

# UNOFFICIAL COPY

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Morrison & Foerster LLP  
250 West 55<sup>th</sup> Street  
New York, New York 10019  
Attention: Lawrence A. Ceriello,  
Esq.

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Authorization ID # AAA-8150  
Investment ID # 0009115  
ML Realty Portfolio 2020

**ASSIGNMENT OF LEASES AND RENTS**

**MLRP 3801 ROSE LLC**

**as Borrower**

to and for the benefit of

**TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA**

**as Lender**

Dated as of March 2, 2020

Property Address:  
3801 Rose Street, Schiller Park, Illinois 60176

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Investment ID # 0009115

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## ASSIGNMENT OF LEASES AND RENTS

**THIS ASSIGNMENT OF LEASES AND RENTS** (this "**Assignment**") is made as March 2, 2020, by **MLRP 3801 ROSE LLC**, a Delaware limited liability company, having an office at One Pierce Place, Suite 450, Itasca, Illinois 60143 ("**Borrower**"), to and for the benefit of **TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA**, a New York corporation ("**Lender**") having an office in care of Nuveen Alternatives Advisors LLC, 730 Third Avenue, New York, New York 10017.

### RECITALS:

A. Lender agreed to make and Borrower and certain Affiliates of Borrower (collectively, the "**Co-Borrowers**") have agreed to accept a loan in the maximum amount of \$76,000,000.00 (the "**Loan**").

B. The Loan is evidenced and governed by, among other things, that certain Promissory Note in the principal amount of SEVENTY-SIX MILLION AND NO/100 DOLLARS (\$76,000,000.00), dated as of the date hereof from Borrower and other affiliated borrowers to Lender (as the same may be amended, replaced, supplemented or otherwise modified from time to time, the "**Note**"), and that certain Loan Agreement dated as of the date hereof by and among Borrower and other affiliated borrowers and Lender (as the same may be amended, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**").

C. Borrower's obligations under the Note and the Loan Agreement are secured by, among other things, those certain Security Instruments (as defined in the Loan Agreement) dated as of the date hereof that encumbers the real property with improvements thereon and other collateral located at 3801 Rose Street, Schiller Park, Illinois 60176, and more particularly described on **Exhibit A** attached hereto (collectively, the "**Property**").

E. As a condition to making the Loan, Lender requires that Borrower assign the Assigned Property (defined below) to secure Borrower's obligations in respect of the Loan.

### AGREEMENT:

NOW, THEREFORE, in consideration of the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Borrower and Lender agree as follows:

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

**Section 1.1 Definitions.** All capitalized terms not expressly defined in this Assignment will have the meanings given in the Loan Agreement.

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**Section 1.2 Specific Definitions.** The following terms shall be defined as follows:

(a) **“Leases”** means all present and future leases, subleases, licenses and other agreements for the use and occupancy of the Property, any present and future guarantees or other credit enhancements given in connection with any Tenant’s performance under any of the foregoing, and any use and occupancy arrangements created pursuant to Section 365(h) of the Bankruptcy Code or otherwise in connection with the commencement or continuation of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar Proceedings, or any assignment for the benefit of creditors, in respect of any tenant or other occupant of the Property.

(b) **“Rents”** means all present and future rents, prepaid rents, percentage, participation or contingent rents, issues, profits, proceeds, parking fees, revenues and other consideration accruing under or in connection with the Leases or otherwise derived from the use and occupancy of the Property, including tenant contributions to expenses, security deposits (if and when forfeited) and royalties, if any, all other fees or payments paid to or for the benefit of Borrower, including liquidated damages after a default under a Lease, any termination, cancellation, modification or other fee or premium payable by a tenant for any reason, the proceeds of any rental insurance and any payments received pursuant to Sections 502(b) or 365 of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or other occupant of the Property and all claims as a creditor in connection with any of the foregoing.

(c) **“Tenants”** means all present and future tenants, subtenants, licensees and other occupants of the Property.

**Section 1.3 Rules of Construction.** This Assignment will be interpreted in accordance with the rules of construction set forth in Exhibit B of the Loan Agreement.

## ARTICLE II

### GRANTING CLAUSES

**Section 2.1 Assignment.**

(a) In consideration of the Debt, Borrower irrevocably, absolutely, presently, unconditionally and not merely as additional security for the payment and performance of the Obligations, sells, assigns, sets over and delivers to Lender the following property, rights, interests and estates now or in the future owned or held by Borrower (the **“Assigned Property”**), for Lender’s uses and purposes as set forth in this Assignment, subject to the license granted by Lender to Borrower in this Assignment to collect and receive the Rents until an Event of Default occurs:

- (i) all Leases;
- (ii) all Rents and the immediate and continuing right to collect and receive all Rents;

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(iii) all rights or causes of action that Borrower now or hereafter may have against any Tenant.

(b) Borrower further assigns, transfers and sets over to Lender all of Borrower's right, title and interest in and to all payments and claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Leases by a Tenant or trustee of the Tenant under Sections 502(b) or 365 of the Bankruptcy Code, including all rights to recover damages arising out of such breach or rejection, all rights to charges payable by the Tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of such Tenant and all rentals and other charges outstanding under the Lease as of the date of entry of such order for relief and all payments and all claims and rights to the payment of money in connection with the commencement or continuance of any bankruptcy, insolvency, reorganization, arrangement, dissolution, receivership or similar proceedings or assignment for the benefit of creditors relating to any Tenant.

(c) Lender's acceptance of this Assignment, with all of the rights, powers, privileges and authority so created, will not, prior to Lender's entry upon and taking possession of the Property, be deemed to constitute Lender a mortgagee-in-possession, will not obligate Lender to appear in or defend any action or proceeding relating to the Leases or to take any action under this Assignment, to expend any money or incur any expenses under the Leases or this Assignment, to perform or discharge any obligation under the Leases or to assume any obligation for security deposits or other deposits delivered to Borrower by any Tenant and not delivered to Lender and Lender will not be liable for any injury or damage to person or property sustained in or about the Property.

## ARTICLE III

### LICENSE TO COLLECT, AND APPLICATION OF, RENTS

#### Section 3.1 License to Collect Rents.

(a) Lender grants to Borrower a license to collect the Rents as they become due under the Leases, receiving and holding the Rents as a trust fund for the benefit of Lender.

(b) If an Event of Default occurs, Borrower's license to collect the Rents will terminate automatically, without any action required of Lender. If Borrower nevertheless collects any Rents after the license terminates, Borrower nevertheless will hold such Rents as a trust fund for the benefit of Lender and will apply such Rents in the following order of priority (i) to Lender, amounts required to be deposited into the Tax Reserve pursuant to the Loan Agreement, (ii) to Lender, the unpaid amount of Debt Service Payment due on the next occurring Payment Date and all other amounts then due and payable to Lender in accordance with the terms of the Loan Documents, (iii) to Lender, such additional amounts, if any, required to be deposited into any other Reserve established pursuant to the terms of the Loan Documents, (iv) to any other Expenses as may be directed or permitted in writing by Lender in the exercise of its sole discretion, and (v) the balance, if any, to Lender, for application against the Debt in such order and amounts as determined by Lender in its sole discretion.

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## ARTICLE IV

### REMEDIES

#### Section 4.1 Remedies.

(a) If an Event of Default occurs and is continuing, Lender may take any of the following actions (the "Assignment Remedies") without notice to Borrower:

(i) exercise any of the Remedies or any other remedies set forth in any other Loan Document; and

(ii) directly or through a receiver or as a mortgagee-in-possession as authorized by the court:

(A) take possession and control of the Property;

(B) manage and operate the Property;

(C) require Borrower to deliver to Lender or a receiver all security deposits, all books and records relating to the Property and Borrower and all original counterparts of the Leases;

(D) collect, sue for and give receipts for the Rents and, after paying all expenses of collection, including a receiver's fee and expenses, any broker's fees and commissions, and any attorneys' fees (including expert fees, disbursements and costs) apply the net collections to the operation, management and leasing of the Property and thereafter as provided in the Loan Documents;

(E) make, modify, enforce, terminate or accept surrender of Leases and evict tenants;

(F) appear in and defend any Proceeding brought in connection with the Assigned Property and bring any Proceeding, in the name and on behalf of Borrower, that Lender, in its sole discretion, determines should be brought to protect the Assigned Property or Lender's interest in the Assigned Property;

(G) perform any act in the place of Borrower that Lender or the receiver deems necessary to preserve the value, marketability or rentability of the Property or to increase the gross receipts from the Property; and

(H) take any other action with respect to the Assigned Property as Lender may deem necessary to protect, preserve or realize upon Lender's interest in the Assigned Property.

#### Section 4.2 General Provisions Pertaining to Remedies.

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(a) The Assignment Remedies are cumulative and may be pursued concurrently or otherwise, at such time and in such order as Lender may determine in its sole discretion and without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower.

(b) The enumeration in the Loan Documents of specific rights or powers will not be construed to limit any general rights or powers or impair Lender's rights with respect to the Assignment Remedies.

(c) If Lender exercises any of the Assignment Remedies, Lender will not be deemed a mortgagee in possession.

(d) Lender will not be liable for any act or omission of Lender in connection with the exercise of the Assignment Remedies, except in the case of the gross negligence or willful misconduct of Lender.

(e) Lender's right to exercise any Remedy will not be impaired by Lender's delay in exercising or failure to exercise the Assignment Remedies and will not be construed as extending any cure period or constitute a waiver of the Event of Default.

(f) If an Event of Default occurs, Lender's or a receiver's payment or performance or acceptance of payment or performance will not be deemed a waiver or cure of the Event of Default.

(g) Lender's or a receiver's acceptance of partial payment will not extend or affect any grace period or constitute a waiver of an Event of Default but will be credited against the unpaid Debt.

(h) If Lender or a receiver exercises any of the Assignment Remedies, such action will not cure or waive any Event of Default, will not waive, modify or affect any notice of Event of Default under the Loan Documents and will not invalidate any act done pursuant to a notice of an Event of Default under the Loan Documents. Once Lender exercises the Assignment Remedies, Lender's enforcement will continue for so long as Lender elects, notwithstanding that the collection and application of the Rents may have cured the original Event of Default. If Lender elects to discontinue the exercise of the Assignment Remedies, the Assignment Remedies may be reasserted at any time and from time to time following and during the continuance of a subsequent Event of Default.

(i) A demand by Lender or the receiver on any Tenant to pay the Rents to Lender or the receiver by reason of an Event of Default will be sufficient notice to the Tenant to make future payments of Rents to Lender or the receiver without the necessity for consent by Borrower.

**Section 4.3 Payment of Expenses.** In furtherance of Borrower's obligations under Section 11.1 of the Loan Agreement, Borrower is obligated to pay all Expenses incurred by Lender or the receiver or that are otherwise payable in connection with this Assignment or the Leases, the Rents or any other Assigned Property, including Expenses relating to (a) any Proceeding or other claim asserted against Lender, and (b) the preservation of Lender's security and the exercise of any Assignment Remedies.

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**Section 4.4 Duty to Defend.** If Lender or any of its trustees, officers, participants, employees or affiliates is a party in any Proceeding relating to the Assigned Property, Borrower will indemnify and hold harmless the party and will defend the party with attorneys and other professionals retained by Borrower and approved by Lender. Lender may elect to engage its own attorneys and other professionals, at Borrower's expense, to defend or to assist in the defense of the party. In all events, case strategy will be determined by Lender if Lender so elects and no Proceeding will be settled without Lender's prior approval which may be withheld in its sole discretion.

## ARTICLE V

### MISCELLANEOUS

**Section 5.1 Further Assurances; Attorney-In-Fact.** Borrower will execute, acknowledge and deliver to Lender, or any other entity Lender designates, any additional or replacement documents and perform any additional actions that Lender determines are reasonably necessary to evidence, perfect or protect Lender's first lien on and prior security interest in the Assigned Property or to carry out the intent or facilitate the performance of the provisions of this Assignment. Borrower appoints Lender as Borrower's attorney-in-fact to perform, at Lender's election, any actions and to execute and record any additional or replacement documents necessary to effectuate the actions referred to in this Section, in each instance only at Lender's election and only to the extent Borrower has failed to comply with the terms of this Section. The foregoing appointment is a power coupled with an interest and is irrevocable.

### **Section 5.2 Bankruptcy Proceeding Provisions.**

(a) If Borrower receives on account of any Proceeding including any Proceeding under the Bankruptcy Code, any sums relating to the breach or rejection of any of the Leases by a Tenant or trustee of such Tenant under Section 365 of the Bankruptcy Code, including all damages arising out of such breach or rejection, all rights to charges payable by the Tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of the Tenant and all rentals and other charges outstanding under the Lease as of the date of entry of such order for relief, such amounts shall be treated as a "Termination Fee" pursuant to Section 8.3 of the Loan Agreement, and shall be deposited and/or applied in the manner required thereby.

(b) Any proof of claim or similar document filed by the Lender in connection with the breach or rejection of any of the Leases by any lessee thereunder or trustee of any such lessee under Section 365 of the Bankruptcy Code, 11 U.S.C. §365, will for the purpose of perfecting the Lender's rights conferred in Section 2.1 be deemed to constitute a petition by Lender against Borrower for sequestration of rents under the Laws of the state where the Property is located.

**Section 5.3 Assignment Terminates Upon Payment in Full.** Upon payment and performance in full of the Obligations, this Assignment will terminate, but the affidavit, certificate, letter or statement of any officer of Lender showing any part of the Debt to be unpaid will be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person, firm or corporation, may and is hereby authorized to rely thereon.

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Upon termination of this Assignment, upon request from Borrower, Lender shall execute and deliver a release hereof to Borrower in recordable form.

**Section 5.4 No Further Assignment.** Borrower will not, for collateral or security purposes, further assign or otherwise transfer or encumber its interest in the Assigned Property without Lender's prior consent which may be withheld in Lender's sole discretion. If Lender consents to any further assignment, transfer or encumbrance of the Assigned Property, it will only do so provided that (i) the subordinate assignment restricts the subordinate assignee from subordinating the Leases to any mortgage or other security instrument held by the subordinate assignee and requires the subordinate assignee to subordinate its interests to any Leases executed after the date of the subordinate assignment; (ii) the subordinate assignment prohibits the subordinate assignee from taking any action that would terminate, modify or amend or could result in the termination, modification or amendment of any of the Leases; and (iii) the subordinate assignee agrees that if it exercises its remedies under its assignment and either it or any party acting on its behalf collects any Rents, such Rents will be deemed collected for the benefit of Lender and held in trust for Lender and upon written demand, the party holding the Rents collected will immediately pay them to Lender. If any subordinate assignment does not contain the foregoing provisions, to the extent permitted by Law, the subordinate assignee will be deemed bound by such provisions as if set forth in the subordinate assignment or any action taken by subordinate assignee that violates the foregoing provisions will be null and void.

**Section 5.5 Applicable Law.** This Assignment shall be governed and construed in the manner described in Section 18.1 of the Loan Agreement.

**Section 5.6 Limitation of Liability.** This Assignment is subject to the limitations on liability set forth in Section 15.1 of the Loan Agreement.

**Section 5.7 Provisions Incorporated.** The provisions of Articles XVI, XVII and XVIII of the Loan Agreement are applicable to this Assignment and are deemed incorporated by reference as if set forth at length herein.

**Section 5.8 Covenants Run with the Land.** The terms, covenants, conditions and warranties contained in this Assignment and the powers granted hereby will run with the Property, will inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all lessees, sub-tenants and assigns of same, and all subsequent owners of the Property, and all subsequent holders of the Loan Documents.

**Section 5.9 Counterparts.** Duplicate counterparts of this Assignment may be executed and together will constitute a single original document. The parties stipulate that electronic copies of this Assignment shall be sufficient for evidentiary purposes.

**Section 5.10 Illinois Mortgage Foreclosure Law.** In the event that any provision in this Assignment shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101, et seq., herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Assignment, but shall not invalidate or render unenforceable any other provision of this Assignment that can be construed in a manner consistent with the Act.



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To the extent Lender's rights hereunder are more limited than the rights statutorily mandated to inure to the benefit of Lender pursuant to the Act, the Act shall control.

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[SIGNATURES ON FOLLOWING PAGE]

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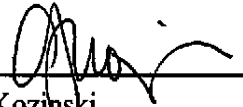
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IN WITNESS WHEREOF, Borrower has executed and delivered this Assignment as of the date first set forth above.

**BORROWER:**

**MLRP 3801 ROSE LLC,**  
a Delaware limited liability company

By: ML Realty Partners LLC,  
a Delaware limited liability company,  
its Sole Member

By:   
Name: Nancy Kozinski  
Title: Chief Operating Officer

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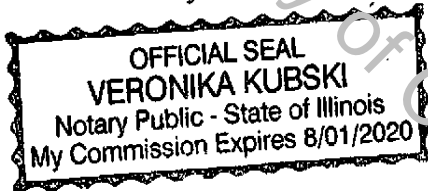
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STATE OF ILLINOIS :

COUNTY OF DuPage : SS:  
:

I, the undersigned, a Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY that Nancy Kozinski, the Chief Operating Officer of ML Realty Partners LLC, a Delaware limited liability company, the sole member of MLRP 3801 Rose LLC, a Delaware 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/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27 day of February 2020.



Veronika Kubski  
Notary Public

Place Notary Seal and/or Any Stamp Above

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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 1 IN MLRP 3801 ROSE, BEING A RESUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 3801 ROSE STREET, SCHILLER PARK, IL 60176  
PERMANENT INDEX NUMBER: 12-22-100-170-0000

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