



## Assignment and Assumption Agreement

**Document 2094A**

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## ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (this "**Agreement**") in connection with the [NAME OF AGREEMENT] [DATED] by and between [SELLER] of Seller, a \_\_\_\_\_ corporation (the "**Seller**") and [LENDER], a \_\_\_\_\_ [corporation] (the "**Lender**") dated as of [DATE].

WHEREAS, [BUYER NAME], a \_\_\_\_\_ corporation (the "**Buyer**") seeks to [*purchase substantially all of the assets of the Seller*], for good and valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the [NAME OF AGREEMENT] (the "**[Transaction] Agreement**").

2. **Assignment, Assumption and Consent.** The Seller hereby assigns and the Buyer hereby agrees to assume the obligation of the Seller to the Lender to make monthly payments as that term is defined in, and pursuant to [Transaction] Agreement. In no event shall the Buyer be liable for any amount in excess of the Assumed Obligations. In addition to the foregoing, the Buyer hereby agrees that upon the occurrence of a Default not cured within the "**Cure Period**" as that term is defined in the [Transaction] Agreement, the Buyer shall consent to and herby covenants and agrees not to contest, to cooperate fully with the Lender with respect to, and to allow the Lender to complete as soon as possible any foreclosure that it may commence. The Buyer covenants and agrees not to seek injunctive relief against any such foreclosure or foreclosure sale and after any foreclosure sale, not to take any action, including apply for any injunctive relief against such conveyance, that might interfere with or delay the timely conveyance with the purchasers thereof of the Property (including possession and occupancy thereof).

3. **Representations by [SELLER].** The Seller hereby represents and warrants to Buyer that the Seller has delivered to Buyer true and accurate copies of any and all instruments evidencing or in any way relating to, the Assumed Obligations and that there are no agreements or modifications to the Assumed Obligations except those which have been set forth in writing and have been delivered to Buyer.

4. **Consent of Lender.** The Lender hereby consents to the conveyance. The Lender hereby agrees that it will not seek to enforce any rights and/or remedies against the Property or Buyer unless there is a "**Default**" as that term is defined in the [Transaction] Agreement, not cured within the "**Cure Period**" or the "**Grace Period**", as those terms are defined in the [Transaction] Agreement. The Lender further agrees that provided that the Seller performs as required by the [Transaction] Agreement, the Lender shall not seek to enforce any rights and/or remedies against the Seller. The Lender hereby agrees that upon payment of the Assumed Obligations in accordance with the terms of the [Transaction] Agreement, the Lender shall execute and record a Discharge of Mortgage in substantially the same form as attached as Exhibit A to the [Transaction] Agreement, or at the Buyer's request, shall assign the "**Loan Documents**" as that term is defined in the [Transaction] Agreement).

**5. Notice.** All parties hereto agree that any notice required to be given hereunder the Seller and/or Lender shall be given in accordance with Section \_\_\_\_ of the [Transaction] Agreement. Any notice to Buyer shall be provided to:

If to Buyer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

**6. Release.** The Buyer hereby remises, covenants not to sue, release, acquits, waives and forever discharges and relieves the Lender and all of its parents, subsidiaries, and affiliates and the officers, directors, agents, attorneys and employees of each in their capacities as such (hereinafter referred to as “**Releasees**”) of, from, regarding and/or on account of any and all rights, benefits, interest, liabilities, claims, demand, actions, causes of action, suits, debts, covenants, obligations, accounts due, contracts, rights to payment, damages, lost profits, costs, fees, counterclaims, attorney’s fees, interest, penalties, offset, setoff, losses and claims and defenses of any nature and kind whatsoever, whether at law, equity or in administrative proceedings, whether at common law (tort, contract or other theory) or pursuant to federal, state or local statute, rule, ordinance or regulation, whether vested or contingent, whether known or unknown, whether liquidated or unliquidated, whether matured or unmatured whether disputed or undisputed, which any or all of them ever had, now have or which may result from the existing, past or present state of things, from the beginning of the world to the date hereof, against or related in any way to Releasees arising out of or relating to the “**Loan Documents**” or the “**Obligations**” as those terms are defined in the [Transaction] Agreement. It is hereby further understood and agreed that the acceptance and delivery of this release by the Lender shall not deemed or construed as an admission of liability by the Lender, and the Lender expressly denies liability of any nature whatsoever arising from or related to the subject of this Release.

## **7. Miscellaneous**

7.1 Further Assurance. All parties hereto agree to execute all such further instruments and documents and take such further action as may reasonably be required in order to effectuate the specific terms and specific purposes of this Agreement and the [Transaction] Agreement.

7.2 Section Headings; Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretations. All references to “Section” or “Sections” refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number,

as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms.

7.3 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

7.4 Time of the Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

7.5 Governing Law. This Agreement will be governed by the laws of the [STATE] without regard to conflicts of laws principles.

7.6 Counterparts. This Agreement may only be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered.

[SELLER NAME]

By: \_\_\_\_\_  
Its:

[BUYER NAME]

By: \_\_\_\_\_  
Its:

[LENDER]

By: \_\_\_\_\_  
Its:

