon or at any time during the continuance of an Event of Default, Assignee may declare all sums secured hereby immediately due and payable, and may, at its option, without notice, and whether or not the Secured Obligations shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, (a) subject to the rights of tenants under Leases, enter upon, take possession of, manage and operate the Property, or any part thereof (including, without limitation, making necessary repairs, alterations and improvements to the Property), (b) make, cancel, enforce or modify any of the Leases, (c) obtain and evict tenants, (d) fix or modify Gross Revenue, (e) do any acts which Assignee deems proper to protect the security thereof and (f) either with or without taking possession of the Property, in its own name sue for or otherwise collect and receive such Gross Revenue, including any such Gross Revenue that is past due and unpaid. In connection with the foregoing, Assignee shall be entitled and empowered to employ attorneys and management, rental and other agents in and about the Property and to effect the matters which Assignee is empowered to do, and in the event Assignee shall itself effect such matters, Assignee shall be entitled to charge and receive management, rental and other fees therefor as may be customary in the area in which the Property is located, and the fees, charges, costs and expenses of Assignee or such Persons shall be additional Secured Obligations. Assignee may apply all funds collected as aforesaid, less costs and expenses of operation and collection, including reasonable attorneys' and agents' fees, charges, costs and expenses, as aforesaid, upon any Secured Obligations, and in such order as Assignee may determine. The entering upon and taking possession of the Property, the collection of such Gross Revenue and the application thereof as aforesaid shall not be deemed to (i) cure or waive any Default or Event

UNOFFICIAL COPY

of Default, (ii) waive, modify or affect notice of any Default or Event of Default under the Note or this Assignment, or (iii) invalidate any act done pursuant to such notice.

6. **Authority of Assignee.** Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Assignee hereunder without investigating (a) the reason for any action taken by Assignee, (b) the validity or the amount of Secured Obligations owing to Assignee, (c) the existence of any default in the Note or this Assignment, or under or by reason of this Assignment or (d) the application to be made by Assignee of any amounts to be paid to Assignee. The sole signature of Assignee shall be sufficient for the exercise of any rights under this Assignment and the receipt signed solely by Assignee for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Property. Checks for all or any part of the rentals collected under this Assignment shall be drawn in such a manner as to be deposited in the Deposit Account (as such term is defined in the Security Instrument) or as otherwise directed by Assignee.

7. **Indemnification of Assignee.** Nothing herein contained shall be deemed to obligate Assignee to perform or discharge any obligation, duty or liability of any lessor under any Lease of the Property, and Assignor shall and does hereby indemnify and hold Assignee harmless from any and all liability, loss or damage which Assignee may or might incur under any Lease or by reason of this Assignment, excluding, however, any such matter resulting from Assignee's gross negligence or willful misconduct. Any and all such liability, loss or damage incurred by Assignee, together with the costs and expenses, including reasonable attorneys' fees, incurred by Assignee in defense of any claim, or demands therefor (whether successful or not), shall be additional Secured Obligations, and Assignor shall reimburse Assignee therefor on demand.

8. **Cross-Default Clause.** Any default by Assignor in the performance or observance of any covenant or condition hereof, and the continuance thereof after any notice and cure period, shall be deemed an Event of Default under each of the Loan Documents, entitling Assignee to exercise all or any remedies available to Assignee under the terms of any or all Loan Documents, and any Event of Default under any other Loan Document shall be deemed a default hereunder, entitling Assignee to exercise any or all remedies provided for herein. Failure by Assignee to exercise any right that Assignee may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Assignee, and the waiver by Assignee of any such default by Assignor hereunder shall not constitute a continuing waiver or a waiver of any other default or of the same default on any future occasion.

9. **Reassignment by Assignee.** Assignee may assign all or part of Assignor's right, title and interest in any or all of the Leases (to the extent of the interests therein conferred upon Assignee by the terms hereof) to any subsequent holder, owner, co-owner or participant, of or in the Note or the other Loan Documents, or to any Person that acquires title to the Property through foreclosure, deed in lieu of foreclosure or otherwise. From and after the acquisition of title to the Property by any Person, through foreclosure or conveyance in lieu of foreclosure, no assignee of the interest of Assignor in any Lease shall be liable to account to Assignor for the rents, income and profits thereafter accruing. The recording of any valid release of the Security Instrument shall operate as a release of this Assignment in favor of the then owner of the Property; provided, that the recording of any valid partial release of the Security Instrument shall

UNOFFICIAL COPY

operate as a release hereof only with respect to that portion of the Property thereby released from the Security Instrument, the term "Property" as used herein being deemed thereafter to refer only to that portion of the Property remaining encumbered by the Security Instrument and the term "Assignor" as used herein being deemed thereafter to refer only to the owner or owners of such remaining portion of the Property; and provided further, that the affidavit of any officer of Assignee stating that any part of the indebtedness secured hereby remains unpaid shall constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any Person may and is hereby authorized to rely upon such affidavit.

10. **Rights and Remedies.** All rights and remedies set forth in this Assignment and in the other Loan Documents are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment thereon, issue execution therefor and resort to every other right or remedy available at law or in equity without first exhausting, and without affecting or impairing the security of, any right or remedy afforded hereby. Unless expressly provided in this Assignment to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein regarding any breach or default by any other interested party referred to herein, in the performance by such other party of any obligations contained herein shall be deemed a consent to, or waiver by the party of, the performance by such other party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other obligations hereunder.

11. **Interpretation.** If any provision of this Assignment or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Assignment shall be construed as if such invalid part were never included herein.

12. **Successors and Assigns.** This Assignment and all provisions hereof shall be binding upon Assignor, its successors and assigns, and all other Persons claiming under or through Assignor and the word "Assignor," when used herein, shall include all such Persons and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Assignment. The word "Assignee," when used herein shall include Assignee's successors and assigns, including all other holders, from time to time, of the Note. This Assignment shall run with the land constituting the Property.

13. **Binding Effect.** The provisions of this Assignment shall bind and benefit the parties hereto and their respective successors and permitted assigns.

14. **Notices.** Notices under this Assignment shall be given in the manner set forth in Section 9.10 of the Security Instrument.

15. **Governing Law.** This Assignment shall be construed and enforced according to the laws of the State of Illinois, without giving effect to conflict of laws principles.

16. **Conflict with Security Instrument.** In the event of any conflict between the terms hereof and the terms of the Security Instrument, the Security Instrument shall control and be binding.

UNOFFICIAL COPY

17. **Non-Recourse.** Assignor's obligations hereunder are subject to and limited by Section 18 of the Note and Sections 9.4 and 9.21 of the Security Instrument.

18. **Termination.** Upon the indefeasible payment and performance in full of all of the Secured Obligations (except for those certain obligations that survive repayment of the Indebtedness under the Loan Documents), Assignee will, at the sole cost and expense of Assignor, promptly execute and deliver to Assignor such documents as may be required to discharge and/or release this Assignment of record, provided that such documents are acceptable to Assignee in Assignee's discretion.

19. **Acceptance of Cures for Events of Default.** Notwithstanding anything to the contrary contained in this Assignment or the other Loan Documents (including, without limitation, any reference to the "continuance" of an Event of Default or that an Event of Default is "continuing"), Assignee shall in no event or under any circumstance be obligated or required to accept a cure by Assignor or by any other Person of an Event of Default unless Assignee agrees to do so in the exercise of its sole and absolute discretion, it being agreed that once an Event of Default has occurred and so long as Assignee has not determined to accept a cure of such Event of Default in writing, Assignee shall be absolutely and unconditionally entitled to pursue all rights and remedies available to it under the Loan Documents, at law or in equity or otherwise.

20. **Amendment of Prior ALR.** The terms, covenants and provisions of the Prior ALR are hereby modified, amended and restated in their entirety so that henceforth the terms, conditions and provisions of the Prior ALR shall read the same as set forth in this Assignment, and the Prior ALR, as so modified, amended and restated in its entirety, is hereby ratified and confirmed in all respects by Assignor. The Secured Obligations shall be secured by this Assignment.

[Balance of page intentionally left blank]

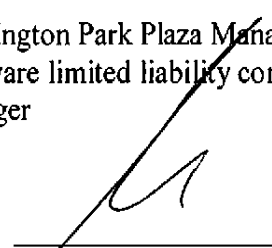
UNOFFICIAL COPY

IN WITNESS WHEREOF, this Assignment has been duly executed by Assignor as of the day and year first above written.

ASSIGNOR:

WASHINGTON PARK PLAZA LLC, a Delaware limited liability company

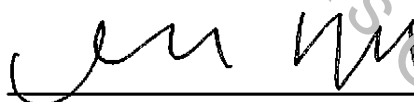
By: Washington Park Plaza Manager LLC, a Delaware limited liability company, its sole Manager

By: 

Binyamin Beitel
Manager

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

On the 6 day of February, in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared, Binyamin Beitel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.



(Signature and office of individual taking acknowledgment.)
Notary Public
My Commission Expires:

GEDALIA MARYL
Notary Public, State of New York
Reg. No. 01MA6226310
Qualified in Kings County
My Commission Expires Aug. 9, 2022

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOTS 1, 2 AND 3 IN WASHINGTON PARK PLAZA, BEING A RESUBDIVISION OF PART OF THE EAST 1/2 OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 7, 2005 AS DOCUMENT 0534145044, AND CERTIFICATE OF CORRECTION RECORDED JULY 5, 2007 AS DOCUMENT 0718618033, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 1, 2 AND 3 IN THE PLAT OF RESUBDIVISION OF LOT 4 OF WASHINGTON PARK

PLAZA, BEING A RESUBDIVISION OF LOT 4 OF WASHINGTON PARK PLAZA, BEING A RESUBDIVISION OF PART OF THE EAST 1/2 OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 18, 2005 AS DOCUMENT 0619945052, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF LOT 1 IN RICHARD HOFFMAN'S CONSOLIDATION, BEING A CONSOLIDATION OF THAT PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 13, 1988 AS DOCUMENT NUMBER 88307656, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1, THENCE ON AN ASSUMED BEARING OF NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE NORTH LINE OF LOT 1, A DISTANCE OF 285.75 FEET FOR A POINT OF BEGINNING; THENCE EASTERLY ALONG A TANGENTIAL CURVE, CONCAVE TO THE SOUTH, RADIUS 180.00 FEET, CENTRAL ANGLE 25 DEGREES 40 MINUTES 50 SECONDS, 80.68 FEET; THENCE SOUTH 64 DEGREES 19 MINUTES 10 SECONDS EAST ALONG TANGENT, 9.17 FEET TO A LINE 167 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF LOT 1 AFORESAID; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID PARALLEL LINE, 98.25 FEET TO THE SOUTH LINE OF SAID LOT 1; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID SOUTH LINE, 167.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST LINE THEREOF 70.00 FEET TO THE NORTHEAST CORNER OF LOT 1; THENCE WESTERLY ALONG THE NORTH AND NORTHERLY LINE OF LOT 1 (BEING ALSO THE SOUTH LINE AND SOUTHERLY LINE OF MAPLE AVENUE AS DEDICATED BY DOCUMENT NO. 26661237) THE FOLLOWING 4 COURSES: NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 7.73 FEET; THENCE WESTERLY ALONG

UNOFFICIAL COPY

TANGENTIAL CURVE CONCAVE TO THE NORTH, RADIUS 330.00 FEET, CENTRAL ANGLE 19 DEGREES 01 MINUTES 40 SECONDS, 109.59 FEET; THENCE NORTH 70 DEGREES 58 MINUTES 28 SECONDS WEST ALONG TANGENT 52.84 FEET; THENCE WESTERLY ALONG A TANGENTIAL CURVE CONCAVE TO THE SOUTH, RADIUS 270.00 FEET, CENTAL ANGLE 19 DEGREES 01 MINUTES 18 SECONDS, 89.64 FEET TO THE POINT OF BEGINNING.

29-32-200-059-0000
29-32-200-095-0000
29-32-200-096-0000
29-32-200-097-0000
29-32-401-034-0000
29-32-401-035-0000
29-32-401-036-0000
29-32-200-061-0000
29-32-401-032-0000

17800, 17810, 17812, 17816, 17818, 17820, 17840, 17850, 17900, 17910, 17928-17860, 17920
17930, 17936-17938, 17940, 17944-17948, 17956, 17928, 17932 AND 17958-17960 HALSTED
STREET, HOMEWOOD, IL

CLERK OF COOK COUNTY
CLERK'S OFFICE