

**WHEN RECORDED, MAIL TO:**

Actium High Yield Loan Fund III LLC  
Actium High Yield Loan Fund IV LLC  
111 East Broadway, Suite 390  
Salt Lake City, Utah 84111

12946795  
3/8/2019 3:06:00 PM \$54.00  
Book - 10759 Pg - 903-921  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
REAL ADVANTAGE TITLE INS AGCY  
BY: eCASH, DEPUTY - EF 19 P.

*Ratia: 19354 cH*

**ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), dated as of March 8, 2019 (the "Effective Date"), is made by Do Eat Holdings, LLC, a Utah limited liability company, as assignor (hereinafter referred to, together with its successors and assigns, as "Assignor"), in favor of Actium High Yield Loan Fund III LLC, a Utah limited liability company, Actium High Yield Loan Fund IV LLC, a Utah limited liability company and their successors and assigns, as "Assignee" (collectively, "Assignee"). This Assignment has been executed and delivered in conjunction with that certain Amended and Restated Loan and Security Agreement dated as of the Effective Date by and between Assignor and Assignee (the "Loan Agreement"), and all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

**RECITALS**

- A. Assignee has made a loan (the "Loan") to Assignor in the original principal sum of \$960,000.00.
- B. The Loan is evidenced by the Loan Agreement, the Note and secured by the Security Instrument.
- C. The Security Instrument encumbers and is secured by those parcel(s) of real property described with particularity on **Exhibit A** attached to this Assignment (the "Land"), all buildings, structures and improvements now or hereafter located or erected thereon (the "Improvements") and the other Property (as hereinafter defined).
- D. As consideration for the making of the Loan, Assignee has required that Assignor make an absolute and unconditional present assignment and transfer to Assignee of all the Leases (as hereinafter defined) and the Rents (as hereinafter defined).
- E. In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Assignor and Assignee agree as follows:

**ARTICLE I**

**DEFINITIONS**

**Section 1.01 Defined Terms.** For purposes of this Assignment, the following terms shall have the meanings set forth below. Capitalized terms used in this Assignment and not defined herein shall have the meanings ascribed to them in the Loan Agreement.

“Bankruptcy Code” means Title 11 of the United States Code, as amended from time to time, or any similar federal or state law for the relief of debtors.

“Leases” collectively means all leases, subleases, license agreements, concession agreements, occupancy agreements or other agreements, whether written or oral, and whether now existing or hereafter entered into, for or relating to the lease, use or occupancy of all or any part of the Land and/or Improvements, together with all related guarantees provided in connection therewith (in each case, as amended, supplemented, renewed, extended, substituted or otherwise modified from time to time).

“Note” means that certain Secured Promissory Note made by Assignor, as borrower, to Assignee, as lender, dated as of the date hereof, which evidences the Loan, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms.

“Person” means and includes an individual, entity or other association.

“Premises” means, collectively, the Land and the Improvements.

“Property” has the meaning set forth in the Security Instrument.

“Rents” means any and all rents, additional rents, revenues, profits, royalties, cancellation or surrender payments, income, Security Deposits (as hereinafter defined), damages and other amounts resulting from any Lease default or termination or rejection of any Lease under the Bankruptcy Code or otherwise, proceeds of insurance or condemnation awards (or payments in lieu thereof), and any other benefits that are now due, past due or may hereafter become due, by reason of the renting, leasing, occupancy, licensing, or bailment of all or any portion of the Premises or the use or occupancy thereof, including, without limitation, all such items payable under or pursuant to the Leases.

“Security Deposits” collectively means all security deposits and other security now or hereafter provided to or held by Assignor as security for the performance of the obligations of the Tenants (as hereinafter defined) under the Leases (in each case, as amended, supplemented, renewed, extended, substituted or otherwise modified from time to time).

“Security Instrument” means that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by Assignor, as grantor, in favor of Assignee, as beneficiary, dated as of the date of this Assignment, that encumbers the Land, Improvements and the other Property and is intended to be recorded concurrently herewith in Salt Lake County as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms.

“Security Obligations” has the meaning ascribed to such term in the Security Instrument.

“Tenants” collectively means all present and future tenants, subtenants, licensees, users and occupants of the Premises, including all such Persons who are a party to the Leases.

## ARTICLE II

### ASSIGNMENT OF LEASES AND RENTS

#### Section 2.01 Assignment.

(a) Assignor hereby absolutely, presently, irrevocably and unconditionally grants, assigns and transfers to Assignee:

(i) all of Assignor's present and future right, title, interest and estate in, to and under all Leases and Rents, whether now owned or hereafter acquired; and

(ii) the absolute, present, irrevocable and unconditional right to receive, collect and possess all Rents.

(b) This Assignment constitutes an absolute, present, irrevocable and unconditional assignment of the Leases and Rents to Assignee and not merely a collateral assignment of, or the grant of a lien or security interest in or on, the Leases and Rents. Such grant, assignment and transfer shall not be construed to: (i) bind Assignee to the performance of any of the covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Assignee; or (ii) create, or operate to place or impose, any responsibility, obligation or liability upon Assignee for: (A) the control, care, maintenance, management or repair of the Premises; (B) any dangerous or defective condition of the Premises, including, without limitation, the presence of any environmental contamination or conditions; (C) any waste committed on the Premises by any Person; and/or (D) any negligence in the management, upkeep, repair or control of the Premises.

#### Section 2.02 Revocable License.

(a) Notwithstanding the grant, assignment and transfer of the Leases and Rents from Assignor to Assignee pursuant to Section 2.01, Assignee grants to Assignor a revocable license to collect and receive the Rents as they become due, and to retain, use, and apply the Rents to the payment of the Secured Obligations and to the costs and expenses incurred in connection with the operation and maintenance of the Property, and to exercise all rights as landlord under any Lease, in each case subject to the terms hereof, the Security Instrument and the other Loan Documents. After the occurrence and during the continuance of an Event of Default, Assignor shall collect and receive all such Rents as trustee for the benefit of Assignee.

(b) From and after the occurrence and during the continuance of any Event of Default:

(i) the revocable license granted to Assignor pursuant to Section 2.02(a) shall immediately and automatically, with or without notice from Assignee, cease and terminate and shall be void and of no further force or effect;

(ii) Assignee shall immediately and automatically be entitled to receive, collect and possess all Rents (whether or not Assignee enters upon or takes control of the Premises or has a receiver appointed for the Premises or takes any other action), as hereinafter provided in this Assignment;

(iii) Assignor shall, immediately upon written demand by Assignee, notify in writing all Tenants under the Leases that all Rents due thereunder from and after the date of such notice shall be paid to Assignee at its address set forth in this Assignment, or at such other place as Assignee shall notify Assignor or the Tenants in writing; and

(iv) any portion of the Rents then or thereafter received or held by Assignor shall be held in trust by Assignor for the benefit of Assignee and payable immediately within 5 days to Assignee for application by Assignee in its sole discretion.

(c) It is agreed that, if the Event of Default that gave rise to the termination of the revocable license pursuant to Section 2.02(b) is cured in Assignee's sole discretion, then the revocable license granted pursuant to Section 2.02(a) shall be reinstated for so long as no other Event of Default shall occur and be continuing, subject to the provisions of this Section 2.02.

(d) Upon the occurrence and during the continuance of an Event of Default, Assignor agrees that, at Assignee's sole option from time to time, Assignee, and not Assignor, shall be deemed to be the creditor of each Tenant under each Lease in respect of any and all assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting each Tenant, with an option to apply in accordance with the Loan Documents any money received from such Tenant in reduction of any amounts due under the Loan Documents. In each such case, Assignee or Assignor at Assignee's direction shall be obligated to file or make timely filings of claims in such proceedings and to otherwise pursue creditor's rights in such proceedings.

**Section 2.03 Certain Rights of Assignee.** From and after any revocation of the license granted pursuant to Section 2.02(a) above, Assignee shall, at its option and in addition to its other rights and remedies provided in this Assignment, the Security Instrument and the other Loan Documents and/or at law or in equity, have the immediate and continuing right, power, and authority, either personally or by agent without bringing any foreclosure or other action or proceeding, or by a receiver appointed by a court and without the necessity of taking possession of the Premises in its own name, and without the need for any other authorization or action by Assignor or Assignee, to take any or all of the following actions:

(a) Notify any Tenant or other Person that the Leases have been assigned to Assignee and that all Rents are to be paid directly to Assignee, in accordance with the provisions of Section 2.04.

(b) Settle, compromise, release, extend the time of payment for, and make allowances, adjustments and discounts of, any Rents or other obligations in, to and under the Leases.

(c) Demand, sue for, collect, receive, and enforce payment of all Rents, including those past-due and unpaid and other rights under the Leases, and prosecute any action or proceeding for the payment or collection of Rents or for the recovery of damages under the Leases or the abatement of any nuisance at the Premises, and defend against any claim, with respect to the Rents and Leases or the Premises.

(d) Lease all or any part of the Premises and/or modify, amend, renew or terminate any Leases.

(e) Perform any and all obligations of Assignor under the Leases and exercise any and all rights of Assignor therein contained to the full extent of Assignor's rights and obligations

thereunder.

#### **Section 2.04 Instructions to Tenants.**

(a) At Assignee's request from time to time during the term of this Assignment, Assignor shall promptly: (i) notify each Tenant under any Lease now or hereafter affecting all or any portion of the Premises of the existence of this Assignment and the rights and obligations of Assignor, Assignee and such Tenant hereunder; (ii) provide each such Tenant with a copy of this Assignment; and (iii) use commercially reasonable efforts to obtain each such Tenant's agreement to be bound and comply with the provisions hereof that apply to Tenants.

(b) In furtherance of Section 2.03(a), upon the occurrence of an Event of Default and during the continuance thereof, Assignee may, at its option, send any Tenant a notice in compliance with applicable law to the effect that: (i) an Event of Default has occurred and Assignee has revoked Assignor's license to collect the Rents; (ii) Assignee has elected to exercise its rights under this Assignment and applicable law; and (iii) such Tenant is thereby directed to thereafter make all payments of Rents and to perform all obligations under its Lease for the benefit of Assignee or as Assignee may direct.

(c) Upon receipt of any such notice from Assignee, each Tenant is hereby absolutely and irrevocably authorized and directed by Assignor and Assignee (and without the necessity for any further consent or direction by Assignor) to: (i) comply with the provisions of such notice and all demands of Assignee under this Assignment; and (ii) rely upon any notice from Assignee with respect to any payment of Rents made pursuant to such notice and shall not be required to investigate or determine the validity or accuracy of such notice or any Event of Default, or the validity or enforceability of this Assignment, notwithstanding any notice or claim to the contrary from Assignor. Assignor hereby agrees to indemnify, defend and hold such Tenant harmless from and against any and all loss, claim, damage or liability arising from or related to payment of Rents or performance of obligations under any Lease by such Tenant made in good faith in reliance on and pursuant to such notice. Assignor hereby acknowledges and agrees that payment of any Rents by a Tenant or other Person to Assignee as provided above shall constitute payment by such Tenant or other Person, as fully and with the same effect as if such Rents had been paid to Assignor.

(d) If the Event of Default that gave rise to the termination of the revocable license pursuant to Section 2.02(b) is cured and the revocable license granted pursuant to Section 2.02(a) shall be reinstated, Assignee shall give written notice thereof to the Tenants and thereafter, until further notice from Assignee, the Tenants shall pay Rents to Assignor, subject to the terms and conditions of this Article II.

#### **Section 2.05 Leases Subject and Subordinate.**

(a) To the extent permitted by applicable law, and subject to the terms of any and all Leases currently in existence, any Lease now or hereafter affecting all or any portion of the Premises is and will be subject and subordinate to the Security Instrument and this Assignment, and each Tenant shall be bound by and required to comply with the provisions of the Security Instrument and this Assignment. Assignee may, at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien and security interest of the Security Instrument and this Assignment to any Lease, without joinder or consent of, or notice

to, Assignor, any Tenant or any other Person, and notice is hereby given to each Tenant under the Leases of such right to subordinate. No such subordination shall constitute subordination to any lien, security interest or other encumbrance, whenever arising, or improve the right of any junior lienholder.

(b) All Leases hereafter executed with respect to the Premises or any portion thereof shall contain a reference to this Assignment and shall state that such Tenant is bound by and shall comply with the provisions hereof.

(c) Assignee shall not be liable to any Tenant for the payment or return of any Security Deposit under any Lease unless and to the extent that such Security Deposit has been paid to and received by Assignee, and Assignor agrees to indemnify, defend and hold Assignee harmless from and against any and all losses, claims, damages or liabilities arising out of any claim by a Tenant with respect thereto.

**Section 2.06 Lease Covenants.** Assignor covenants and agrees as follows (whether or not an Event of Default has occurred and whether or not the license granted to Assignor pursuant to Section 2.02(a) has been revoked):

(a) Except as otherwise agreed to by Assignee or as expressly provided under this Assignment or the Security Instrument, Assignor shall:

(i) make all payments and otherwise perform all of Assignor's obligations under each Lease as and when required thereunder;

(ii) not enter into, amend, modify, supplement or terminate any Lease affecting all or any portion of the Premises, nor waive, condone or in any manner discharge any Tenant under any Lease from its obligations thereunder;

(iii) not sell, assign, transfer, mortgage, or pledge any Leases, Rents or any right or interest under any Leases, nor subordinate any Lease to any other holder of a lien or security interest;

(iv) keep each Lease in full force and effect, and enforce each Lease and all remedies available to Assignor against the Tenant thereunder in case of any default;

(v) not allow any Lease to lapse or terminate or any renewal or expansion options or rights under any Lease to be forfeited or cancelled;

(vi) notify Assignee of any default or event of default by any Tenant or other Person under any Lease and use commercially reasonable efforts (including cooperating with Assignee) to cure or cause the cure of any such default or event of default;

(vii) not consent to any assignment of or subletting under any Lease;

(viii) appear in and defend any action or proceeding arising under or in connection with any Lease; and

(ix) comply with any additional covenants set forth in the Security Instrument with regard

to the Leases.

(b) Assignor shall not accept Rent in excess of one (1) month in advance from any Tenant, nor discount any future accruing Rents, without the prior written consent of Assignee.

(c) If requested in writing by Assignee, Assignor shall promptly deliver to Assignee true, correct and complete copies of all Leases, together with any amendments, modifications and supplements thereto and/or such other information relating to the Leases or to the Tenants thereunder as Assignee may reasonably request.

(d) If requested in writing by Assignee, Assignor shall promptly make available to Assignee all books, records, financial statements and other information relating to the Leases, the collection of all Rents, and the disposition and disbursement thereof.

(e) If a petition under the Bankruptcy Code shall be filed by or against Assignor and Assignor, as landlord, shall determine to reject any Lease pursuant to Section 365 of the Bankruptcy Code, then Assignee shall have the right, but not the obligation, to demand that Assignor assume and assign the Lease to Assignee, and Assignor shall provide adequate assurance of future performance under the Lease.

**Section 2.07 Lease Representations.** Assignor hereby represents and warrants as follows:

(a) Assignor is the sole owner of the entire landlord's interest in the Leases, and this Assignment is a first priority assignment and Assignor has not executed any other assignment of the Leases and/or Rents.

(b) Assignor has delivered to Assignee true and complete copies of all Leases, and all material modifications, amendments and supplements thereto, affecting all or any portion of the Premises.

(c) Each of the Leases affecting the Premises is in full force and effect, and no default or event of default, and no event or circumstance which with the passage of time or the giving of notice or both would constitute a default or event of default, exists under any Lease.

(d) All Rents under each Lease have been paid in full and no Rent under any Lease has been paid to Assignor more than one (1) month in advance.

(e) No Tenant under any Lease is entitled to any offset or defense against the payment of Rent thereunder.

(f) No Tenant under any Lease has, except as provided in its Lease (a copy of which has been delivered to Assignee): (i) any option or right of first refusal to purchase all or any portion of the Premises; (ii) any option or right to renew or extend the term of the Lease; or (iii) any option or right of first refusal to lease or occupy additional space at the Premises.

(g) Each Lease affecting all or any portion of the Premises is by its terms or by separate written agreement subject and subordinate to the lien, terms and provisions of this Assignment and the Security Instrument.

## ARTICLE III

### REMEDIES ON DEFAULT

**Section 3.01 Remedies.** Upon the occurrence and during the continuance of an Event of Default, Assignee may, at Assignee's election, in addition to and without limiting or impairing any of Assignee's other rights and remedies under this Assignment, the Security Instrument and the other Loan Documents, or at law or in equity, take such action as is permitted at law or in equity, without notice or demand (except as explicitly provided in the Security Instrument), as it deems necessary or advisable to protect and enforce its rights under this Assignment against Assignor and the Leases and Rents, including but not limited to, any or all of the following rights and remedies, each of which may be pursued concurrently or otherwise, at such time and in such order as Assignee may determine in its sole discretion:

(a) Assignee may, either in person or by agent and with or without bringing any action or proceeding or having a receiver appointed by a court:

(i) enter the Premises and take exclusive possession thereof and of all books, records, and accounts relating thereto. If Assignor remains in possession of the Premises after the occurrence and during the continuation of an Event of Default without Assignee's prior written consent, Assignee may invoke any legal remedies to dispossess Assignor, or Assignee may, at its option, require Assignor to pay monthly in advance to Assignee, or any court-appointed receiver for the Premises, the fair and reasonable rental value for the use and occupation as tenant of all or such part of the Premises that Assignor may be occupying or possessing for Assignor's own use as a Tenant;

(ii) exercise its rights under Section 2.03 with regard to the Leases and Rents; and

(iii) hold, develop, manage, operate, control, and otherwise use the Premises upon such terms and conditions as Assignee deems reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Assignee deems reasonably necessary or desirable, all at Assignor's expense), and exercise all rights and powers of Assignor with respect to the Premises, whether in the name of Assignor or otherwise.

(b) Prior to, concurrently with, or subsequent to the institution of foreclosure proceedings, Assignee may apply to a court of competent jurisdiction for, and, to the extent permitted by applicable law, obtain from such court as a matter of strict right and without notice to Assignor or anyone claiming under Assignor or regard to the value of the Premises or the solvency or insolvency of Assignor or the adequacy of any collateral for the repayment of the Secured Obligations or the interest of Assignor therein, the appointment of a receiver or receivers for the Premises. Assignor irrevocably consents to such appointment. Any receiver or receivers shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Premises upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of this Assignment, the Security Instrument and the other Loan Documents, except as otherwise required by law.

(c) Assignee may appoint Assignor to act as agent for Assignee for the purpose of:



- (i) managing and operating the Premises and paying all expenses incurred in connection therewith and approved by Assignee;
- (ii) enforcing the provisions of the Leases; and/or
- (iii) collecting all Rents due thereunder.

If Assignee so elects and gives written notice to Assignor to act as agent of Assignee for the purpose or purposes specified in such notice, then Assignor shall promptly comply with all instructions and directions from Assignee with respect thereto. Assignor shall not be entitled to any management fee, commission or other compensation unless expressly agreed to in writing by Assignee. All Rents collected by Assignor as agent for Assignee pursuant to this Section 3.01(c) shall be immediately deposited in an insured account in the name of Assignee in a bank or other financial institution designated by Assignee or otherwise remitted to Assignee in accordance with Assignee's written instructions to Assignor. All Rents collected by Assignor and all amounts deposited in such account or otherwise delivered, including interest thereon, shall be the property of Assignee, and Assignor shall not be entitled to withdraw any amount from such account without the prior written consent of Assignee in each instance. The agency hereby created shall be solely for the purpose of implementing the provisions of this Assignment and collecting the Rents due Assignee hereunder. Assignee may at any time terminate the agency relationship with Assignor by written notice to Assignor.

(d) Assignee may exercise all other rights and remedies granted under this Assignment and the other Loan Documents, or otherwise available at law or in equity including any action:

- (i) seeking specific performance of any covenant contained in the Loan Documents;
- (ii) to foreclose the Security Instrument; and/or
- (iii) seeking a judgment on the Note, either before, during or after any proceeding to enforce this Assignment.

**Section 3.02 Remedies Cumulative, Concurrent and Nonexclusive.** In connection with any Event of Default, Assignee shall have all rights and remedies granted in this Assignment and the other Loan Documents and available at law or equity (including the Uniform Commercial Code). Such rights and remedies: (a) shall be cumulative and concurrent and shall be in addition to every other remedy so provided or permitted; (b) may be pursued separately, successively, or concurrently against Assignor, or against the Premises, or against any one or more of them, at the sole discretion of Assignee; and (c) may be exercised as often as occasion therefor shall arise. The exercise or failure to exercise any right or remedy shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and all such rights and remedies are intended to be, and shall be, nonexclusive. No exercise by Assignee of any rights or remedies under this Assignment or the Loan Documents or otherwise at law or equity (including without limitation any collection of Rents) shall be deemed to cure or waive any Event of Default.

**Section 3.03 Waiver of Redemption, Notice and Marshaling of Assets.** Assignor, to the full extent that it may lawfully do so, waives, and agrees that it will not at any time plead or in any way take advantage of, any appraisal, valuation, stay, marshaling of assets, exemption, extension, redemption, or moratorium law now or later in effect so as to prevent or hinder the enforcement of

this Assignment or the Secured Obligations, or any agreement between Assignor and Assignee or any rights or remedies of Assignee. Assignor hereby waives presentment, demand for payment, protest, notice of dishonor, notice of protest or nonpayment, notice of intent to accelerate, notice of acceleration of maturity and diligence in connection with the enforcement of this Assignment or the taking of any action to collect any sums owing hereunder.

**Section 3.04 Discontinuance of Proceedings.** If Assignee proceeds to invoke any right, remedy or recourse permitted under the Loan Documents and thereafter elects to discontinue or abandon it for any reason, Assignee shall have the unqualified right to do so. In such event, Assignor and Assignee shall be restored to their former positions with respect to this Assignment, the other Loan Documents, the Premises and otherwise, and the rights, remedies, recourses and powers of Assignee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Assignee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 3.05 Application of Proceeds.** The proceeds of the Property, together with any other sums that may be held by Assignee under this Assignment or under any other Loan Document, whether under the provisions of this Section or otherwise, shall be applied in same manner as is provided for the application of proceeds pursuant to the Loan Agreement.

**Section 3.06 Additional Advances and Disbursements and Costs.** Upon the occurrence of any default or Event of Default by Assignor in the performance of its obligations under this Assignment or any of the Leases, Assignee shall have the right, but not the obligation, with or without notice to Assignor, to perform such obligations and/or cure such default or Event of Default in the name and on behalf of Assignor and at Assignor's sole cost and expense. These acts may include, without limitation, appearing in and defending any proceeding in connection with the Leases, including any proceedings involving any Tenants under the Bankruptcy Code. No action or cure by Assignee shall release Assignor from its obligations under this Assignment. Assignee shall notify Assignor reasonably promptly following the date of Assignee's performance of such obligations. All sums advanced and expenses incurred at any time by Assignee under this Section 3.06 shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall constitute additions to the Secured Obligations and shall be secured by this Assignment and the other Loan Documents, and Assignor covenants and agrees to pay such sums to Assignee upon 5 days of demand.

**Section 3.07 No Liability and No Lender in Possession.** Without limiting the provisions of Section 2.01(b) or any other provision of this Assignment, the enforcement of any of the remedies under this Article III or any other remedies afforded to Assignee under the Loan Documents, at law or in equity, shall not:

- (a) Cause Assignee to be deemed or construed to be a "mortgagee in possession" of the Premises.
- (b) Operate or be construed to obligate Assignee to perform any of the terms, covenants and conditions contained in any Lease or otherwise to impose any obligation upon Assignee with respect to any Lease, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment contained in any Lease in the event the Tenant under any such Lease shall

have been joined as a party defendant in any action to foreclose and the estate of such Tenant shall have been terminated.

(c) Obligate Assignee to lease the Premises or attempt to do so, or operate or be construed to create or impose any liability on Assignee for any losses or damages sustained by Assignor resulting from Assignee's or its agents' failure to lease the Premises, or from any other act or omission of Assignee or its agents in managing or operating the Premises.

## ARTICLE IV

### MISCELLANEOUS

**Section 4.01 Notices.** Any required or permitted notice under this Assignment shall be given in the manner described in the Loan Agreement.

**Section 4.02 Incorporation of Loan Terms; Covenants Running With the Land.** All representations, warranties, and covenants contained in the Loan Agreement are incorporated herein by this reference. In the event of any conflict between the terms of this Assignment and the Loan Agreement, the terms of the Loan Agreement shall control. All representations, warranties and covenants contained herein and incorporated herein from the Loan Agreement, to the extent relating to the Premises, are intended by the parties to be, and shall be construed as, covenants running with the land. All Persons who may have or acquire an interest in the Premises shall be deemed to have notice of, and be bound by, the terms of this Assignment, the Security Instrument and the other Loan Documents; provided, however, that no such Person shall be entitled to any rights thereunder or be deemed to be a third-party beneficiary of this Assignment without the prior written consent of Assignee in each instance.

**Section 4.03 Successors and Assigns.** This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee, and their respective legal representatives, successors and assigns. No right in Assignor to sell, transfer or encumber the Premises or any of the other collateral secured by the Security Instrument or the Leases and/or Rents may be inferred from this Section 4.03. Assignee shall have the absolute and unrestricted right, at any time or from time to time, and without notice to or consent by Assignor or any other Person, to sell, assign or transfer all or any portion of this Assignment in connection with any sale, assignment or transfer of the Loan and the Loan Documents. Each such purchaser, assignee or transferee shall have the rights and benefits with respect to this Assignment as such Person would have if they were the Assignee originally named in this Assignment.

**Section 4.04 No Waiver.** No delay or forbearance by Assignee in exercising any or all of its rights and remedies hereunder or rights and remedies otherwise afforded by law or in equity shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any Event of Default or if any subsequent Event of Default occurs. No act or inaction of Assignee under this Assignment shall be deemed to constitute or establish a "course of performance or dealing" that would require Assignee to so act or refrain from acting in any particular manner at a later time under similar or dissimilar circumstances. Any failure by Assignee to insist upon strict performance of any of the terms, provisions, or conditions of this Assignment or any of the Loan Documents shall not be deemed to be a waiver of such term, provision, or condition, and Assignee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions. Any waiver of the terms hereof shall be effective only in the specific instance and for

the specific purpose given.

**Section 4.05 Subrogation.** Assignee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Secured Obligations or otherwise discharged or paid by Assignee. Assignor waives all rights of subrogation until the entire Secured Obligations has been indefeasibly paid in full.

**Section 4.06 Release.** Upon payment in full of the Secured Obligations and performance in full of all of the outstanding obligations of Assignor under the Loan Documents, this Assignment shall cease, terminate, and be void, and Assignee, at Assignor's request and expense, shall release the liens and security interests created by this Assignment by executing and delivering to Assignor an appropriate release or discharge of this Assignment.

**Section 4.07 Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Utah without regard to conflict of law rules.

**Section 4.08 Headings.** The Article, Section and Subsection titles of this Assignment are for convenience of reference only and shall not alter, modify, limit, or define, or be used in construing, the scope, intent or text of such Articles, Sections or Subsections.

**Section 4.09 Jurisdiction; Venue; Waiver of Jury Trial.**

(a) Assignor hereby irrevocably and unconditionally: (i) agrees that any legal action, suit or proceeding arising out of or relating to this Assignment may be brought in the courts of the state of Utah or of the United States of America located in Utah; and (ii) submits to the exclusive jurisdiction of any such court in any such action, suit or proceeding. Final judgment against Assignor in any action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment.

(b) Nothing in this Section 4.09 shall affect the right of Assignee to: (i) commence legal proceedings or otherwise sue Assignor in any other court having jurisdiction over Assignor; or (ii) serve process upon Assignor in any manner authorized by the laws of any such jurisdiction.

(c) Assignor irrevocably and unconditionally waives, to the fullest extent Assignor may effectively do so, the defense of improper venue and/or an inconvenient forum to the maintenance of any action or proceeding in any court referred to in this Section 4.09 or otherwise relating to this Assignment.

(d) ASSIGNOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER BASED ON CONTRACT, EQUITY, TORT OR ANY OTHER THEORY.

**Section 4.10 Expenses; Indemnity.** Assignor shall pay or reimburse Assignee for, and shall defend, indemnify and hold Assignee harmless from and against, any and all claims, losses, expenses, damages, and liabilities (including, without limitation, all fees and expenses of attorneys) that Assignee incurs or may incur in connection with this Assignment and/or any suit, action, proceeding or dispute of any kind in which Assignee is made a party or appears as party plaintiff or

defendant relating to this Assignment, including, without limitation, in connection with: (i) the rights and interests created herein; (ii) the Leases and Rents; and (iii) the enforcement of Assignee's rights and remedies hereunder or any action to protect the priority or security hereof. If Assignee incurs any such claim, loss, expense, damage, or liability, the amount thereof, including all attorneys' fees and costs and expenses associated with Assignee's actions taken in defense thereof, or otherwise in protecting its interests hereunder, shall constitute additions to the Secured Obligations and shall be secured by this Assignment and the other Loan Documents. Assignor agrees to reimburse Assignee within 5 days after demand by Assignee for any such sums, together with interest thereon from the date such indebtedness arises until paid at the Default Rate.

**Section 4.11 Counterparts; Integration; No Oral Amendments.** This Assignment and any amendments, waivers, consents or supplements hereto may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Assignment or any amendment, modification or supplement hereto by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Assignment. The provisions of this Assignment may be amended or revised only by an instrument in writing signed by Assignor and Assignee. This Assignment and all the other Loan Documents embody the final, entire agreement of Assignor and Assignee and supersede any and all prior commitments, agreements, representations and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of Assignor and Assignee. There are no oral agreements between Assignor and Assignee concerning or relating to the Secured Obligations, this Assignment or any of the other Loan Documents.

**Section 4.12 Severability.** If any term or provision of this Assignment is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Assignment or invalidate or render unenforceable such term or provision in any other jurisdiction.

**Section 4.13 Security Interest and Lien Absolute.** Assignor acknowledges that this Assignment and the other Loan Documents secure the Secured Obligations. Assignor agrees that, to the extent not prohibited by law, the security interest and lien of this Assignment and all obligations of Assignor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by: (a) any lack of validity or enforceability of any Loan Document; (b) any acceptance by Assignee of any security or guaranty for any of the Secured Obligations; (c) any failure, neglect, or omission by Assignee to realize upon or protect any of the collateral security for the Secured Obligations; (d) any change in the time, manner, or place of payment of, or in any other term of, all or any of the Secured Obligations; (e) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, non-perfection, renewal, extension, indulgence, alteration, exchange, modification, or disposition of any Loan Document or any collateral provided for the Loan; (f) any waiver of, or consent to any departure from, any provision of the Loan Documents or any guaranty given for the Secured Obligations; (g) any exercise of Assignee's rights or remedies hereunder or under any or all of the Loan Documents; and/or (h) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Assignor in respect of the Secured Obligations or this Assignment (other than the indefeasible payment in full of all the Secured Obligations).

**Section 4.14 Time Is of the Essence.** Time shall be of the essence with respect to each of the

Assignor's obligations hereunder.

**Section 4.15 Recording Fees.** Assignor shall pay all recording fees due in connection with this Assignment and any amendments hereto or terminations hereof.

**Section 4.16 Further Assurances; Power of Attorney.**

(a) Assignor shall take such action and shall execute, deliver and record, at its sole cost and expense, such documents as Assignee in its reasonable discretion may deem necessary or advisable to evidence the assignment of the Leases and Rents made in this Assignment, to establish the first priority assignment of this Assignment, and/or to carry out the intent and purposes hereof. If requested in writing by Assignee, Assignor shall promptly execute a specific assignment of any Lease now or hereafter affecting all or any portion of the Premises.

(b) Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact (such power of attorney being coupled with an interest), and as such attorney-in-fact, Assignee may, without the obligation to do so, in Assignee's name or in the name of Assignor: (i) prepare, execute, file and/or record financing statements, continuation statements, applications for registration, notices of completion, notices of cessation of labor, notices to Tenants and property managers or other agents of Assignor, or any other notices or instruments that Assignee deems necessary or advisable to protect Assignee's interest and any documents or instruments necessary or advisable to create, perfect, enforce and/or preserve any of Assignee's liens, security interests or rights in or to any of the Leases, Rents and/or the Property; and (ii) upon the occurrence of any default or Event of Default by Assignor hereunder in the performance of its obligations hereunder, take any action required of Assignor (including, without limitation, any action taken by Assignee pursuant to Section 3.06); provided, however, that Assignee as such attorney-in-fact shall be accountable only for such funds as are actually received by Assignee and Assignee shall not be liable to Assignor or any other person or entity for any failure to act under this Section.

**Section 4.17 Interpretation; Rules of Construction.** For purposes of this Assignment: (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Assignment as a whole. The definitions given for any defined terms in this Assignment shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, any references herein: (x) to "Schedules," "Exhibits" and "Sections" mean the Schedules, Exhibits and Sections of this Assignment; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Assignment shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

**Section 4.18 Joint and Several Liability.** If more than one party, as assignor, shall execute this Assignment, the term "Assignor" shall mean all parties signing, and each of them, and each agreement, representation, covenant and obligation of Assignor hereunder shall be and mean the

several as well as joint undertaking of each of them.

## ARTICLE V

### STATE SPECIFIC PROVISIONS.

**Section 5.01 State Specific Provisions Control.** In the event of any conflict between the terms and provisions set forth in this Article V and the other terms and provisions of this Assignment, the terms and provisions of this Article V shall govern and control.

**Section 5.02 Utah Assignment of Rents Act.** To the extent that this Assignment is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated § 57-26-101, et seq. (the "*Act*"), and in the event of any conflict or inconsistency between the provisions of the terms and conditions of this Deed of Trust and the provisions of the Act, the provisions of the Act shall control.

*[remainder of page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed on the date set forth in the acknowledgment below and to be effective as of the date first set forth above.

Do Eat Holdings, LLC, a Utah limited liability company

By: Qingyu Zhou AKA Tony Zhou.

Name: Qingyu Zhou aka Tony Zhou

Title: Manager



**EXHIBIT A**

LEGAL DESCRIPTION OF THE LAND

[INSERT LEGAL DESCRIPTIONS FOR NORTH TEMPLE AND 2700 SOUTH]

Exhibit "A"

Parcel No. 16-19-377-024 (Parcel 1)

Beginning at the Southwest corner of Lot 53, Block 1, Central Park, a subdivision of Lots 1, 2, 3 and 16, Block 41, Ten Acre Plat "A" Big Field Survey, thence East 25 feet; thence North 11 feet; thence West 25 feet; thence South 11 feet to the point of beginning.

Tax Parcel #: 16-19-377-025 (Parcel 2)

Lots 1, 2, 3, 4, 5 and 54, Block 1, Central Park, a subdivision of Lots 1, 2, 3 and 16, Block 41, Ten Acre Plat "A" Big Field Survey.

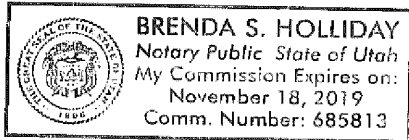
Also commencing at the Northwest corner of Lot 51, Block 1, said subdivision; thence South 39 feet; thence East 25 feet; thence South 36 feet; thence East 108 feet; thence North 75 feet; thence West 133 feet to the point of beginning.

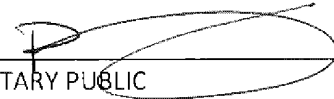
Tax Parcel #: 16-19-377-026 (Parcel 3)

Beginning 11.0 feet North from the Southwest corner of Lot 53, Block 1, Central Park, a subdivision of Lots 1, 2, 3 and 16, Block 41, Ten Acre Plat "A" Big Field Survey and running thence North 25 feet; thence East 25 feet; thence South 25 feet; thence West 25 feet to the point of beginning.

STATE OF UTAH            )  
                                      : ss.  
SALT LAKE COUNTY        )

The foregoing instrument was acknowledged before me this March 8, 2019 by Qingyu Zhou aka Tony Zhou, who acknowledged before me that he is the Manager of Do Eat Holdings, LLC.



  
NOTARY PUBLIC