

Recording Cover Sheet

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RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 9 P.

Assignment of Rents and Leases

After Recording Mail To:

CLI Capital, a real estate investment trust
C/O Sprouse Shrader Smith PLLC
701 S. Taylor, Ste 500
Amarillo, TX 79101

File No. 137407-JCP

Tax Parcel No. 14-23-400-051, 14-23-400-052, 14-26-202-003 and 14-26-202-004

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this “*Agreement*”), is entered into this 4th day of May, 2021, by and between WEST VALLEY SCHOOL DEVELOPMENT II, LLC, a Utah limited liability company (“*Borrower*”), having a principal address at 290 N. Flint St., Suite A, Kaysville, Utah 84037, and CLI CAPITAL, a real estate investment trust (“*Lender*”), having a principal address at 5305 West Interstate 40, Amarillo, Texas 79106-4759.

RECITALS

A. Contemporaneously with this Assignment, Lender has made a loan to Borrower in the original principal sum of up to \$12,000,000.00 (the “*Loan*”) evidenced by a Promissory Note dated of even date herewith (as amended, modified, renewed, or restated, and together with any substitutions or replacements therefor, the “*Note*”).

B. The Note is secured by this Agreement and a Deed of Trust of even date herewith from Borrower to Cottonwood Title Insurance Agency Inc., Trustee, for the benefit of Lender (the “*Deed of Trust*”), which shall be recorded in the Official Public Records of the county in which the real property described in Exhibit “A” hereto is located (the “*Property*”).

C. Borrower desires to grant a security interest in the Rents and Leases (each as defined below) to Lender, as additional security for the Loan.

AGREEMENT

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. Absolute Assignment. Subject to Section 7 herein, Borrower unconditionally and absolutely assigns to Lender all of Borrower’s right, title and interest in and to (a) all leases, subleases, occupancy agreements, licenses, concessions, contracts and other agreements (written or oral) now or hereafter existing relating to the use or occupancy of the project located on the Property (collectively, the “*Leases*”), together with all guarantees, letters of credit and other credit support related to such Leases (whether before or after the filing by or against Borrower of any petition of relief under 11 U.S.C. § 101 et seq., as same may be amended from time to time (the “*Bankruptcy Code*”), and all security and other deposits related to such Leases; (b) all rents, revenues, issues, profits, income and proceeds due or to become due from tenants of the Property, including rentals and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, rendering in, or otherwise enjoying the Property (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. This Agreement is an absolute assignment to Lender and not an assignment as security for the performance of the obligations under the Loan Documents (defined below), or any other indebtedness.

2. Borrower’s Covenants. Borrower covenants: (a) to duly and punctually observe, perform and comply with any and all of the representations, warranties, covenants, agreements and obligations imposed upon the landlord in the Leases; (b) not to do or permit to be done anything to impair the security of any of the Leases; (c) that no Rent reserved in any of the Leases has been assigned, except to Lender; (d) except for tenant deposits, not to collect any of the Rent, income and profits arising, accruing or to be derived from the Property more than 30 days in advance of the time when the same became due under the

terms of said Leases; (e) not to discount any future accruing Rents except in the ordinary course of business; (f) to maintain each of the Leases in full force and effect during the full term thereof; (g) to appear in and defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of Assignor or the other party or parties thereto; (h) not to execute any other Assignment of Lease or Assignment of Rents relating to the Leases or the Property except with the prior written consent of Lender; (i) except in the ordinary course of business, not to amend, modify or terminate any of the Leases in any material respect without the prior written approval of Lender; (j) except in the ordinary course of business, not to enter into any new leases without the prior written approval of Lender, such approval not to be unreasonably withheld, conditioned or delayed, as to the terms of such Lease and the creditworthiness of the tenants under such Leases; (k) not to assign or grant a security interest in and to any of the Leases to any party other than Lender without the prior written consent of Lender; (l) to assign and transfer to Lender, at the request of Lender, any specific Leases upon any specific parts of the Property (said assignment to be in form like this Assignment of Rents and Leases); (m) except in the ordinary course of business, not to repossess all or any part of the Property without the prior written consent of Lender; (n) except in the ordinary course of business not to declare any of the Leases terminated without the prior written consent of the Lender; (o) except in the ordinary course of business, not to exercise any rights available to Borrower upon any breach by any lessee under any of the Leases without the prior written consent of Lender; and (p) to deliver to Lender executed counterparts of all Leases affecting the Property, regardless of whether such Leases were or are executed before or after the date hereof.

3. Rights of Lender. Subject to the provisions of Section 7 below, upon the occurrence of and while an Event of Default (as defined in the Deed of Trust and other Loan Documents) is continuing, Lender shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Lender and that all Rents are to be paid directly to Lender, whether or not Lender has commenced or completed foreclosure or taken possession of the Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) subject to applicable law, enter upon, take possession of and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Borrower under the Leases and exercise any and all rights of Borrower therein contained to the full extent of Borrower's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Lender's request, Borrower shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Property. Subject to the provisions of Section 7 below, upon the occurrence of and while an Event of Default (as defined in the Deed of Trust and other Loan Documents) is continuing, Borrower irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Borrower, to comply with all demands of Lender under this Agreement and to turn over to Lender on lawful demand all Rents which it receives.

4. No Obligation or Liability. Notwithstanding Lender's rights hereunder, Lender shall not be obligated to perform, and Lender does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Agreement. Lender shall have no responsibility on account of this Agreement for the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

5. Right to Apply Rents. During the existence of an Event of Default, Lender shall have the right, but not the obligation, to use and apply any Rents received hereunder in such order and such manner as Lender may determine for:

(a) Enforcement or Defense. The payment of costs and expenses of enforcing or defending the terms of this Agreement or the rights of Lender hereunder, and collecting any Rents;

(b) Loan Payments. Interest, principal or other amounts payable pursuant to (i) the Loan Agreement of even date between Lender and Borrower (the "*Loan Agreement*"); (ii) the Note; (iii) the Deed of Trust; and (iv) all other documents and instruments evidencing, governing and securing the Loan and any and all modifications, amendments or extensions thereof or replacements or substitutions therefor (the Loan Agreement, the Note, the Deed of Trust, such other documents and instruments, and such modifications, amendments, extensions, replacements, and substitutions thereof being herein collectively called the "*Loan Documents*"); and

(c) Operating Expenses. Payment of costs and expenses of the operation and maintenance of the Property, including (i) rentals and other charges payable by Borrower under any ground lease or other agreement affecting the Property; (ii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property; (iii) insurance premiums; (iv) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents; (v) commissions of agents and attorneys' fees and expenses; and (vi) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Property.

After the payment of all such costs and expenses and after Lender has established such reserves as it, in its reasonable discretion, deems necessary for the proper management of the Property, Lender shall apply all remaining Rents received by it to the reduction of the Loan.

6. No Waiver. The exercise or non-exercise by Lender of the rights granted in this Agreement or the collection and application of Rents by Lender or its agent shall not be a waiver of any default by Borrower under this Agreement or any other Loan Document. No action or failure to act by Lender 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 Lender's rights and privileges under this Agreement, or discharge, release or modify any of Borrower's duties or obligations hereunder.

7. Revocable License. Notwithstanding that this Agreement is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Lender grants to Borrower a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Such license may be revoked by Lender upon the occurrence of any Event of Default and Lender shall immediately be entitled to receive and apply all Rents, whether or not Lender enters upon and takes control of the Property. Prior to such revocation, Borrower shall apply any Rents which it receives to the payment of debt service on the Note and other payments due under the Loan Agreement, taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Property, insurance premiums, operation and maintenance charges relating to the Property, and other obligations of lessor under the Leases before using such proceeds for any other purpose. Lender is hereby granted and assigned by Borrower the right, at its option, upon the revocation of the license granted herein to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any rents collected after the revocation of the license herein granted may be applied toward payment of the indebtedness in such priority and proportion as Lender, in its discretion, shall deem proper.

8. Term. This Agreement shall continue in full force and effect until (a) all amounts due under the Loan Documents are paid in full, and (b) all other obligations of Borrower under the Loan Documents are fully satisfied.

9. Appointment. Borrower irrevocably appoints Lender its true and lawful attorney in fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Borrower.

10. Liability of Lender. Excepting only the grossly negligent or willful acts or omissions of Lender, Lender shall not in any way be liable to Borrower for any action or inaction of Lender, its employees or agents under this Agreement.

11. Indemnification. Borrower shall indemnify, defend and hold harmless Lender from and against all liability, loss, damage, cost or expense which it may incur under this Agreement or under any of the Leases, including any claim against Lender 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 Lender's gross negligence or 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 Lender at the Highest Lawful Rate under the Note.

12. Modification. This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

13. Bankruptcy.

(a) Upon or at any time after the occurrence of an uncured Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after he notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

14. Authority. Borrower represents and warrants that it has full power and authority to execute and deliver this Agreement and the execution and delivery of this Agreement has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Property.

15. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

16. Headings, Etc. The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

17. Notices. Any notice required or permitted to be given under this Agreement shall be (a) in writing, (b) sent in the manner set forth in the Loan Agreement, and (c) effective in accordance with the terms of the Loan Agreement.

18. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Lender and its successors and assigns and Borrower and its successors and assigns.

19. Governing Law. This Agreement, the indebtedness and obligation secured hereby and the transactions evidenced hereby, and all matters relating thereto, and the rights, duties and obligations and liabilities of the parties, shall be governed by and construed in accordance with the applicable laws (both statutory and case law) of the United States of America and the State of Texas, except that with respect to the creation, priority and enforcement of the lien created hereby with respect to property located outside of the State of Texas, the law where such property is located shall govern.

20. Forum and Venue. Any and all claims or actions arising out of or relating to this Assignment will be filed in and heard by the court of competent jurisdiction located in a District Court in Potter County, Texas, or in the United States District Court for the Northern District of Texas, Amarillo Division, and each party consents to the jurisdiction of such courts and irrevocably waives any objections thereto.

21. Conflict. If any conflict or inconsistency exists between the absolute assignment of the Rents and the Leases in this Agreement and the assignment of the rents and releases in the Deed of Trust, the terms of this Agreement shall control.

22. Counterparts. To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party appear on each counterpart. All counterparts shall collectively constitute a single instrument (including copies sent to a party by facsimile or e-mail). It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. Signatures transmitted via facsimile or e-mail shall be considered authentic and binding.

[Signature Page Follows]

BORROWER:

WEST VALLEY SCHOOL DEVELOPMENT II, LLC,
a Utah limited liability company

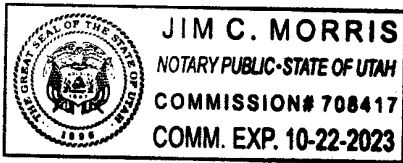
By: [Signature]
Name: Sheldon Killpack
Title: Manager

STATE OF UTAH §

COUNTY OF Davis §

29th Jun

This instrument was acknowledged before me on the 28th day of April, 2021, by Sheldon Killpack, Manager of West Valley School Development II, LLC, a Utah limited liability company, on behalf of the limited liability company.



[Signature]
Notary Public, State of Utah
My Commission Expires: 10-22-23

LENDER:

CLI CAPITAL, a real estate investment trust

By: _____
Name: Travis David
Title: Chief Financial Officer

STATE OF TEXAS §

COUNTY OF POTTER §

This instrument was acknowledged before me on the ____ day of April, 2021, by Travis David, Chief Financial Officer, of CLI Capital, a real estate investment trust, on behalf of the real estate investment trust.

Notary Public, State of Texas
My Commission Expires: _____

[Signature Page to Assignment of Rents]

BORROWER:

WEST VALLEY SCHOOL DEVELOPMENT II, LLC,
a Utah limited liability company

By: _____
Name: Sheldon Killpack
Title: Manager

STATE OF UTAH §

COUNTY OF _____ §

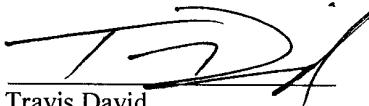
This instrument was acknowledged before me on the ____ day of April, 2021, by Sheldon Killpack, Manager of West Valley School Development II, LLC, a Utah limited liability company, on behalf of the limited liability company.

Notary Public, State of Utah

My Commission Expires: _____

LENDER:

CLI CAPITAL, a real estate investment trust

By: 
Name: Travis David
Title: Chief Financial Officer

STATE OF TEXAS §

COUNTY OF POTTER §

This instrument was acknowledged before me on the 29 day of April, 2021, by Travis David, Chief Financial Officer, of CLI Capital, a real estate investment trust, on behalf of the real estate investment trust.


Notary Public, State of Texas

My Commission Expires: 8.2.21

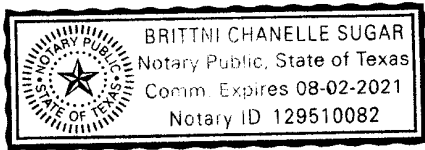


EXHIBIT "A"
Property Description

Lot 1, WALLACE STEGNER ACADEMY SUBDIVISION, according to the official plat thereof recorded April 22, 2021 as Entry No. 13639979 in Book 2021P of Plats at Page 98 in the office of the Salt Lake County Recorder.