



2014 00013740

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COLLATERAL ASSIGNMENT OF LEASES AND RENTS

ASSIGNMENT made this 31st day of July, 2014, by **ARTH, LLC**, a Massachusetts limited liability company with a principal place of business located at 41 Perry Hill Road, Westhampton, Massachusetts (hereinafter referred to as the "Assignor") to **NUVO BANK & TRUST COMPANY**, a Massachusetts trust company, having an office at 1500 Main Street, Springfield, Massachusetts (hereinafter referred to as the "Assignee").

WHEREAS, the Assignor, as Landlord rents or may rent to certain tenants all or a portion of the premises known and designated as **39 HOOKER ROAD, WESTHAMPTON, HAMPSHIRE COUNTY, MASSACHUSETTS** (the "Premises"), said premises being more particularly described on **Exhibit "A"**; and

WHEREAS, the Assignor is the owner in fee of the Premises and has requested the Assignee to loan to the Assignor and Thomas R. Hathaway (collectively, the "Borrowers"), jointly and severally, a certain sum of money including, but not limited to, a Time Note in the original principal amount of **TWO HUNDRED THOUSAND AND 00/100 (\$200,000.00) DOLLARS** (the "Loan" or the "Note");

WHEREAS, the Assignee has refused to loan to the Borrowers such sums unless the Assignor, in addition to the Borrowers executing their Note for said sums and the Assignor executing and delivering its Commercial Mortgage and Security Agreement (the "Mortgage") to secure the payment of such Note also executes and delivers this Collateral Assignment of Leases and Rents as additional collateral for the repayment of such Note and Mortgage.

NOW, THEREFORE, in consideration of the good and valuable consideration paid by the Assignee to the Assignor, receipt whereof is hereby acknowledged, and in order to better secure the payment to the Assignee of the principal on such Note together with the principal of any other obligation of the Borrowers held by the Assignee, and any and all other obligations of the Borrowers to the Assignee, direct or contingent, now existing or hereafter arising, the Assignor does hereby grant, bargain, sell, transfer, assign, convey and set over unto the Assignee all of the rents, issues and profits due, and to become due, from the Premises, together with all leases, agreements, service contracts, and insurance policies affecting the Premises.

1. **COLLECTION OF RENTS** - Upon the occurrence of an Event of Default by the Assignor (as defined below), the Assignee shall have the power and authority to enter upon and take possession of the Premises and to demand, collect, and receive from the tenants, lessees, or other occupants now or at any time hereafter in possession of the Premises or from any part thereof, rents now due or to become due, to endorse the name of the Assignor or any subsequent owner of the Premises on any checks, notes or other instruments for the payment of money, to deposit the same in bank accounts, to give any and all acquittances or any other instrument in relation thereto in the name of the Assignor or in the name of the Assignee and either in its own name or in the name of the Assignor, to institute, prosecute, settle, or compromise any summary or legal proceedings for the recovery of such rents, profits, or to recover the whole or any part of the Premises, and to institute, prosecute, settle, or compromise any other proceedings for the protection of the Premises, for the recovery of any damages done to the Premises, or for the abatement of any nuisance thereon, also the power to defend any legal proceedings brought against the Assignor or against the owners arising out of the operation of the Premises.

2. **AUTHORITY TO LEASE** - Upon the occurrence of an Event of Default by the Assignor, the Assignee shall have the power to lease or rent the Premises, or any part thereof, to employ an agent to rent and manage the Premises, to make any changes or improvements thereon or therein deemed by it to be necessary or expedient for the leasing or the renting of the Premises, to keep and maintain the Premises in a tenantable and rentable condition, as well as in a good state of repair, and to purchase all equipment or supplies necessary or desirable in the operation and maintenance of the Premises, to pay interest or principal on the prior mortgages on the Premises now due or to become due, taxes, assessments, water and sewerage rates, and meter charges now due and unpaid or which may hereafter become due and a charge or lien against the Premises, and to pay the principal of the Note and Mortgage herein described, now due or hereafter to become due and the interest thereon, now due or hereafter to become due, and to pay the premiums on all policies of insurance now or hereafter effected by the Assignee and to comply with orders of any governmental departments having jurisdiction against the Premises, and to remove any mechanic's liens, security interests, or other liens against the Premises, and in general, to pay all charges and expenses incurred in the operation of the Premises.
3. **PAYMENT OF EXPENSES** - Upon the occurrence of an Event of Default by the Assignor, the Assignee shall have the authority to pay the cost of all the matters herein mentioned out of the rents and other revenues received from the Premises and the cost of any of such expenditures and of any payments which may be made by the Assignee under any of the provisions of this Agreement, including expenses and charges for reasonable counsel fees, shall be charged to the Assignor and for all purposes be deemed secured hereby and they may be retained by the Assignee out of the rents of the Premises.
4. **LIABILITY OF ASSIGNEE** - The Assignee shall in no way, except for its gross negligence or willful misconduct, be liable for any act done or anything omitted by it but shall be liable only to account for all moneys that it may receive hereunder, and nothing herein contained shall be construed as to prejudice its right to institute or to prosecute any proceedings to foreclose the mortgage herein mentioned, or to enforce any lien or any other collateral which the Assignee may have, or prejudice any right which the Assignee may have by reason of any default, present or future, under the terms of the Mortgage.
5. **TRANSFER OF LEASES** - The Assignor hereby assigns, transfers and sets over the Assignee all leases or subleases made or hereafter made to the various tenants in the building, and all its right, title, and interest therein, hereby authorizing and empowering the Assignee to continue present leases, or to demise any one or more spaces upon such terms and conditions as the Assignee may deem just and proper, and, if necessary, to execute, acknowledge, and deliver any and all instruments in writing necessary to effectuate this agreement. The Assignee shall have full power and authority to do and perform all acts or things necessary and requisite to be done in and about the Premises, as fully and to all intents and purposes as the Assignor might or could do if present with full power of substitution and revocation, hereby ratifying and confirming all that the Assignee shall lawfully do or cause to be done by virtue hereof.
6. **MODIFICATION OF LEASES** - The Assignor hereby agrees that except upon the occurrence of an Event of Default it may cancel, modify, or surrender any lease now existing in respect to any portion of the Premises without Assigner's prior consent.
7. **FAILURE TO ACCOUNT** - It is understood and agreed that the Assignee shall in no way be responsible or liable for any defalcation or failure to account for any rents collected by any agent or collector of the Premises whom it may designate or appoint to collect or manage the


Premises, nor shall the Assignee be in any way liable for the failure or refusal on its part to make repairs to the Premises. Assignee's limitation on liability shall not apply on the occasion of Assignee's gross negligence or willful misconduct.

8. **EVENTS OF DEFAULT** - The following shall be deemed to be "Events of Default" hereunder:
- (a) the Borrowers fail to make any payment within ten (10) days from the date when due; (b) the Borrowers shall default in the payment or performance of any of the terms, agreements, covenants or conditions contained herein or in the loan documents, or any other instrument given to secure or guaranty the payment hereof, and such default shall continue beyond any applicable notice, cure or grace period contained therein; (c) the Borrowers default under any loan, extension of credit, security agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of the Borrowers' or Assignor's property or the Borrowers' ability to repay the Note or perform the Borrowers' or Assignor's obligations under the Note or any of the loan documents; (d) Any representation or statement made or furnished to the Borrowers by Assignor or on Assignor's behalf is false or misleading in any material respect; (e) the Borrowers or Assignor become insolvent, a receiver is appointed for any part of the Borrowers' or Assignor's property, the Borrowers or Assignor makes an assignment for the benefit of creditors, or any proceeding is commenced either by the Borrowers or Assignor or against the Borrowers or Assignor under any bankruptcy or insolvency laws, provided, however, it shall not be deemed an Event of Default unless such involuntary petition in bankruptcy shall fail to have been discharged within sixty (60) days; (f) Any creditor attaches or seizes any of the Borrowers' or Assignor's property on or in which the Assignee has a lien or security interest, including a garnishment of any of the Borrowers' accounts with the Assignee and any such action is not terminated or discharged within twenty (20) days; or (g) Any of the events described in this default section occurs with respect to any guarantor of the Note; or (h) any guaranty given to secure the Note is terminated, or any guaranty required to be furnished is not given.
9. **RIGHTS OF ASSIGNEE IN COLLATERAL** - This assignment is intended for use in connection with the loan secured by the Note and Mortgage referred to in this agreement. It is understood and agreed by the parties that this assignment shall in no manner prejudice the Assignee or estop the Assignee in any way in the exercise of its right as mortgagee or as the Plaintiff in any foreclosure action which may be instituted upon any other collateral which may be held by the Assignee and this assignment shall be at all times subject to the exercise of any such rights which the Assignee may have and to any proceedings which the Assignee may be entitled to take in connection therewith.
10. **FURTHER ASSIGNMENT** - The Assignee is hereby given the, privilege of assigning all of its right, title, and interest in and to this assignment to any third party to whom the Note and Mortgage are assigned, and in such manner so that the holder of such Note and Mortgage shall originally named herein as the Assignee.
11. **SECURITY INTEREST IN RENTS** - Notwithstanding that which is conveyed herein, Assignor hereby grants to Assignee as secured party a security interest in all rents, issues and profits due and to become due from the Premises hereinafter described including but not limited to all accounts resulting from said rents due.

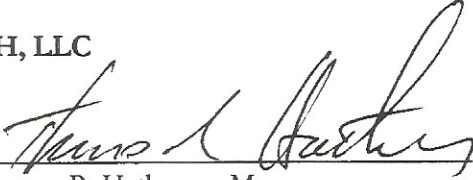
12. **JURY WAIVER - THE ASSIGNOR ACKNOWLEDGES THAT ASSIGNOR HAS BEEN REPRESENTED BY COUNSEL AND THAT THIS DOCUMENT WAS AVAILABLE FOR REVIEW AND NEGOTIATION PRIOR TO ITS EXECUTION. THE ASSIGNOR HEREBY AGREES THAT ALL OF THE ASSIGNEE'S RIGHTS WERE THE RESULT OF NEGOTIATIONS BETWEEN ASSIGNOR AND THE ASSIGNEE AND WERE INDUCED IN A MATERIAL RESPECT BY THE BENEFITS GRANTED TO THE ASSIGNOR HEREUNDER. THUS ASSIGNOR AND THE ASSIGNEE AGREE TO WAIVE THEIR RIGHT TO A TRIAL BY JURY AS TO ANY AND ALL MATTERS AND ISSUES WHICH MAY ARISE HEREFROM OR FROM ANY OTHER DOCUMENT, LETTER OR AGREEMENT EXECUTED IN CONJUNCTION HERewith WHETHER DIRECTLY OR INDIRECTLY INCLUDING WITHOUT LIMITATION TO COUNTERCLAIMS IF ANY.**

[Signature Page to Follow]

IN WITNESS WHEREOF, the Assignor has executed this Assignment as of the day and year first above written.

Witness 

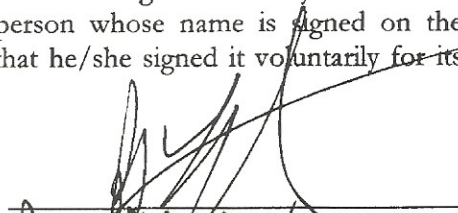
ARTH, LLC

By: 
Thomas R. Hathaway, Manager
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss

On this 31 day of July, 2014, before me, the undersigned notary public, personally appeared Thomas R. Hathaway, Manager of Arth, LLC and proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of said limited liability company.



Roger P. LIPTON, Notary Public
My commission expires: 7/20/18

Exhibit "A"

A tract or parcel of land in Westhampton, Hampshire County, Massachusetts, known as the Henry Hooker Homestead and bounded as follows, viz:

Beginning at the northwest corner of the premises on the southerly side of the old Turkey Hill Road; thence

EASTERLY on line of land now or formerly of Eugene J. Hathaway to land now or formerly of William I. Edwards; thence

SOUTHWESTERLY and WESTERLY on line of land now or formerly of said Edwards to land now or formerly of H.M. Parsons; thence

NORTHERLY and WESTERLY on line of land now or formerly of said Parsons to land now or formerly of the heirs of Dr. J.A. Gridley; thence

NORTHERLY on line of said land to the place of beginning.

ATTEST: HAMPSHIRE, *Mary Colberding* REGISTER
MARY COLBERDING