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Parcel Identification

Number: 08-15-04832003 **2016 054938**

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2016 AUG 12 AM 8:53

MICHAEL B. BROWN
RECORDER

WHEN RECORDED, MAIL TO:

First American Title Insurance Company
National Commercial Services

One Oxford Centre, Suite 4235
301 Grant Street
Pittsburgh, PA 15219

NCS 795088 - PD



FOR RECORDER'S USE ONLY

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), dated as of the 28th day of July, 2016 but effective July 29, 2016 by **MERRILLVILLE PROPERTIES, LLC**, an Indiana limited liability company, with an address of 250 W. 84th Drive, Merrillville, IN 46410 ("Assignor"), to **FIRST NIAGARA FUNDING, INC.**, a national banking association with a banking office at 726 Exchange Street, Buffalo, NY 14210, Attention: Commercial Loan Administration ("Lender"), evidences, with the intent to be legally bound hereby:



1.1 BUSINESS DAY: A day of the year which is neither a Saturday or Sunday nor a legal holiday on which banks are required or authorized by law to close in the Commonwealth of Pennsylvania.

1.2 INDEBTEDNESS: As used herein, "Indebtedness" shall mean all indebtedness and other liabilities of Assignor to Lender and affiliates of Lender of every kind and character, arising under this Assignment or any other loan documents or by operation of law, whether direct, indirect, primary, absolute, contingent, as borrower or guarantor, matured or unmatured, now owing or existing or hereafter incurred or created, originally contracted with Lender or with others, evidenced by a negotiable or non-negotiable instrument or other writing, and all amendments, extensions, renewals and replacements thereof, including, without limitation, all principal, interest, charges, expenses, commitment or facility fees, collateral management or other fees, treasury management obligations, foreign exchange obligations, obligations due pursuant to any Interest Rate Protection Agreement entered into by Assignor, reasonable attorneys' fees and expenses related to the collection of the foregoing and any other amount payable by Assignor hereunder and any other agreement between the parties whether executed in connection herewith or otherwise. "Interest Rate Protection Agreement" shall mean any agreement, device or arrangement designed to protect such Assignor from fluctuations of interest rates, exchange rates or forward rates, including, but not limited to, dollar-denominated or cross-currency exchange agreements, forward currency exchange agreements, interest rate caps, collars or floors, forward rate currency or interest rate options, puts, warrants, swaps, swaptions, U.S. Treasury locks and U.S. Treasury options, and any and all cancellations, buybacks, reversals, terminations or assignments of any of the foregoing.

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1.3 LEASES: All agreements now existing or hereafter arising for the rental of space in or affecting the Premises or the right to enter upon, occupy, possess or use the Premises, including subleases, and other agreements for the leasing or rental of the Premises or any part thereof, now existing or hereafter made, and all proceeds of any of the foregoing, including, without limitation, all revenues, receipts, income, fees, charges, accounts, accounts receivable and other payments and receivables; all rents and other amounts now or hereafter due thereon; all proceeds thereof; and all replacements and substitutions and all renewals, extensions and modifications thereof from time to time amended.

1.4 MORTGAGE: The Mortgage given by Assignor to Lender of even date herewith encumbering the real property described on Schedule A hereto, as such mortgage may be amended, supplemented, replaced or otherwise modified from time to time.

1.5 PREMISES: The real property and additional interests so defined as the Premises in the Mortgage.

II. ASSIGNMENT

As continuing collateral security for the payment of the Indebtedness, Assignor hereby assigns to Lender all Assignor's right, title and interest in and to the Leases, such assignment being present, absolute and unconditional; provided, however, that in the absence of an Event of Default (as hereafter defined), Lender agrees that Assignor may collect the payment of any rents, issues, income, royalties and profits and retain and use the rents and other amounts now or hereafter due on the Leases. Upon the occurrence of an Event of Default, Assignor's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to Assignor. Lender shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

The above assignment shall not be deemed to impose upon Lender any of the obligations or duties of the landlord or Assignor provided in any Lease.

III. COVENANTS AND REPRESENTATIONS OF ASSIGNOR

3.1 EXISTING LEASES: Any existing Leases submitted to Lender by or on behalf of Assignor are now valid and enforceable according to their terms, and have not, since their execution, been altered or amended in any manner which would cause a reduction of the rental or other sums due to Assignor or to create greater financial obligations on the part of Assignor, and no rents thereunder have been collected more than one (1) month in advance of the time when such rent is due.

3.2 COMPLIANCE WITH LEASES: Assignor will duly perform all the duties of, and comply with all the terms, covenants, conditions, provisions and agreements required of or made by Assignor in accordance with the Leases.

3.3 NEW LEASES; CANCELLATION AND AMENDMENT: Assignor will not, without Lender's prior written consent: (a) enter into any new Lease; (b) cancel, abridge, or modify any Lease; (c) transfer, mortgage or otherwise encumber the rents or other amounts due under Leases; or (d) accept prepayments of installments of rent to become due in excess of one (1) month.

3.4 AUTHORITY: Assignor has (a) the right to the rents presently due or to become due under the existing Leases; (b) has not previously assigned such rents or any part thereof except to Lender; (c) has the right and authority to make this Assignment; (d) has performed or will perform all necessary acts to authorize payment of the rents to Lender; and (e) will execute and deliver to Lender any and all other documents and perform all acts requested by Lender in connection with the Leases and this Assignment.

3.5 ATTORNEY-IN-FACT: Lender is hereby appointed attorney-in-fact of Assignor with full power and authority to act in the name of Assignor after the occurrence of any Event of Default in the exercise of any remedy permitted Lender hereunder but nothing herein shall in any way obligate Lender to act in any manner on behalf of Assignor or relieve Assignor from its duty to perform according to the provisions of the Leases and this Assignment. The rights and powers granted to Lender hereby shall be irrevocable so long as the Indebtedness remains unpaid.

IV. EVENTS OF DEFAULT

The occurrence of any of the events or existence of any of the conditions described in this Article IV shall constitute an event of default hereunder ("Event of Default"):

- 4.1 **NONPAYMENT OF INDEBTEDNESS:** Failure by Assignor to pay the Indebtedness when due.
- 4.2 **EVENT OF DEFAULT:** The failure to comply with the provisions hereof or any other document evidencing or securing the Indebtedness.

V. REMEDIES

Upon demand or the occurrence of an Event of Default, Lender may, at its option and sole discretion, exercise, alternatively or cumulatively, any or all of the following remedies, without in any way waiving such Event of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or any guarantor of any Indebtedness from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by any other document evidencing or securing the Indebtedness:

- 5.1 **COLLECT RENTS:** Demand, recover and receive any and all rents and income from the Leases and apply the same to the Indebtedness.
- 5.2 **PERFORM LEASES:** Perform such acts as may be required of Assignor by the Leases.
- 5.3 **LEASE AND SUBLEASE PREMISES:** Lease, sublease, license or otherwise permit the use of the Premises or any part thereof which is now or may become vacant for such periods as Lender may deem proper.
- 5.4 **MAINTAIN ACTIONS:** Maintain any and all actions or proceedings to recover rents or other income from the Premises or to remove tenants, subtenants or occupants therefrom.
- 5.5 **PAY EXPENSES:** Pay all sums Lender deems necessary toward taxes, assessments, utility charges, prior liens, insurance premiums, service contracts, or repairs affecting the Premises and the obligations of Assignor under the Leases, and for exercising any remedies hereunder, and if the income of the Premises is not sufficient to cover such payments, together with sums then due on the Indebtedness secured hereby, Assignor will promptly reimburse Lender to the extent thereof and such sums shall be secured hereby.
- 5.6 **RENEGOTIATE LEASES:** Renegotiate (including the making of rent concessions and making of tenant improvements), cancel, accept the surrender of, and enforce the terms of, the Leases.
- 5.7 **RIGHT OF SETOFF:** Upon and at any time and from time to time after any occurrence or existence of any Event of Default, Lender shall have the right to place an administrative hold on, and setoff against each obligation of Assignor pursuant to this Assignment, each obligation of Lender or any other direct or indirect subsidiary of First Niagara Financial Group, Inc. (in any capacity) owing to Assignor, whether now existing or hereafter arising or accruing, whether or not then due and whether pursuant to any deposit account or any other manner. Such setoff shall become effective at the time Lender opts therefor even though evidence thereof is not entered in the books and records of Lender until later.
- 5.8 **OTHER:** Exercise any other right or remedy available to Lender in law or equity.

In the exercise of any of the foregoing rights and powers, Lender shall not be liable to Assignor for any loss or damage thereby sustained unless due solely to the willful misconduct of Lender.

VI. MISCELLANEOUS

- 6.1 **WAIVERS:** Nothing contained in this Assignment shall operate as or be deemed to be an extension of the time for payment of the Indebtedness or to in any way affect any of Lender's rights, powers or remedies to enforce payment of the Indebtedness or any part thereof, no delay or omission by Lender in exercising any right or

remedy hereunder or with respect to any Indebtedness shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Lender may remedy any default by Assignor hereunder in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by Assignor.

6.2 SUCCESSORS AND ASSIGNS: This Assignment shall be binding upon Assignor and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns, including without limitation any future holder of the Mortgage or a participating interest in the Indebtedness.

6.3 GOVERNING LAW: This Assignment and the rights and obligations of the parties hereto shall be construed and interpreted in accordance with the internal laws of the Commonwealth of Pennsylvania, without regard to the principles of conflict of laws.

6.4 LIMITATION OF LIABILITY: To the fullest extent permitted by applicable law, Assignor shall not assert, and hereby waives any claim against Lender, on any theory of liability, for special, indirect, consequential or punitive damages (but excluding direct or actual damages) arising out of, in connection with or as a result of, this Assignment, any related loan documents, the transactions contemplated hereby or thereby or any loan or the use of the proceeds.

6.5 JURISDICTION: ASSIGNOR KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY (a) CONSENTS IN EACH ACTION AND OTHER LEGAL PROCEEDING COMMENCED BY LENDER AND ARISING OUT OF OR OTHERWISE RELATING TO THIS ASSIGNMENT, ANY OF THE OBLIGATIONS, ANY OF THE LEASES OR RENTS OR ANY OTHER COLLATERAL TO THE JURISDICTION OF ANY COURT THAT IS EITHER A COURT OF RECORD OF THE COMMONWEALTH OF PENNSYLVANIA OR A COURT OF THE UNITED STATES LOCATED IN THE COMMONWEALTH OF PENNSYLVANIA, (b) WAIVES EACH OBJECTION TO THE LAYING OF VENUE OF ANY SUCH ACTION OR OTHER LEGAL PROCEEDING, (c) WAIVES IN EACH SUCH ACTION AND OTHER LEGAL PROCEEDING EACH RIGHT TO ASSERT ANY NONMANDATORY COUNTERCLAIM, ANY SETOFF OR ANY DEFENSE BASED UPON ANY STATUTE OF LIMITATIONS OR CLAIM OF LACHES, (d) WAIVES EACH RIGHT TO ATTACK ANY FINAL JUDGMENT THAT IS OBTAINED AS A RESULT OF ANY SUCH ACTION OR OTHER LEGAL PROCEEDING AND (e) CONSENTS TO EACH SUCH FINAL JUDGMENT BEING SUED UPON IN ANY COURT HAVING JURISDICTION WITH RESPECT THERETO AND ENFORCED IN THE JURISDICTION IN WHICH SUCH COURT IS LOCATED AS IF ISSUED BY SUCH COURT.

6.6 WAIVER OF JURY TRIAL: ASSIGNOR KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES EACH RIGHT ASSIGNOR MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO, AND IN, ANY ACTION OR OTHER LEGAL PROCEEDING OF ANY NATURE, RELATING TO (a) THIS ASSIGNMENT, ANY RELATED LOAN DOCUMENT OR ANY COLLATERAL RELATED HERETO, (b) ANY TRANSACTION CONTEMPLATED BY ANY SUCH DOCUMENTS OR (c) ANY NEGOTIATION, PERFORMANCE OR ENFORCEMENT OF THIS ASSIGNMENT, OR ANY COLLATERAL RELATED HERETO. ASSIGNOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL AS NECESSARY AND APPROPRIATE.

[Signature Page Follows]

[Signature Page to Assignment of Leases and Rents]

IN WITNESS WHEREOF, Assignor has duly executed this Assignment as of the date set forth above. 7

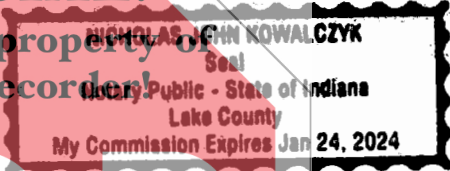
MERRILLVILLE PROPERTIES, LLC

By: [Signature] (SEAL)
Name: Robert S. Crookston
Title: Co-Manager

By: _____ (SEAL)
Print Name: Robert W. Morgan
Title: Co-Manager

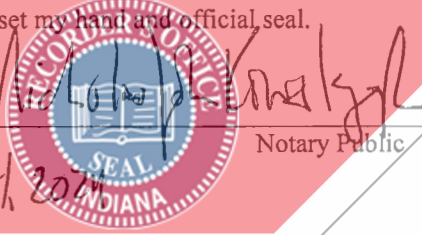
STATE OF INDIANA
COUNTY OF BARREN

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On this, the 28th day of July, 2016, before me, a Notary Public, the undersigned officer, personally appeared Robert S. Crookston, known to me (or satisfactorily proven) to be a Co-Manager of Merrillville Properties, LLC ("Company"), and that as such Co-Manager, being duly authorized to do so, he executed the foregoing instrument for the purposes therein contained by signing the name of Company by himself as such Co-Manager.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



MY COMMISSION EXPIRES: January 24, 2021

[Signature Page to Assignment of Leases and Rents]

above. IN WITNESS WHEREOF, Assignor has duly executed this Assignment as of the date set forth

MERRILLVILLE PROPERTIES, LLC

By: _____ (SEAL)

Name: Robert S. Crookston

Title: Co-Manager

By: *Robert W. Morgan* (SEAL)

Print Name: Robert W. Morgan

Title: Co-Manager



STATE OF _____)

COUNTY OF _____)

SS:

On this, the _____ day of July, 2016, before me, a Notary Public, the undersigned officer, personally appeared Robert S. Crookston, known to me (or satisfactorily proven) to be a Co-Manager of Merrillville Properties, LLC ("Company"), and that as such Co-Manager, being duly authorized to do so, he executed the foregoing instrument for the purposes therein contained by signing the name of Company by himself as such Co-Manager.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

MY COMMISSION EXPIRES:

STATE OF Pennsylvania)
)
COUNTY OF erie)

SS:

On this, the 28 day of July, 2016, before me, a Notary Public, the undersigned officer, personally appeared Robert W. Morgan, known to me (or satisfactorily proven) to be a Co-Manager of Merrillville Properties, LLC ("Company"), and that as such Co-Manager, being duly authorized to do so, he executed the foregoing instrument for the purposes therein contained by signing the name of Company by himself as such Co-Manager.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Barbara H. Raines
Notary Public

MY COMMISSION EXPIRES March 24 2020

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STOP

RECORDER'S OFFICE
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INDIANA

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Barbara H. Raines, Notary Public
Millcreek Twp., Erie County
My Commission Expires March 24, 2020
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

Schedule A

Real Property Description

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Lot "C" Commerce Park, a Planned Business Center, in the Town of Merrillville, as per Plat thereof, recorded in Plat Book 48, page 119 in the Office of the Recorder of Lake County, Indiana.

