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ASSIGNMENT OF LEASES AND RENTS

**G&I III MADISON LLC,**  
a Delaware limited liability company

-to-

**HSBC REALTY CREDIT CORPORATION (USA)**

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The land affected by the within  
Instrument lies in  
Tax Parcel No.: 09-3-05-0-001-008  
On the Land Map of the County of Shelby

Street Address: Madison at Shoal Run Apartments  
850 Shoal Run Trail, Birmingham, Alabama

Title Co.: Chicago Title Insurance Company  
Title No.: 6125-K3  
HSBC Loan No.: 11-4000805  
CC&J No.: 243/446

Prepared by and Record and Return To:

Cassin Cassin & Joseph LLP  
300 East 42<sup>nd</sup> Street  
New York, New York 10017  
Attn: Carol M. Joseph, Esq.

land title

## ASSIGNMENT OF LEASES & RENTS

THIS ASSIGNMENT made as of the 20<sup>th</sup> day of March, 2003, by **G&I III MADISON LLC**, a Delaware limited liability company, having an office at c/o DRA Advisors LLC, 220 East 42<sup>nd</sup> Street, New York, New York 10017 (hereinafter referred to as the "**Assignor**"), to **HSBC REALTY CREDIT CORPORATION (USA)**, a corporation organized and existing under the laws of the State of Delaware, having an office at 452 Fifth Avenue, New York, New York 10018 (hereinafter referred to as the "**Assignee**");

WITNESSETH THAT:

WHEREAS, the Assignor is the owner of the building (the "**Building**") and premises known as Madison at Shoal Run Apartments and situated at 850 Shoal Run Trail, Birmingham, Alabama, and is the landlord under the leases of the Mortgaged Premises (hereinafter defined) (said Building being located on the parcel of ground described in Schedule "A" attached hereto); and

WHEREAS, the Assignee is the holder of a certain mortgage or mortgages constituting a lien or liens upon the Building and the premises upon which it is constructed (said Building and premises being hereinafter referred to as the "**Mortgaged Premises**"). The term "**Mortgage**" when used herein shall mean the foregoing mortgage or mortgages, as the same may be modified, consolidated, renewed, increased or supplemented on which Mortgage there is presently owing the maximum principal sum of **\$9,230,000.00** with interest, and any additional mortgages on the Mortgaged Premises hereafter granted by Assignor to Assignee, as the same may be modified, consolidated, renewed, increased or supplemented;

NOW THEREFORE, in consideration of and as an inducement to the making by the Assignee to the Assignor of the loan secured by the Mortgage, the Assignor does hereby assign, transfer and set over to the Assignee all the right, title and interest of the Assignor in, under and by virtue of all leases, and any subleases thereunder, of the Mortgaged Premises existing on the date hereof and any and all such other or further leases, or subleases hereafter existing, of space in the Building (hereinafter collectively referred to as the "**Assigned Leases**", which term shall be deemed to include all such leases and subleases and all extensions or renewals thereof) including specifically, but not by way of limitation, all the right, power and privilege of the Assignor in and to any security deposits thereunder or guarantees thereof and to cancel, terminate or accept the surrender of any Assigned Leases, except as provided in paragraph 10 hereof, to accept prepayment of more than one periodic installment of rent thereunder, or to modify or abridge any of the terms, covenants and conditions of any such Assigned Lease so as to reduce the term thereof or the rental payable thereunder (other than charges for electricity) or to change any renewal privilege therein contained without the prior written consent of the Assignee, together with all of the rents, issues and profits which may be or become due, or to which the Assignor may now or hereafter become entitled, arising or issuing out of the Assigned Leases, or from or out of the Mortgaged Premises or any part thereof.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, until such time as the indebtedness secured by the Mortgage shall have been paid in full.

This Assignment is intended by Assignor and Assignee to create, and be construed to create, an absolute assignment to Assignee, subject only to the terms and provisions hereof, and not as an assignment as security for the performance of the obligations secured by the Mortgage, or any other indebtedness of Assignor.

This instrument of assignment is delivered and accepted upon the following terms and conditions:

1. So long as no Event of Default shall exist under the Mortgage, or under this Assignment, the Assignor shall have a revocable license to manage and operate the Mortgaged Premises and to collect, receive and apply for its own account all rents, issues and profits accruing by virtue of such Assigned Leases, and to execute and deliver proper receipts and acquittances therefor. For purposes of this Assignment, and "Event of Default" shall mean an "Event of Default" as defined in the Mortgage.

2. Immediately upon the occurrence of any Event of Default and until such Event of Default shall have been cured, the license mentioned in the foregoing paragraph "1" hereof shall cease and terminate, and in such event the Assignee is hereby expressly and irrevocably authorized to enter and take possession of the Mortgaged Premises by actual physical possession, or by written notice delivered by hand or sent by recognized overnight courier which provides evidence of receipt, or sent by certified or registered mail to the Assignor, at the address set forth above, as the Assignee may elect, and no further authorization shall be required. Notice shall be deemed given when delivered by hand or one (1) day after delivery to such recognized overnight courier or three (3) days after being posted with the United States Postal Service addressed as aforesaid. During the continuance of any Event of Default, the Assignee shall have the right power and authority, without the obligation, with or without entry and the taking of possession to do any or all of the following:

- (a) manage and operate the Mortgaged Premises or any part thereof;
- (b) lease any part or parts thereof for such periods of time, and upon such terms and conditions as the Assignee may, in its discretion, deem proper;
- (c) enforce, cancel or modify any Assigned Lease covering the Mortgaged Premises or any part thereof;
- (d) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for all rents, issues and profits that may then be or may thereafter become due, owing or payable with respect to the Mortgaged Premises or any part thereof from any present or future lessees, tenants, subtenants or occupants thereof;
- (e) institute, prosecute to completion or compromise and settle, all summary proceedings, actions for rent or for removing any and all lessees, tenants, subtenants or occupants of the Mortgaged Premises or any part or parts thereof;



- (f) enforce or enjoin or restrain the violation of any of the terms, provisions and conditions of any Assigned Lease affecting the Mortgaged Premises or any part thereof;
- (g) make such repairs and alterations to the Mortgaged Premises as Assignee may, in its discretion, deem proper;
- (h) pay, from and out of rents, issues and profits collected in respect of the Mortgaged Premises or any part thereof, or from or out of any other funds, the rent and all other charges required to be paid under any ground lease on which the Mortgage may constitute a lien, any taxes, assessments, water rates, sewer rates, or other government charges levied, assessed or imposed against the Mortgaged Premises, or any portion thereof, and also any and all other charges, costs and expenses which it may be necessary or advisable for the Assignee to pay in the management or operation of the Mortgaged Premises, including (without limiting the generality of any rights, powers, privileges and authority hereinbefore or hereinafter conferred) the costs of such repairs and alterations, commissions for renting the Mortgaged Premises or any portions thereof, and legal expenses in enforcing claims, preparing papers or for any other services that may be required; and
- (i) generally do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Mortgaged Premises, as fully as the Assignor might do.

The Assignee shall have the right, power and authority, without the obligation, to use and apply any rents, issues and profits received hereunder to any or all of the following in any order, in its sole discretion: (a) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this Assignment or the rights of the Assignee hereunder, and collecting any rents, issues and profits; and (b) for the operation and maintenance of the Mortgaged Premises and the payment of all costs and expenses in connection therewith including, without limitation, the payment of (i) rentals and other charges payable by Assignor under any ground lease affecting the Mortgaged Premises, (ii) interest, principal or other amounts with respect to any and all loans secured by mortgages on the Mortgaged Premises, including, without limitation, the Mortgage, (iii) taxes, assessments, water charges and sewer rents and other governmental charges levied, assessed or imposed against the Mortgaged Premises, or any part thereof, (iv) insurance premiums, (v) costs and expenses with respect to any litigation affecting the Mortgaged Premises, the Assigned Leases or the rents, issues and profits, (vi) wages and salaries of employees, commissions of agents and attorneys' fees, and (vii) any amounts due the Assignee under paragraph 4 hereof. After the payment of such costs and expenses and after the Assignee shall have set up such reserves as it, in its sole discretion, shall deem necessary or appropriate for proper operation and management of the Mortgaged Premises, the Assignee shall apply all remaining rents, issues and profits collected and received by it to the reduction of the indebtedness secured by the Mortgage. Exercise or nonexercise by the Assignee of the rights granted in this Assignment, or collection and application of any rents, issues and profits by the Assignee or its agent shall not be a waiver of any default by Assignor

under this Assignment, the Mortgage, any note referred to therein or any other document or agreement relating thereto. The Assignee shall be accountable to the Assignor only for monies actually received by the Assignee pursuant to this Assignment.

For the purpose of this paragraph "2", an Event of Default shall be deemed to be cured only when the Assignor shall have paid in full all sums owing and past due, and/or shall have performed all other terms, covenants and conditions, failure in the performance of which terminated the license hereinabove mentioned.

3. The Assignor hereby irrevocably directs each lessee under each Assigned Lease, and each lessee under any other lease which shall hereafter become an Assigned Lease, upon demand and notice from the Assignee of the occurrence of an Event of Default to pay the Assignee all rents, issues and profits accruing or due under its Assigned Lease from and after the receipt of such demand and notice. Any lessee making such payment to the Assignee shall be under no obligation to inquire into or determine the actual existence of any such Event of Default claimed by the Assignee.

4. The Assignor hereby agrees to indemnify and hold the Assignee harmless against and from any and all liability, loss, damage and expense, including reasonable attorneys' fees, which it may or shall incur under any of said Assigned Leases, or by reason of this Assignment, or by reason of any action taken by the Assignee hereunder, and against and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants and conditions contained in any of the said Assigned Leases. Should the Assignee incur any such liability, loss, damage or expense, the amount thereof, together with interest thereon at the Involuntary Rate as defined in the Note (but not in excess of the maximum amount permitted by law) shall be payable by the Assignor to the Assignee immediately upon demand, or at the option of the Assignee, the Assignee may reimburse itself therefor out of any rents, issues or profits of the Mortgaged Premises collected by the Assignee. Nothing contained herein shall operate or be construed to obligate the Assignee to perform any of the terms, covenants or conditions contained in any Assigned Leases or otherwise to impose any obligation upon the Assignee with respect to any of said Assigned Leases, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained, in the event that any lessee shall have been joined as a party defendant in any action to foreclose the Mortgage and the estate of such lessee shall have been thereby terminated. Prior to actual entry into and taking possession of the Mortgaged Premises by the Assignee, this Assignment shall not operate to place upon the Assignee any responsibility for the operation, control, care, management or repair of the Mortgaged Premises, and the execution of this Assignment by the Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Premises is and shall be that of the Assignor, prior to such actual entry and taking of possession.

5. The Assignor represents and warrants that the Assignor has duly and punctually performed, and shall continue to perform, all and singular the material terms, conditions and covenants of the aforesaid Assigned Leases on Assignor's part to be kept, observed and performed; that the Assignor has not sold, assigned, transferred, mortgaged or



pledged any of the rents, issues and profits from the Mortgaged Premises or any part thereof, whether now due or hereafter to become due, to any person, firm or corporation other than the Assignee and to the holder of a subordinate mortgage or mortgages, if any, approved by the Assignee; that the Assigned Leases are valid and unmodified and are in full force and effect; that no rents, issues or profits of the Mortgaged Premises, or any part or parts thereof, becoming due subsequent to the date hereof have been collected for more than one month subsequent to the date hereof, nor has payment of any of the same been anticipated, waived, released, discounted or otherwise discharged or compromised and that no lessee thereunder is in default under any of the material terms of its Assigned Lease. The Assignor agrees that the Assignor will enforce or secure the performance of each and every material obligation, covenant, condition and agreement to be performed by each lessee under the Assigned Leases.

6. The Assignor agrees to execute and deliver to the Assignee, at any time or times during which this Assignment shall be in effect, such further instruments as the Assignee may deem necessary to make effective this Assignment and the several covenants of the Assignor herein contained. The Assignor further agrees that at all times during which this Assignment shall be in effect, the Assignor will use its best efforts to keep the Mortgaged Premises fully rented at the highest rentals obtainable. After the date of this Assignment, Assignor will not rent any space in the Mortgaged Premises without the prior written consent of the Assignee. Any such new leases shall, among other things, be fully subordinate to the lien of all mortgages now or hereafter a lien on the Mortgaged Premises and to all extension, modification, renewals, replacements or increases thereof. If such subordination is to be conditioned upon receipt of a non-disturbance agreement ("SNDA") from Assignee, such SNDA, if approved by Assignee, shall be prepared on Assignee's standard forms at Assignors' cost and expense.

7. Failure of the Assignee to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time, or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Assignee under this Assignment are cumulative and are not in lieu of but are in addition to any other rights and remedies which the Assignee shall have under or by virtue of the Mortgage. The rights and remedies of the Assignee hereunder may be exercised from time to time and as often as such exercise is deemed expedient.

8. The Assignee shall have the right to assign to any subsequent holder of the Mortgage, or to any person acquiring title to the Mortgaged Premises, the Assignor's rights, title and interest in any Assigned Lease hereby or hereafter assigned, subject, however, to the provisions of this Assignment. After the Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in the Mortgaged Premises, no assignee of the Assignor's interest in the Assigned Leases shall be liable to account to the Assignor for any rents, income, revenues, issues or profits thereafter accruing.

9. Upon payment in full of all the indebtedness secured by the Mortgage, as evidenced by a recorded satisfaction or release of Mortgage, as well as any sums which may be payable hereunder, this Assignment shall become and be void and of no effect and, in that event,

upon the request of the Assignor, the Assignee covenants to execute and deliver to the Assignor instruments effective to evidence the termination of this Assignment and/or the reassignment to the Assignor of the rights, power and authority granted herein, provided, however, that, as to any lessee of any portion of the Mortgaged Premises, any affidavit, certificate or other written statement of any officer of the Assignee, stating that any part of said indebtedness remains unpaid, shall be and constitute conclusive evidence of the then validity, effectiveness and continuing force of this Assignment and any person, firm or corporation receiving any such affidavit, certificate or statement may, and is hereby authorized to, rely thereon. As against the Assignee, at all times during which this Assignment shall be in effect there shall be no merger of the Assigned Leases or the leasehold estates created thereby with the Assignor's estate in the Mortgaged Premises by reason of the fact that said leases or any interest therein may be held by or for the account of any person, firm or corporation which may be or become the owner of said Assignor's estate, unless the Assignee shall consent in writing to said merger.

10. Intentionally Omitted.

11. No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless the Assignee shall have consented thereto in writing.

12. In the event there is any conflict between the terms and provisions of the Mortgage and the terms and provisions of this Assignment, the terms and provisions of this Assignment shall prevail.

13. The terms, covenants and conditions contained herein shall inure to the benefit of, and bind the Assignee and the Assignor and their respective distributees, legal representatives, successors and assigns.

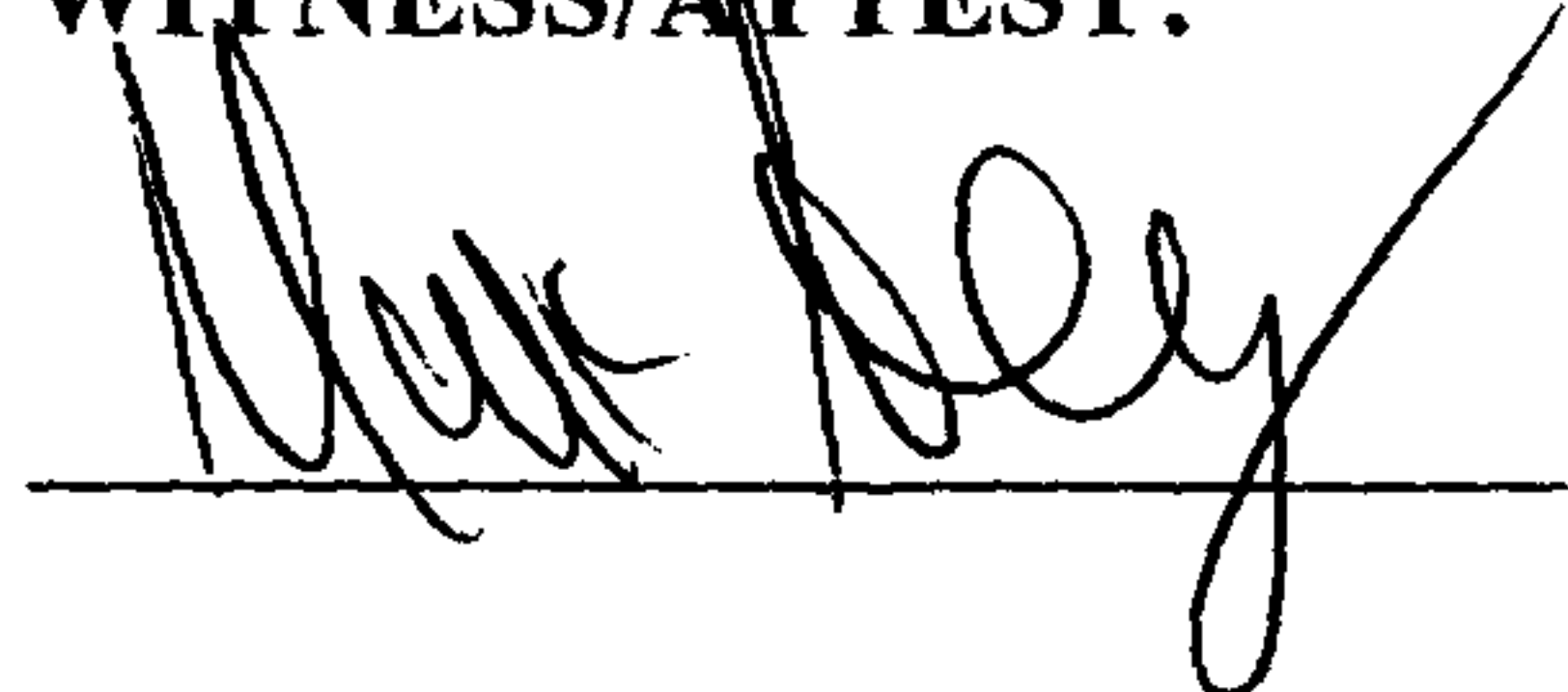
14. This Assignment shall be governed by, construed and enforced in accordance with the laws of the State in which the Mortgaged Premises is situated.

15. The acceptance by Assignee of this Assignment, with all of the rights, powers, privileges, and authority created herein shall not, prior to actual entry upon and taking possession of the Mortgaged Premises by Assignee, be deemed or construed to constitute Assignee a "Mortgagee in Possession," nor obligate Assignee to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Assigned Leases; nor shall Assignee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Premises except as may result from its gross negligence or willful misconduct.

16. The exculpation provision set forth in Paragraph 45 of the Mortgage is hereby incorporated by reference into the terms of this Agreement.

IN WITNESS WHEREOF, this Assignment has been duly executed by the Assignor.

WITNESS/ATTEST:



**G&I III MADISON LLC, a**  
Delaware limited liability company

By: **G&I III INVESTMENT MADISON LLC, a**  
Delaware limited liability company,  
its managing member

By:

Name:

Title:

Brian T. Summers

Vice President

STATE OF NEW YORK )

COUNTY OF NEW YORK )

I, Sheila Lopez, a Notary Public, in and for said County, in said State, hereby certify that **BRIAN T. SUMMERS**, as Vice President of **G&I III INVESTMENT MADISON LLC**, a Delaware limited liability company, whose name as the Managing Member of **G&I III MADISON LLC**, a Delaware limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me in this day that, being informed of the contents of the conveyance, he, as such Vice President and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as Managing Member as aforesaid.

Given under my hand and official seal this the 20<sup>th</sup> day of March, 2003.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

SHEILA LOPEZ  
Notary Public, State of New York  
No. 01LO6029906  
Qualified in Bronx County  
Commission Expires August 30, 2005



SCHEDULE "A"

Lot 2, according to the Survey of Shoal Run, as recorded in Map Book 9, page 130, in the Probate Office of Shelby County, Alabama; together with rights in and to that certain ingress and egress easement dedicated by said map.

Said property is further described as follows:

The following is a legal description by metes and bounds of Lot 2 Shoal Run as recorded in Map Book 9 Page 130 in the Office of the Judge of Probate in Shelby County, Alabama; thence begin at the southeast corner of said Lot 2 and run in a westerly direction along the south line of said Lot for a distance 1333.86 feet; thence turn an angle to the right of 90 degrees 48 minutes 30 seconds and run in a northerly direction along the west line of said Lot 2 for a distance of 826.10 feet to a point on the southeasterly right of way line of Alabama Highway No. 119; thence turn an angle to the right of 22 degrees 30 minutes 50 seconds and run in a northeasterly direction along said highway right of way line for a distance of 289.49 feet; thence turn an angle to the right of 90 degrees 00 minutes 00 seconds and run in a southeasterly direction for a distance of 34.13 feet to the point of beginning of a curve to the right, said curve having a central angle of 21 degrees 56 minutes 00 seconds and a radius of 430.00 feet; thence run in a southeasterly direction along the arc of said curve for a distance of 164.61 feet to the point of tangent; thence run in a southeasterly direction along said tangent for a distance of 69.46 feet to the point of beginning of a curve to the left, said curve having a central angle of 16 degrees 20 minutes 00 seconds and a radius of 557.46 feet; thence run in a southeasterly direction along arc of said curve for a distance of 158.92 feet to the point of beginning of a curve to the left, having a central angle of 32 degrees 50 minutes 00 seconds and a radius of 319.72 feet; thence run in a southeasterly direction along arc of said curve for a distance of 182.19 feet to the point of tangent; thence run in a southeasterly direction along said tangent for a distance of 137.26 feet to the point of beginning of a curve to the right, said curve having a central angle of 39 degrees 51 minutes 00 seconds and a radius of 375.00 feet; thence run in a southeasterly direction along the arc of said curve for a distance of 260.82 feet to the point of tangent; thence run in a southeasterly direction along said tangent for a distance of 74.69 feet to the point of beginning of a curve to the right, said curve having a central angle of 02 degrees 39 minutes 20 seconds and a radius of 2157.20 feet; thence run in a southeasterly direction along arc of said curve for a distance of 99.98 feet to the point of tangent; thence run in a southeasterly direction along said tangent for a distance of 224.22 feet; thence turn an angle to the right of 52 degrees 15 minutes 30 seconds and run in a southerly direction for a distance 496.96 feet to the point of beginning.