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BY: JAS
PG #: 4

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is made and entered into on February 10th, 2023 (the "Effective Date") by TUT Holdings, LLC (the "Assignor"), to and for the benefit of The CPL Real Estate Investment Fund, L.P., and its successors and/or assigns (the "Lender").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

- Grant of Security Interest.** Assignor hereby irrevocably, absolutely, promptly and unconditionally, grants, conveys, transfers and assigns unto Lender all the rights, interest and privileges which the Assignor has and may have in the leases now existing or hereafter made and all rentals from all tenants in all improvements affecting the real property (the "Leases") described in Exhibit A attached hereto (the "Premises"), whether now existing or hereafter entered into, as said Leases may have been, or may from time to time be hereafter modified, extended or renewed together with all rents, fees, income, charges and profits due and becoming due therefrom. The Assignor shall, on request of the Lender, execute further assignments of any future Leases affecting any part of said Premises. This Assignment is made as additional security for the full and faithful performance of all obligations under that certain Promissory Note ("Note") and that certain Real Estate Mortgage ("Mortgage") (and all extensions or modifications thereof), of even date herewith, executed and delivered by Assignor to Lender, which Note is in the original principal amount of \$74,250.00 and which Mortgage covers that certain property situated in Lake County, Indiana described in Exhibit A attached hereto. The acceptance of this Assignment and the collection of rents or the payments under the Leases hereby assigned shall not constitute a waiver of any rights of the Lender under the terms of said Note and Mortgage, and it is expressly understood and agreed by the Assignor and Lender that this is an absolute assignment and not an assignment for security only, but until an Event of Default (as defined herein) occurs, Assignor shall have a revocable license to collect said rents, fees, charges, income and profits from the aforementioned Leases or otherwise from the Premises and to retain, use and enjoy the same; provided, however, that even before any Event of Default occurs no rent shall be collected or accepted more than one (1) month in advance without the prior consent of the Lender. In addition to said rentals, fees, charges, income and profits assigned to Lender hereunder, Assignor hereby assigns to the Lender any award made hereafter to Assignor in any court proceeding involving any of said Leases in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court, any and all payments made by lessees in lieu of rent to appear in any such action and/or to collect any such award or payment and all guaranties related to the Leases.
- Representations and Warranties of Assignor.** Assignor represents and warrants to Lender that: (a) this Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions; (b) Assignor is the lessor, or the successor-in-interest to lessor, under all of the Leases; (c) there is no other existing assignment of Assignor's entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has either Assignor entered into any agreement to subordinate any of the Leases or such Assignor's right to receive any of the rents, issues, income or profits assigned hereunder; (d) Assignor has not executed any instrument or performed any act which may prevent Lender from operating under any of the terms and provisions hereof or which would limit Lender in such operation; and (e) to Assignor's knowledge, there are no defaults by the landlord and there are no material defaults by tenants under any of the Leases.
- Covenants of Assignor.** Assignor covenants and agrees that so long as this Assignment shall be in effect: (a) Assignor shall not lease any portion of the Premises unless Assignor obtains Lender's prior written consent; (b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof, and, additionally, Assignor shall not, except in the ordinary course of business (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and offsetting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises; (c) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, except as may be specifically referenced and permitted in the Mortgage or Note; (d) Assignor shall not materially modify the terms and provisions of any Lease to the detriment of Assignor or the Premises, nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease, without

Lender's prior written consent; (e) Assignor shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; (f) Assignor shall not alter, modify or change the terms of any guaranty of any Lease to the detriment of Assignor or the Premises, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law, except in the ordinary course of business; and (g) Assignor shall and does hereby agree to indemnify, defend (using counsel satisfactory to Lender) and hold Lender harmless from and against any and all liability, loss or damage which Lender may incur under any Lease or under or by reason of this Assignment and of 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 observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignor incurs as a result of Lender's gross negligence or willful misconduct. Should Lender incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become due and payable by Assignor with interest thereon at a rate of twelve percent (12%) per annum if not paid within thirty (30) days of demand by Lender and shall be secured by this Assignment. Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Lender may designate) and shall do or cause to be done such further commercially reasonable acts, as Lender may request, in order to permit Lender to perfect, protect, preserve and maintain the assignment made to Lender by this Assignment. Assignor hereby acknowledges that Lender has not received any security deposited by any tenant pursuant to the terms of the Leases and that Lender assumes no responsibility or liability for any security so deposited.

4. **Event of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in this Assignment; or (b) any other "Event of Default" described in the Mortgage or Note.
5. **Rights Upon an Event of Default.** Upon the occurrence of an Event of Default, at Lender's option: (a) Lender may, and Assignor hereby authorizes the Lender to, enter and take possession of the Premises and to manage and operate the same, to collect all or any rents accruing there from and from said Leases, to let or re-let said Premises or any part thereof, to cancel and modify Leases, evict tenants, bring or defend any suits in connection with the possession of said Premises in its own name or Assignor's name, make repairs as Lender deems appropriate, and perform such other acts in connection with the management and operation of said Premises as the Lender in its sole discretion, may deem proper; (b) Assignor's right to collect such rents, issues, income and profits from the Leases shall immediately terminate without further notice thereof to Assignor; and (c) the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable. Any expenditures made by Lender in curing any Event of Default on the Assignor's behalf, together with interest thereon at the default rate of interest set forth in the Note, shall become part of the debt secured by this Assignment.
6. **Notices to Tenants.** Assignor hereby authorizes the Lender to give notice in writing of this Assignment at any time to any tenant under any of said Leases or otherwise and direct such tenants to pay all rents to Lender.
7. **Limitation of Lender's Liability.** Lender shall not be liable for any loss sustained by Assignor resulting from Lender's failure to let the Premises or from any other act or omission of Lender in managing, operating or maintaining the Premises following the occurrence of an Event of Default, unless such loss is a result of Lender's gross negligence or willful misconduct. Lender shall not be obligated to observe, perform or discharge, nor does Lender hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment. This Assignment shall not operate to place responsibility upon Lender for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Lender responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger, except for Lender's gross negligent or willful misconduct. Nothing set forth herein or in the Mortgage, and no exercise by Lender of any of the rights set forth herein or in the Mortgage shall constitute

NOT AN OFFICIAL DOCUMENT

be construed as constituting Lender a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions hereof or of the Mortgage.

8. **Duration.** This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the Mortgage and Note.
9. **Waiver of Jury Trial.** ASSIGNOR AND LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY, INTENTIONALLY, INTELLIGENTLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS ASSIGNMENT, THE MORTGAGE, THE NOTE OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (b) ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.
10. **Jurisdiction and Venue.** ASSIGNOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY ASSIGNOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS ASSIGNMENT SHALL BE LITIGATED IN THE CIRCUIT OR SUPERIOR COURT OF MARION COUNTY, INDIANA, OR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA OR, IF LENDER INITIATES SUCH ACTION, ANY COURT IN WHICH LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. ASSIGNOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO ASSIGNOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS ASSIGNMENT. ASSIGNOR WAIVES ANY CLAIM THAT MARION COUNTY, INDIANA OR THE SOUTHERN DISTRICT OF INDIANA IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD ASSIGNOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, ASSIGNOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY LENDER AGAINST ASSIGNOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR ASSIGNOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY LENDER, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY LENDER, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND ASSIGNOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.
11. **Miscellaneous.** This Assignment applies to and binds the parties hereto and their respective heirs, administrators, executors, successors and assigns as well as any subsequent owner of the Premises described herein and any assignee of the Mortgage referred to herein. If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Lender and Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Assignment shall be governed by and construed in accordance with the laws of the State of Indiana. Without limiting the scope of the assignment of Leases contained in this Assignment, the assignment of Leases set forth herein shall constitute an assignment of rents and profits as set forth in IND. CODE § 32-21-4-2 and thereby creates, and Assignor hereby grants to Lender, a security interest in the rents and profits that will be perfected upon the recording of this Assignment.
