

This Instrument Prepared By and Return To:  
Miller & Martin PLLC (CRH)  
832 Georgia Avenue, Suite 1200  
Chattanooga, TN 37402

**State of Alabama**

**County of Shelby**

**ASSIGNMENT OF LEASES AND RENTS**

**THIS ASSIGNMENT OF LEASES AND RENTS** (the “**Assignment**”) made to be effective as of the 8<sup>th</sup> day of September, 2022, is given by **Franz-Vista Melrose LLC**, a California limited liability company, having an address of 2710 Loker Avenue, Suite 100, Carlsbad, California 92011 (“**Borrower**”), to, in favor of, and for the benefit of **CapStar Bank**, a Tennessee banking corporation, having an address of P.O. Box 305065, Nashville, Tennessee 37230 (“**Bank**”).

**W I T N E S S E T H:**

**WHEREAS**, Bank has made a loan to Borrower (the “**Loan**”) which is evidenced by that certain Promissory Note executed by the Borrower to and in favor of Bank of even date herewith in the face amount of **One Million Two Hundred Twenty-Seven Thousand One Hundred Eighty-Eight and 00/100 Dollars (\$1,227,188.00)** (the “**Note**”), and further described in that certain Loan Agreement by and between Borrower and Bank of even date herewith (the “**Loan Agreement**”).

**WHEREAS**, the Note is secured by (i) a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Borrower for the benefit of Bank of even date herewith (the “**Security Instrument**”) granting to Bank, among other things, a first priority lien and encumbrance upon the Land (as defined in the Security Instrument), which is also legally described in Exhibit A attached to this Assignment, and Improvements (as defined in the Security Instrument) located thereon (collectively, the Land and Improvements constitute the “**Premises**”); and (ii) certain other Loan Documents (as defined in the Loan Agreement), also executed by the Borrower to and in favor of Bank of even date herewith, the terms and provisions of which Security

Instrument and other Loan Documents are by this reference thereto incorporated herein and made a part hereof.

**WHEREAS**, as a material inducement to Bank to make the Loan and as further security for the Loan, Borrower makes this Assignment.

**NOW, THEREFORE**, for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

1. **ASSIGNMENT OF LEASES AND RENTS.**

1.1. **Definitions.** Capitalized terms not otherwise defined in this Assignment shall have the meanings ascribed to such terms in the Loan Agreement and Security Instrument, as the case may be.

1.2. **Assignment.** Borrower hereby absolutely, unconditionally and irrevocably transfers, conveys, assigns and grants to Bank all of Borrower's right, title and interest in and to: (a) all current and future leases, subleases, licenses, concessions and other agreements (written or oral) affecting the use, enjoyment, or occupancy of all or any part of the Premises, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals of the same (whether before or after the filing by or against Borrower of any petition of relief under 11 U.S.C. §101 *et seq.*, as amended (the "**Bankruptcy Code**")), and all related security and other deposits (collectively, as amended, extended and renewed, the "**Leases**"); (b) all rents, rent equivalents, income, receivables, issues, revenues, receipts, insurance proceeds and profits arising from the Leases and renewals thereof and together with all rents, rent equivalents, income, fees, receivables, issues, accounts, profits (including, but not limited to, all oil and gas or other mineral royalties and bonuses), charges for services rendered and any and all payment and consideration of whatever form or nature received by Borrower or its agents or employees from any and all sources relating to the use, enjoyment and occupancy of the Premises (collectively, the "**Rents**"); (c) all of Borrower's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code; and (d) any and all other rights of Borrower in and to the items set forth in subsections (a) through (c) above, and all amendments, modifications, replacements, renewals, proceeds and substitutions thereof.

1.3. **Absolute Assignments.** This Assignment is an absolute and present assignment to Bank and not an assignment as security for the performance of the obligations under the Loan Documents, or any other indebtedness, and such absolute assignment is presently and immediately effective.

1.4. **License.** Bank hereby grants to and confers upon Borrower a revocable license to collect and retain the Rents as the same become due and payable under the Leases, but not in excess of thirty (30) days in advance so long as, and only so long as, no Event of Default (as herein defined) exists under this Assignment, the Note, the Security Instrument or any of the other Loan Documents (the "**License**"). Upon the occurrence of an Event of Default under this Assignment, the Note, the Security Instrument or any of the other Loan Documents, the License

granted and conferred herein shall immediately and automatically be revoked, cease and terminate without notice.

Upon any such revocation and termination of the License, Bank shall have the right to notify any and all parties to the Leases to pay the Rents then due and thereafter coming due directly to Bank. After such revocation and termination of the License, any and all Rents received by the Borrower shall be remitted to Bank not later than two (2) business days following Borrower's receipt of the same.

Borrower hereby authorizes and directs any party to the Leases, upon receipt of written notice from Bank stating that an Event of Default has occurred or exists under the Note, the Security Instrument or any of the other Loan Documents, to pay directly to Bank the Rents then due and thereafter coming due under the Leases. Borrower agrees that any party shall have the right to rely upon any such notice from Bank without any obligation, and without any right, to inquire as to whether any such Event of Default has actually occurred or exists and notwithstanding any claim of Borrower to the contrary. Borrower shall have no claim (and hereby waives any claim) against any party for the Rents paid by such party directly to Bank following its receipt of any such notice from Bank.

#### 1.5. Covenants.

(a) Negative Covenants. As to the Leases, Borrower hereby covenants and agrees that Borrower shall not, without the prior written consent of Bank, (i) alter, modify, cancel, terminate, discharge or compromise the Leases or the Rents due or to become due thereunder or change the terms of any guarantees of any of the Leases ("**Guarantees**"); (ii) accept any Rents for more than one installment in advance; (iii) waive, release, reduce, discount or otherwise discharge or compromise any Rents; (iv) waive, release, reduce, discount or otherwise discharge or compromise any Guarantees; or (v) execute any other assignment of the Leases or the Rents, whether absolute or conditional.

(b) Affirmative Covenants. As to the Leases, Borrower shall: (i) promptly notify Bank in writing of any default or any attempted termination, relocation, or buyout, or any notice of the same given by either the Borrower or any tenant; (ii) perform and comply with all of its covenants, agreements and obligations as landlord under the Leases; (iii) not suffer or permit to occur any release of liability of any tenant or guarantor or accrual of any right in any tenant or guarantor to withhold payment of Rents; and (iv) enforce the terms of the Leases and all remedies available to the Borrower as landlord under the Leases against the tenants in any case of any material default by any tenant under the Leases.

## 2. DEFAULT AND REMEDIES.

### 2.1. Default.

(a) It shall constitute an event of default ("**Event of Default**") of and under this Assignment and, at the option of Bank, under the other Loan Documents, if Borrower



fails to perform or observe any of the covenants, agreements or conditions of this Assignment and fails to cure the same within thirty (30) days following written notice from Bank.

(b) It shall constitute an Event of Default of and under this Assignment if there shall occur under the Note, Loan Agreement, Security Instrument or other Loan Documents, a Default or Event of Default as defined therein.

## 2.2. **Remedies.**

(a) Upon the occurrence of an Event of Default, the License shall automatically be revoked, cease and terminate without notice to the Borrower and without regard to the adequacy or inadequacy of Bank's security under this Assignment, the Security Instrument or the other Loan Documents. Thereupon, Bank shall be entitled to exercise any and all rights and remedies provided in this Assignment, the Security Instrument and the other Loan Documents. The application of any Rents collected by Bank shall be in accordance with the terms of the Security Instrument.

(b) The rights and remedies provided in this Assignment shall not be deemed exclusive of any rights or remedies granted to Bank in the Security Instrument or by law, but shall be deemed special and additional rights and remedies and shall be cumulative with those rights and remedies granted in the Security Instrument or by law.

## 3. **Miscellaneous.**

3.1. **Perfection.** This Assignment shall be perfected upon its recordation in the official public records of the County and State in which the Premises is located. Neither possession of the Rents nor the appointment of a Receiver of the Premises shall be required for such perfection.

3.2. **Assignment.** Bank may assign its rights in and under this Assignment to any subsequent holder of the Note and Security Instrument and to any person acquiring title to the Premises through foreclosure of the Security Instrument or otherwise.

3.3. **Obligations.** Bank shall not be obligated to perform or discharge, nor, by its acceptance of this Assignment, does it undertake to perform or discharge, any obligation, duty or liability of Borrower, under the Leases, or otherwise. Nothing herein contained shall be construed as causing Bank to be a "Mortgagee in Possession" and Bank shall have no liability of a Mortgagee in Possession by exercising its rights under this Assignment, all such liability being expressly waived and released by Borrower.

3.4. **Ownership.** Borrower represents and warrants that it is the absolute owner of the Rents and Leases with full right, power and authority to execute and deliver this Assignment. Each of the Leases is legally valid, binding upon and enforceable against the parties named therein and has not been changed or modified. There is no outstanding assignment or pledge of the Rents

or Leases or any one thereof, nor are there any existing defaults under the Leases or any one thereof. No party to any Lease has any defenses, set offs or counterclaims against Borrower.

3.5. **Notices.** Any Notice required to be given hereunder shall be given in the manner specified in the Security Instrument.

3.6. **Conflict.** In the event of a conflict between the provisions of this Assignment and any other Loan Documents, this Assignment shall control.

3.7. **Cooperation.** Borrower agrees to cooperate with any reasonable request of Bank to implement the provisions of this Assignment.

3.8. **Successors and Assigns.** Whenever the word "Borrower" is used herein, it is agreed and understood that the same includes and shall be binding upon the Borrower's successors and assigns and any party holding title to the Premises by, through or under the Borrower. All of the rights, powers, privileges and immunities herein granted and assigned to Bank shall also inure to its successors and assigns, including all holders of the Note and Security Instrument.

3.9. **Joint and Several Liability.** If Borrower consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Borrower's obligations under this Assignment.

3.10. **Waiver of Trial by Jury.** Borrower hereby waives, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating, directly or indirectly to this Assignment or any acts or omissions of the Borrower in connection therewith or contemplated thereby.

3.11. **No Waiver.** The exercise or non-exercise by Bank of the rights granted in this Assignment or the collection and application of Rents by Bank or its agent shall not be a waiver of any Event of Default by Borrower under this Assignment or any other Loan Document. No action or failure to act by Bank with respect to any obligations of Borrower under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Bank's rights and privileges under this Assignment, or discharge, release or modify any of Borrower's duties or obligations hereunder.

3.12. **Appointment.** Borrower irrevocably appoints Bank its true and lawful attorney in fact, which appointment is coupled with an interest, to exercise any or all of the rights or powers described herein with the same force and effect as if exercised by Borrower, and Borrower ratifies and confirms any and all acts done or omitted to be done by Bank, its agents, servants, employees or attorneys in, to or about the Property.

3.13. **Indemnification.** Borrower shall indemnify, defend and hold harmless Bank from and against all liability, loss, damage, cost or expense which it may incur under this Assignment or under any of the Leases, including any claim against Bank by reason of any alleged obligation, undertaking, action, or inaction on its part to perform or discharge any terms, covenants or conditions of the Leases or with respect to Rents, and including attorneys' fees and expenses, but excluding any claim to the extent caused by Bank's willful misconduct. Any amount covered by this indemnity shall be payable on demand, and shall bear interest from the date of demand until the same is paid by Borrower to Bank at a rate equal to the Default Rate (as defined in the Loan Agreement).

3.14. **GOVERNING LAW.** THIS ASSIGNMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TENNESSEE APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PREMISES IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF TENNESSEE SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, Borrower has executed and delivered this Assignment under seal to be effective as of the day and year first above written.

**BORROWER:**

**Franz-Vista Melrose LLC,**  
a California limited liability company

By: The Franz Family Revocable Trust Dated  
June 26, 1996, its Member

By: \_\_\_\_\_  
Name: Patrick N. O'Day  
Title: Trustee

**[Notary Acknowledgment on Following Page]**



**ACKNOWLEDGMENT**

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

STATE OF CALIFORNIA )  
 )  
 ) : ss.  
COUNTY OF San Diego )

On September 6<sup>& 7</sup>, 2022, before me, Silvia Calvet,  
Notary Public, personally appeared **Patrick N. O'Day**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Notary Seal]



Signature of Notary Public

SILVIA CALVET

Printed Name of Notary

My Commission Expires: 6-25-2025



**EXHIBIT A**

**LEGAL DESCRIPTION**

The Land referred to herein below is situated in the County of Shelby, State of Alabama, and is described as follows:

Lot 2C, according to the survey of Resource Center, as recorded in Map Book 24, Page 118, in the Probate Office of Shelby County, Alabama.



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
09/08/2022 03:06:07 PM  
\$46.00 PAYGE  
20220908000350790

*Allie S. Boyd*

Exhibit A to Assignment of Leases and Rents