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Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2013-00100804

BK 14778 PG 550-558

ASSIGNMENT OF LEASES AND RENTS

Recorder's Cover Sheet

**Preparer Information:** Gordon L. Jensen  
8525 Edinbrook Crossing, Suite 201  
Brooklyn Park, MN 55443  
(763) 424-8811

**Taxpayer Information:** Boston Commons, LLC  
14039 Sherman Way, Suite 206  
Van Nuys, California 91405

RETURN TO:

**Return Address:** Commercial Partners Title  
200 South Sixth Street, Suite 1300  
Minneapolis, MN 55402

**Assignor:** Boston Commons, LLC

**Assignee:** Thrivent Federal Credit Union

**Legal Description:** See Exhibit I attached hereto

**Document or instrument number if applicable:** Not Applicable

36925 2 of 4 MB

## ASSIGNMENT OF LEASES AND RENTS

**THIS ASSIGNMENT** is made as of May 6, 2013 by and between Boston Commons, LLC, a Delaware limited liability company, whose mailing address is 14039 Sherman Way, Suite 206, Van Nuys, California 91405, ("Assignor"), and Thrivent Federal Credit Union, a federal credit union, whose mailing address is 625 Fourth Avenue South, Minneapolis, MN 55415-1665 ("Assignee").

Assignor has executed and delivered to Assignee its Promissory Note of even date herewith, in the principal amount of \$1,825,000.00 (together with any amendments, extensions, renewals and replacements thereof, called the "Note").

To secure payment of the Note and performance of obligations of the Assignor set forth in a Loan Agreement of even date, the Assignor has executed and delivered to Assignee, among other instruments, a Mortgage and Security Agreement and Fixture Financing Statement bearing even date herewith (the "Mortgage") covering Assignor's interest in certain real property legally described on Exhibit I attached hereto and incorporated herein by reference and the improvements and personal property located thereon (the "Mortgaged Property").

As a condition to making the loan evidenced by the Note, Assignee has required the execution of this Assignment, and this Assignment is given as additional security for the payment of and the performance of all covenants and agreements of Assignor in the Note and the Mortgage.

In consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby GRANT, TRANSFER and ASSIGN to Assignee all of the right, title and interest of Assignor in and to (i) any and all present and future leases or tenancies, whether written or oral, covering or affecting all or any portion of the Mortgaged Property and any license or concession agreement and any other agreement, by whatever name called, involving a transfer or creation of possessory rights or rights of use in the Mortgaged Property, and any and all guaranties of any of the foregoing (all of which, together with any and all amendments, extensions, renewals and replacements thereof, are hereinafter collectively referred to as the "Leases" and each of which is referred to as a "Lease"), and (ii) all rents, issues, profits and other income or payments of any kind (whether or not designated as rent) due or payable or to become due or payable to Assignor as the result of any use, possession or occupancy of all or any portion of the Mortgaged Property or as the result of the use of or lease of any personal property constituting a part of the Mortgaged Property, including without limitation amounts so payable on account of maintenance, repairs, taxes, insurance, operating charges, and all security deposits and other amounts paid by tenants with respect to Leases, any amounts payable under any guaranty of any Lease and any amounts payable in bankruptcy of any tenant (all of which are hereinafter collectively referred to as "Rents"), whether the Rents accrued before or after foreclosure of the Mortgage or during the periods of redemption thereof, all for the purpose of securing:

(a) Payment of all indebtedness evidenced by the Note and all other sums with interest thereon becoming due and payable to Assignee under the terms hereof and as set forth in the Note and the Mortgage; and

(b) Performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein, the Mortgage, the Note and the Loan Agreement.

**ASSIGNOR WARRANTS AND COVENANTS THAT:**

(a) Assignor is and will remain the absolute owner of the Rents and Leases free and clear of all liens and encumbrances other than the lien granted herein, and has not heretofore assigned or otherwise encumbered its interest in any of the Rents or Leases to any person or entity; and

(b) Assignor has the right under applicable law, under the Leases and otherwise to execute and deliver this Assignment and keep and perform all of its obligations hereunder; and

(c) Assignor will warrant and defend the Leases and Rents against all adverse claims, whether now existing or hereafter arising.

Assignor further covenants and agrees with Assignee as follows:

1. **Performance of Leases.** Assignor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which it is now or hereafter becomes liable to observe or perform under any present or future Lease, and, at its sole cost and expense, enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the tenant under each and every Lease. Assignor will give prompt written notice to Assignee of any notice of default on the part of Assignor with respect to any Lease received from the tenant thereunder and will also at its sole cost and expense, appear in and defend action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Assignor or tenant thereunder. Assignor shall not modify or cancel any Lease or accept any prepayment of rent thereunder without the prior written consent of Assignee which consent will not be unreasonably denied or delayed. Assignor will not hereafter lease or otherwise permit the use of all or any portion of the Mortgaged Property for rent that is below the fair market rent for such property.

Assignor shall, upon request of Assignee, furnish it a complete list as of the date of the request of all leases and other tenancies of the real estate herein described in such reasonable detail as may be requested by Assignee. Further, if requested, Assignor shall deliver to Assignee executed or certified copies of all leases and other written agreements, correspondence, and memoranda between Assignor and lessees and other tenants setting forth the contractual arrangements between them. Such requests may be made at any reasonable time. Annual requests, or more frequent requests if made after default under this Assignment, the Note secured hereby or the Mortgage securing said Note, shall be deemed to be made at a reasonable time.

2. **Collection of Rents.** Assignor will not collect or accept any Rents for the use or occupancy of the Mortgaged Property for more than one month in advance. Security deposits shall not be deemed Rents for purposes of this paragraph.

3. **Protecting the Security of This Assignment.** Should Assignor fail to perform or observe any covenant or agreement contained in this Assignment, then Assignee, but without obligation to do so or liability for failure to do so, and without releasing Assignor from any obligation hereunder, upon ten (10) days prior written notice to Assignee make or do the same in such manner and to such extent as reasonably appropriate to protect the security of Assignee, including, specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Leases and in exercising any such powers to pay necessary costs and expenses, employ counsel and pay reasonable attorneys' fees. Assignor will pay within ten days of written demand therefor all sums extended by Assignee under the authority of this Assignment, together with interest thereon at an annual rate equal to the rate then in effect for the Note, unless payment of interest at such rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate permitted by applicable law, and the same shall be added to said indebtedness and shall be secured hereby and by the Mortgage.

4. **No Liability for Assignee.** Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Assignor under the Leases; and this Assignment shall not operate to place upon Assignee responsibility for the control, care, management or repair of the Mortgaged Property or for the carrying out of any of the terms and conditions of the Leases, nor shall this Assignment operate to make Assignee liable for any waste committed on the premises or any negligence in the management, upkeep, repair, or control of the premises resulting in loss, injury, or death to any tenant, licensee, employee, invitee or stranger to their property.

5. **Indemnity.** Assignor shall, and does hereby agree to, indemnify, defend, and hold harmless Assignee of and from any and all liability, loss, claims or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in the Leases so long as said loss or damage is not the result of the negligent or intentional tortious acts or omissions of Assignee or any of its employees or agents. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall be secured hereby, Assignor shall reimburse Assignee therefore within ten (10) days following written demand therefore, and upon Assignor's failure to do so, Assignee may declare all sums secured hereby immediately due and payable.

6. **Present Assignment.** This Assignment shall constitute a perfected, absolute and present assignment; provided, however, that Assignor shall have the right to collect and use, but not prior to accrual, all rents unless and until an uncured Event of Default exists under the Mortgage. Any rents which accrue prior to an Event of Default but are paid thereafter shall be paid to Assignee.

7. **Survival of Obligation to Comply With The Note, The Mortgage, and This Assignment.** This Assignment is given as security in addition to the Mortgage. Assignor covenants and agrees to observe and comply with all terms and conditions contained in the Note, the Mortgage and this Assignment. All of Assignor's obligations under this Assignment shall survive foreclosure of

the Mortgage and Assignor covenants and agrees to observe and comply with all terms and conditions of the Mortgage and this Assignment throughout any redemption period after foreclosure of the Mortgage.

8. **Specific Assignment of Leases.** Assignor will from time to time execute any and all instruments reasonably requested by Assignee in order to effectuate this Assignment and to accomplish any of the purposes that are necessary or appropriate in connection with this Assignment, including without limitation, the transfer and assignment by Assignor to Assignee, upon written notice by Assignee, of any and all specific Leases Assignee requests. Such transfer or assignment by Assignor shall be upon the same or substantially the same terms and conditions as are herein contained, and Assignor will properly file or record such assignments, at Assignor's expense, if requested by Assignee.

9. **Default, Remedies.** Upon the occurrence and during the continuance of any Event of Default specified in the Loan Documentation identified in the Loan Agreement and during any redemption period following foreclosure, Assignee may (in addition to exercising any other rights which it may have under the Note or Mortgage), at its option, at any time:

(a) to the extent permitted by law, in the name, place and stead of Assignor and without becoming a mortgagee in possession (i) enter upon, manage and operate the Mortgaged Property or retain the services of one or more independent contractors to manage and operate all or any part of the Mortgaged Property; (ii) make, enforce, modify and accept surrender of the Leases; (iii) obtain or evict tenants, collect, sue for, fix or modify the Rents and enforce all rights of Assignor under the Leases; and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Assignment.

(b) with or without exercising the rights set forth in subparagraph (a) above, give or require Assignor to give notice, which notice shall comply with applicable Iowa law, to any or all tenants under the Leases authorizing and directing the tenants to pay all Rents under the Leases directly to Assignee.

(c) without regard to waste, adequacy of the security or solvency of Assignor, apply for, and Assignor hereby consents to, the appointment of a receiver of the Mortgaged Property, whether or not foreclosure proceedings have been commenced, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred.

The exercise of any of the foregoing rights or remedies and the application of the Rents, profits and income pursuant to paragraph 10, shall not cure or waive any Event of Default (or notice of default) under the Note or Mortgage or invalidate any act done pursuant to such notice.

10. **Application of Rents, Profits and Income.** All Rents collected by Assignee or the receiver each month shall be applied as follows in the priority listed:

(a) to payment of all reasonable fees of the receiver approved by the court, if any;

(b) to payment of all prior or current real estate taxes and special assessments with respect to the Mortgaged Property, or if the Mortgage or any mortgage prior and superior to the

Mortgage required periodic escrow payments for such taxes and assessments, to the escrow payments then due;

(c) to payment of all premiums then due for the insurance of the type required by the provisions of the Mortgage, or if the Mortgage requires periodic escrow payments for such premiums, to the escrow payments then due;

(d) to payment of expenses incurred for normal maintenance of the Mortgaged Property;

(e) if received prior to any foreclosure sale of the Mortgaged Property, to Assignee for payment of the indebtedness secured by the Mortgage or this Assignment, but no such payment made after acceleration of the indebtedness shall affect such acceleration;

(f) if received during or with respect to the period of redemption after a foreclosure sale of the Mortgaged Property;

(1) if the purchaser at the foreclosure sale is not Assignee, first to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Mortgage or this Assignment, second to the purchaser as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to the purchaser;

(2) if the purchaser at the foreclosure sale is Assignee, to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Mortgage or this Assignment and the balance to be retained by Assignee as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to Assignee, whether or not any such deficiency exists.

The rights and powers of Assignee under this Assignment and the application of Rents under this paragraph 10 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

**11. Authorization to Tenants.** Upon notice from Assignee that it is exercising the remedy set forth in paragraph 9(b) of this Assignment, the tenants under the Leases are hereby irrevocably authorized and directed to pay to Assignee all sums due under the Leases, and Assignor hereby consents and directs that said sums shall be paid to Assignee without the necessity for a judicial determination that an uncured Event of Default exists under the Mortgage or that Assignee is entitled to exercise its rights hereunder, and to the extent such sums are paid to Assignee, Assignor agrees that the tenant shall have no further liability to Assignor for the same. To the extent permitted by applicable Iowa law, the signature of Assignee alone shall be sufficient for the exercise of any rights under this Assignment and the receipt of Assignee alone for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Mortgaged Property. Checks for all or any part of the Rents to which Assignor is entitled, shall upon notice from Assignee, be drawn to the exclusive order of Assignee.

12. **Satisfaction.** Upon the payment in full of all indebtedness secured hereby as evidenced by a recorded satisfaction of the Mortgage executed by Assignee, this Assignment shall, without the need for any further satisfaction or release, become null and void and be of no further effect.

13. **Assignee an Attorney-In-Fact.** Assignor hereby irrevocably appoints Assignee, and its successors and assigns, as its agent and attorney-in-fact, which appointment is coupled with an interest, with the right but not the duty to endorse on behalf and in the name of Assignor all checks from tenants in payment of Rents that are made payable to Assignee. This power of attorney and the rights and power conferred hereby shall be effective only if there shall exist an uncured Event of Default.

14. **Assignee Not a Mortgagee in Possession.** Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting Assignee a mortgagee in possession.

15. **Unenforceable Provisions Severable.** All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby. It is the intention of the parties hereto that this Assignment shall confer upon Assignee the fullest rights, remedies and benefits available pursuant to Iowa law.

16. **Successors and Assigns.** The covenants and agreements herein contained shall bind and the rights hereunder shall benefit the respective heirs, representatives, successors and assigns of Assignor and Assignee, including any purchaser at a foreclosure sale.

17. **Captions; Amendments; Notices.** The captions and headings of the paragraphs of this Assignment are for convenience only and shall not be used to interpret or define the provisions of this Assignment. This Assignment can be amended only in writing signed by Assignor and Assignee. Any notice from Assignee to Assignor under this Assignment shall be deemed to have been given when given by Assignee in accordance with the requirements for notice by the Assignee under the Mortgage.

18. **Waiver.** Assignee's failure to do any of the things or exercise any of the rights, interests, powers and/or authority granted hereunder shall not be construed as a waiver of any of the rights, interests, powers, or authorities assigned and granted to Assignee under this instrument. Assignor agrees that neither the security of this Assignment nor any obligation of Assignor under the Mortgage will be released, impaired or subordinated by any amendment to this Assignment or any other instrument, any extension of time or waiver of right or remedy as to Assignor or any other party or any other act or thing which, but for this provision, would so release, impair or subordinate. This Assignment shall be in all respects valid and enforceable, securing all payments under the Note and all other indebtedness secured by the Mortgage and this Assignment, regardless of whether the Note has been validly authorized, executed and delivered or is legal, valid or enforceable.

19. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Iowa (excluding conflict of law rules).

Executed as of the day and year first above written.

BOSTON COMMONS, LLC, a Delaware limited liability company

By JOSEFINA GALAPON

Its: VICE PRESIDENT

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

} ss.

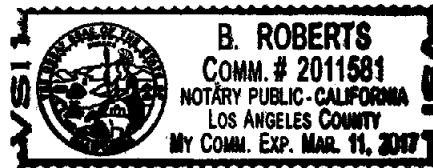
On May 3, 2013 before me, B. Roberts a Notary Public, personally appeared Josefina Galapon who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument that 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.

Signature B. Roberts

Name: B. ROBERTS  
(typed or printed)



(Area reserved for official notarial seal)



**EXHIBIT I**  
**LEGAL DESCRIPTION**

Parcel 1:

Lots 21 and 153 in Clover Acres, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Parcel 2:

Lots 154 and 155 in Clover Acres, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa: EXCEPT that part deeded to the State of Iowa by Warranty Deed filed February 24, 2010, in Book 13365, Page 718.