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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 04/27/2023 02:29 PM PG: 1 OF 12

SPACE ABOVE LINE RESERVED FOR OFFICIAL RECORDER'S USE

**DOCUMENT PREPARED BY AND
WHEN RECORDED MAIL TO:**

Loan #: 1-004-545

CARLTON FIELDS
ONE STATE STREET, SUITE 1800
HARTFORD, CONNECTICUT 06103
ATTENTION: KATE S. D'AGOSTINO, ESQ.

PERMANENT INDEX NUMBERS: 08-22-302-016-0000, 08-22-302-017-0000, 08-22-302-017-0000 AND 08-22-302-028-0000

STREET ADDRESS: 147-225 STANLEY ST. AND 701 GULLO AVENUE, ELK GROVE VILLAGE,
ILLINOIS

**MODIFICATION AND ASSUMPTION OF
MORTGAGE AND ASSIGNMENT OF LEASES**

THIS MODIFICATION AND ASSUMPTION OF MORTGAGE AND ASSIGNMENT OF LEASES (this "Agreement") is made as of April 21, 2023 by and between **TCG ELK LLC**, a Delaware limited liability company, having an address at c/o Trident Capital Group, LLC, 40 Grove Street, Suite 250, Wellesley, Massachusetts 02482 (the "Assignor"), and **UP STANLEY, LLC**, a Delaware limited liability company, having an address at c/o Unilev Capital Corporation, 9250 Wilshire Boulevard, Suite 303, Beverly Hills, California 90212 (the "Assignee"), and is also made for the benefit of **AETNA BETTER HEALTH INC.**, an Ohio corporation, having an address c/o Aetna Investment Group, at 151 Farmington Avenue, RTAA, Hartford, Connecticut 06156 ("Lender"). Capitalized terms used but not otherwise defined herein shall have the

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meanings ascribed to such terms in the Mortgage (as hereinafter defined and/or modified).

RECITALS

- A. Lender made a loan to Assignor in the original principal amount of \$2,359,500.00 (the “**Loan**”);
- B. The Loan is evidenced by the Promissory Note dated as of March 26, 2020, in the original principal amount of \$2,359,500.00, payable to the order of Lender (the “**Note**”) which, as of the date hereof, has an outstanding principal balance of \$2,313,226.81;
- C. The Loan is secured by, among other things: (i) that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of March 26, 2020 by Assignor in favor of Lender, and recorded on April 24, 2020 with the Cook County Recorder of Deeds, Illinois (the “**Land Records**”), as Document #2011520052 (the “**Mortgage**”), and (ii) that certain Assignment of Leases and Rents dated as of March 26, 2020 by Assignor in favor of Lender, and recorded on April 24, 2020 in the Land Records as Document #2011520053 (the “**Assignment of Leases**”). The Mortgage and the Assignment of Leases relate to certain real property commonly known as Elk Grove Industrial Portfolio and located in Elk Grove Village, County of Cook and State of Illinois (the “**Property**”), more particularly described on **Exhibit A** attached hereto;
- D. Assignor desires to transfer and assign all of Assignor’s right, title and interest in the Property to Assignee and Assignee wishes to assume all of the duties and obligations of the Assignor under the Loan Documents, from and after the date hereof (the “**Assignment and Assumption**”);
- E. Assignor and Assignee have requested that Lender consent to the Assignment and Assumption and Lender is willing to do so in accordance with the terms and conditions of that certain Modification and Assumption Agreement dated as of the date hereof by and among Assignor, Assignee and Lender (the “**Assumption Agreement**”); and
- F. In connection with the Assignment and Assumption, Assignor, Assignee and Lender further desire to amend and modify the Mortgage and the Assignment of Leases in accordance with the provisions of this Agreement.

AGREEMENT

As an inducement to Lender to consent to the Assignment and Assumption and to enter into this Agreement and the Assumption Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, Assignor, Assignee and Lender hereby agree as follows:

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1. **Lender's Consent.** Subject to the terms and provisions of this Agreement, Lender hereby consents to the Assignment and Assumption. Such consent shall not constitute a waiver or modification of any provision contained in any of the Loan Documents requiring Lender's consent to any future transfer of the Property, or to any other act requiring Lender's consent, nor shall it constitute a modification of the terms, provisions, or requirements of the Loan Documents, except as expressly set forth in this Agreement.

2. **Assignment of Loan Documents and Assumption of Loan.**

(a) Assignor hereby assigns, sells, transfers, negotiates, endorses, grants, conveys, delivers and sets over unto Assignee all of the Assignor's right, title and interest in and to the Loan Documents.

(b) Assignee hereby assumes all of Assignor's obligations, covenants, liabilities and indebtedness under the Note and each of the other Loan Documents and hereby agrees to be a party to and bound by each of the terms, conditions and provisions thereof. Assignee acknowledges and agrees that it has acquired the Property subject to the mortgage liens and security interests created by the Loan Documents.

3. **Modification of the Mortgage.** As of the date hereof, the Mortgage is amended as follows:

(a) All references to "Mortgagor" in the Mortgage shall hereafter refer to "UP Stanley, LLC, a Delaware limited liability company".

(b) All references to "TCG Remington LLC, a Delaware limited liability company" shall be replaced with "UP Remington, LLC, a Delaware limited liability company."

(c) All references to "Peter Walter and David Pizzotti", as Principals, shall be replaced with "**THE TOTTENHAM TRUST, originally established July 27, 2001**, having an address at 9250 Wilshire Boulevard, Suite 303, Beverly Hills, California 90212 ("**Trust Guarantor**"), **RAYMOND LEVY**, an individual, having an address at 9250 Wilshire Boulevard, Suite 303, Beverly Hills, California 90212 ("**Levy**"), **NITIN CHEXAL**, an individual, having an address at 48 Pascal Lane, Austin, Texas 78746 ("**Chexal**"), **RICHARD GOLDMAN**, an individual, having an address at 10545 Vestone Way, Los Angeles, California 90077 ("**Goldman**"), and **CHEUK NG**, an individual, having an address at 2012 Primrose Avenue, South Pasadena, California 91030 ("**Ng**"; Levy, Trust Guarantor, Chexal, Ng and Goldman are individually and collectively referred to herein as the case may warrant as "**Principal**")", as Principal.

(d) Intentionally Omitted.

(e) All references to the Closing Certificate shall hereafter refer to that certain Closing Certificate, along with all exhibits thereto, of even date herewith executed by UP Stanley, LLC and Principal.

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(f) All references to the Indemnification Agreement shall hereafter refer to that certain Indemnification Agreement of even date herewith executed by UP Stanley, LLC and Principal.

(g) All references to the Cross Default Guaranty shall hereafter refer to that certain Cross Default Guaranty of even date herewith executed by UP Remington, LLC.

(h) The address for “Mortgagor” is hereby replaced with the address set forth in the first paragraph of this Assignment.

(i) Section 1.18(2)(ii) is hereby amended and restated in its entirety as follows:

“Mortgagor’s financial statements for such year in accordance with sound accounting principles consistently applied, including a balance sheet as of the end of such year and an income statement and a cash flow statement for such year; and”

(j) Section 1.2(b)(i) is hereby amended and restated in its entirety as follows:

“(i) (A) Mortgagor is a duly organized and validly existing limited liability company under the laws of the State of Delaware and is in good standing under those laws and is duly qualified to do business in the State of Illinois; and (B) Mortgagor’s organizational identification number as assigned to it by the State of Delaware is 7235828;”

(k) Section 1.2(b)(iii) is hereby amended and restated in its entirety as follows:

“(iii) the sole member of Mortgagor is UP Stanley Remington Holdings, LLC; the manager of the sole member of Mortgagor is UP Stanley Remington GP, LLC;”

All references in the Mortgage to “member of Mortgagor” shall also include the manager of the sole member of Mortgagor.

(l) Section 1.2(c)(iii) is hereby amended by adding the following reference: “and that certain Phase One Environmental Site Assessment dated February 2, 2023, prepared by BBG Assessments, LLC:”

(m) Section 1.10(f) is hereby amended by deleting “Trident Industrial Management LLC, a Delaware limited liability company” and replacing it with “UNILEV MANAGEMENT CORP., a Texas corporation.”

(n) Section 3.1(c) is hereby deleted in its entirety.

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(o) Section 3.1(d) is hereby amended and restated in its entirety to read as follows:

“(d) Notwithstanding subsection 3.1(a), provided no Event of Default then exists, a transfer of a direct or indirect ownership interest in Mortgagor shall be permitted provided after such transfer, one or more Principal, directly or indirectly controls the management and operation of Mortgagor; and (ii) such transfer shall not release, waive, diminish or otherwise affect any of the transferor’s obligations then existing or thereafter arising under any of the Loan Documents to which it is a party. Mortgagee’s confirmation that any such transfer satisfies the conditions thereto shall be at no cost to Mortgagee, and Mortgagor expressly agrees to pay the reasonable fees and reasonable out-of-pocket third party expenses of Mortgagee’s legal counsel, if any is engaged.”

4. Modification of the Assignment of Leases. As of the date hereof, the Assignment of Leases shall be amended as follows:

(a) All capitalized terms used in the Assignment of Leases having meanings ascribed to such terms by reference to the Mortgage, shall hereafter mean such terms as used in the Mortgage, as modified by this Agreement.

(b) All references to “Assignor” in the Assignment of Leases shall hereafter refer to “UP Stanley, LLC, a Delaware limited liability company”.

5. Grant of Security Interest. To secure payment of the Indebtedness and the keeping, performance and observance of, and compliance with the provisions of the Mortgage, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignee does hereby **IRREVOCABLY AND UNCONDITIONALLY GRANT, MORTGAGE, WARRANT, CONVEY, BARGAIN, TRANSFER AND ASSIGN TO LENDER AND ITS SUCCESSORS AND ASSIGNS FOREVER, WITH RIGHT OF ENTRY AND POSSESSION, AND GRANTS TO LENDER,** its successors and assigns forever, in and to the Property.

6. Ratification of Mortgage and Other Loan Documents. Each of the Loan Documents and the obligations, indebtedness and liabilities of the Assignee are hereby ratified, reaffirmed and confirmed. The Property shall remain in all respects subject to the lien, charge and encumbrance of the Mortgage and the Assignment of Leases, each as modified hereby. To Assignee’s knowledge, nothing herein contained and nothing done pursuant hereto shall affect or be construed to affect the lien, charge or encumbrance of the Mortgage and the Assignment of Leases, each as modified hereby or the priority thereof over all liens, charges or encumbrances.

7. Representations and Warranties. Assignee hereby represents and warrants to Lender as follows:

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(a) To Assignee's knowledge, after giving effect to the transactions contemplated hereby, no default in the payment or performance of any of the obligations of Assignee (except for such pertain to any period of time arising prior to the date hereof) under any of the Loan Documents exists. Assignee does not have any rights of set-off, offsets, claims, counterclaims, credits or defenses to the payment or performance of any of its obligations under the Mortgage or the Assignment of Leases, each as modified by this Agreement, all of which are hereby waived.

(b) Assignee has adequate power and authority to execute and deliver this Agreement and each other document to which it is party in connection with the Assignment and Assumption and perform its obligations hereunder and thereunder. This Agreement and each other document executed in connection with the Assignment and Assumption do not contravene the organizational documents of Assignee or any law, rule or regulation applicable to Assignee or any of the terms of any other indenture, agreement or undertaking to which Assignee is a party. The execution and delivery of this Agreement by Assignee and the performance of all of the obligations by Assignee contemplated hereby and by the Loan Documents, as amended hereby, have been duly authorized by all appropriate action on the part of Assignee.

8. Miscellaneous Provisions.

(a) The captions and section headings in this Agreement are for convenience only and are not intended to define, alter, limit or enlarge in any way the scope or meaning of this Agreement or any term or provision set forth in this Agreement.

(b) The Recitals set forth at the beginning of this Agreement are incorporated in and made a part of this Agreement by this reference.

(c) This Agreement is, and shall be deemed to be, the product of joint drafting by the parties hereto and shall not be construed against any of them as the drafter hereof.

(d) This Agreement may be executed in one or more identical counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same Agreement.

(e) From and after the date hereof, all references in the Loan Documents to (i) the Mortgage shall hereafter be deemed to refer to the Mortgage, as modified hereby, (ii) the Assignment of Leases shall hereafter be deemed to refer to the Assignment of Leases, as modified hereby, (iii) the Indemnification Agreement shall hereafter be deemed to refer to the Indemnification Agreement of even date herewith executed by UP Stanley, LLC and Principal, and (iv) the Cross Default Guaranty shall hereafter be deemed to refer to the Cross Default Guaranty of even date herewith executed by UP Remington, LLC.

(f) This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement and the obligations of

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such parties hereunder are and at all times shall be deemed to be for the exclusive benefit of such parties and their respective successors and assigns, and nothing set forth herein shall be deemed to be for the benefit of any other person.

(g) This Agreement shall be governed by, and enforced in accordance with, the internal laws of the State of Illinois.

(h) The electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to such document. The parties agree that this electronically signed document shall be deemed (i) to be "written" or "in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if introduced as evidence in any proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. No party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted via the internet as a "pdf" (portable document format) or other replicating image attached to an e-mail message, and "electronically signed document" means a document transmitted via e-mail containing an electronic signature.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

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ACKNOWLEDGMENT

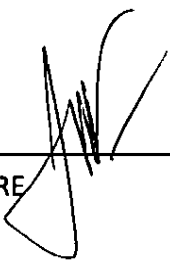
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

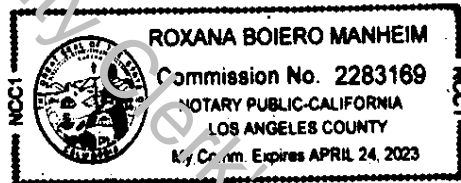
STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On April 12th., 2023, before me, ROXANA BOIERO MANHEIM, a Notary Public, personally appeared RAYMOND LEVY who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE 



(SEAL)

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOT 1 IN R & S RESUBDIVISION BEING A RESUBDIVISION OF LOTS 1 AND 2 IN GULLO INTERNATIONAL'S RESUBDIVISION IN THE WEST HALF OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 3 AND 4 IN GULLO INTERNATIONAL'S RESUBDIVISION OF LOT 3 IN GULLO INTERNATIONAL'S OFFICE AND INDUSTRIAL CENTER SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 5 IN GULLO INTERNATIONAL'S RESUBDIVISION OF LOT 3 IN GULLO INTERNATIONAL'S OFFICE AND INDUSTRIAL CENTER BEING A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel 08-22-302-016-0000; Parcel 08-22-302-017-0000; Parcel 08-22-302-018-0000; Parcel 08-22-302-028-000

Parcel 08-22-302-016-0000; Parcel 08-22-302-017-0000; Parcel 08-22-302-018-0000; Parcel 08-22-302-028-000