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**CITY OF DANBURY**  
**OFFICE OF THE CORPORATION COUNSEL**  
155 DEER HILL AVENUE  
DANBURY, CONNECTICUT 06810

(203) 797-4518  
(203) 796-8043 FAX

PLEASE REPLY TO:

December 29, 2004

Hon. Mayor Mark D. Boughton  
Hon. Members of the Common Council  
155 Deer Hill Avenue  
Danbury, CT 06810

Re: Lease of City Property at Kenosia Ave and Backus Ave  
Jay Earl Associates, LLC

Dear Mayor and Council:

At your regular meeting in January 2003, you approved a lease for parking (on property owned by the City) for the referenced tenant. Part of the overall business transaction undertaken by the tenant (Jay Earl Associates, LLC) includes the acquisition and use of an adjacent building (not owned by the City) the occupants of which would utilize the parking area to be leased by the City to Jay Earl Associates. For purposes of financing the transaction, the Jay Earl Associate's lending institution required what is known as a "Conditional Assignment of Lease". This document served to secure the bank's interest in the lending, in exchange for a right to take over the lease in the event the tenant/lender defaults on the loan(s). On March 4, 2003, the Common Council approved that Conditional Assignment of Lease.

Enclosed please find a letter from David L. Grogins of Cohen and Wolf, PC, on behalf of Jay Earl Associates, LLC, dated December 29, 2004. In his letter, Mr. Grogins explains that Jay Earl Associates, LLC, is now seeking to refinance its construction mortgage loan in the amount of \$3,600,000.00. As a result, the lender has requested that the City consent to a revised Conditional Assignment of Lease, a copy of which is attached to Mr. Grogins' letter.

The lease, which was approved and executed by the parties, provides that any assignment of the lease requires the consent of the City (such consent not to be unreasonably withheld). These conditional assignments are not uncommon in these circumstances, and after reviewing the document, we can determine that there is no reasonable basis upon which the City should refuse its execution.

Therefore, if it is your wish, kindly authorize the execution of "Union Savings Bank Conditional Assignment of Lease" (copy attached hereto for information) in order that their process can proceed.

As usual, if you have any questions, please do not hesitate to call.

Very truly yours,  
  
Eric L. Gottschalk  
Deputy Corporation Counsel

Enclosure

cc: Robert J. Yamin, Corporation Counsel  
Laszlo L. Pinter, Assistant Corporation Counsel  
David Grogins, Esquire  
Paul D. Estefan, Airport Administrator

jayearl6

PLEASE REPLY TO DANBURY

HERBERT L. COHEN  
(1928-1983)

December 29, 2004

Eric Gottschalk, Esquire  
Office of the Corporation Counsel  
155 Deer Hill Avenue  
Danbury, CT 06810

RECEIVED  
DEC 29 2004

CORPORATION COUNSEL

**Re: Jay Earl Associates, LLC/Union Savings Bank  
\$3,600,000.00 Commercial Mortgage Refinancing  
62-69 Kenosia Avenue, Danbury, Connecticut**

Dear Rick:

As you may recall, when Jay Earl Associates, LLC purchased the above property in February of 2003, a requirement of the lender, Union Savings Bank, in connection with a \$2,200,000 construction mortgage loan, was that Jay Earl's rights as the tenant under the Lease between Jay Earl and the City of Danbury relative to property of the City on Airport Road (also known as Kenosia Avenue) for parking purposes be conditionally assigned to the Bank, and that the City sign the Conditional Assignment to evidence its acceptance of its terms and conditions. The Conditional Assignment was subsequently approved by the Common Council and signed by the Mayor on March 5, 2003.

Union Savings Bank has now approved the application of Jay Earl for a loan of \$3,600,000.00 for the purpose of refinance the existing \$2,200,000 first mortgage loan and a subsequent \$650,000 second mortgage from the Bank, and to provide additional funds for completion of tenant improvements to unleased space in the building. The new loan will be will be secured by a first mortgage on the property.

The Bank is, once again, requiring that Jay Earl conditionally assign to the Bank its rights as the tenant under the Lease with the City and that the City sign the same to evidence its agreement to its terms and conditions.

I have enclosed, for your review, a Conditional Assignment for this purpose. If the same meets with your approval, I would appreciate it if you would place this matter on the agenda of the January meeting of the Common Council for approval.

If you have any questions, please feel free to contact me.

Sincerely yours,



David L. Grogins

DLG:mmm - Encl.

**UNION SAVINGS BANK**  
**CONDITIONAL ASSIGNMENT OF LEASE**

**KNOW ALL MEN BY THESE PRESENTS**, that **JAY EARL ASSOCIATES, LLC**, a Connecticut limited liability company having its main office located at 58 High Valley Way, Stamford, CT 06903 (hereinafter called the "Assignor"), in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, assign, transfer and set over unto **UNION SAVINGS BANK**, having a place of business at 225 Main Street, Danbury, 06810 (the "Bank"), and unto its successors and assigns, all right, title and interest of the Assignor in and to a certain agreement of lease, and any amendments thereto, between Assignor and **CITY OF DANBURY**, a municipal corporation, having an office and place of business at 155 Deer Hill Avenue, Danbury, Connecticut 06810 (the "Landlord") dated February 3 , 2003 (hereinafter called the "Assigned Lease") covering premises located at Kenosia Avenue, Danbury, Connecticut, as more particularly described in **Schedule A** attached hereto (the "Premises").

**FOR THE PURPOSES OF SECURING:**

(a) Payment of all of the Liabilities (as hereinafter defined) now or at any time hereafter due to the Bank under or pursuant to a certain Commercial Open End Mortgage Deed and Security Agreement (hereinafter referred to as the "Agreement") which was executed by the Assignor in favor of the Bank and is dated January 7, 2005, to secure payment of a certain Fixed Rate Note in the principal amount of **THREE MILLION SIX HUNDRED THOUSAND DOLLARS (\$3,600,000.00)** executed by the Assignor in favor of the Bank and also dated January 7, 2005 (hereinafter referred to as the "Note") and any other agreement or document executed in connection therewith (all of which sums are hereinafter referred to as the "Liabilities", which term shall be deemed to include any extensions or renewals thereof, as well as substitutions therefor; and which Note, Agreement, this Conditional Assignment of Lease, and any other document executed in connection herewith or therewith are hereinafter referred to as the "Loan Documents" (which term shall include substitutions therefor and modifications and replacements thereof); and

(b) Performance and discharge of each and every obligation, covenant and agreement of the Assignor contained in the Loan Documents.

The Assignor, on behalf of itself and its successors and assigns, agrees:

1. To faithfully abide by, perform and discharge each and every obligation, covenant and agreement of the Assigned Lease by the Assignor, as tenant thereunder, to be performed; at the sole cost and expense of the Assignor to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Assigned Lease by the Landlord thereunder to be performed.

2. Upon the occurrence of an Event of Default under any of the Loan Documents, the Bank may, at its option, thereupon and from time to time thereafter, so long as an Event of Default shall continue to exist, and during any redemption period following foreclosure of the Mortgage and without any prior judicial proceeding, order or authorization, exercise all the rights, powers and privileges of the Assignor as tenant under the Assigned Lease, including, but not limited to, the right to grant consents, waivers, approvals or permissions; to declare or waive events of default; to exercise any and all remedies provided for in any such Assigned Lease; to exercise any and all rights of entry; and to perform any tenant's covenants to the extent permitted by the provisions of the Lease;

3. The Assignor hereby authorizes the Bank upon such entry subsequent to such Event of Default, at the option of the Bank, to take over and assume possession of all or any portion of the Premises and to perform all acts which it deems necessary and proper and to expend such sums out of the income of the Premises, if any, as it deems necessary or desirable in connection therewith in the same manner and to the same extent as the Assignor theretofore might do, including, without limitation, the right to effect a new lease, to cancel or surrender the existing lease, to alter or amend the terms of existing lease, to renew existing leases, or to make concessions to the Landlord; the Assignor hereby releases all claims against the Bank arising out of such management, operation and maintenance, excepting the liability of the Bank to account as hereinafter set forth.

4. The Assignor further covenants and agrees as follows:

(a) the Assignor shall obtain the prior written consent of the Bank to any lease or sublease of all of or any portion of the Premises (as used in this subsection 4(a), the terms "lease" and "sublease" shall be deemed to include, without limitation, any rental, occupancy, usage or possessory interest with a term of one month or more, or with the potential for a term of one month or more, as in the case, for example, of a tenancy at will or short term leases with options to renew). The consent of the Bank to any such lease or subleases shall not be unreasonably withheld. All such leases and subleases shall be in writing, shall be submitted to the Bank as a condition to its consent, and shall be in form and substance reasonably acceptable to the Bank. The Bank may require, in its discretion, and as a condition to such consent, that the Assignor provide the Bank with such agreements, instruments, consents or other documents (whether from the Assignor, the guarantors of the Liabilities, or from third parties, such as a Landlord), in form and substance acceptable to the Bank, as may be necessary or advisable, in the Bank's discretion.

(b) the Assignor shall not alter, modify or change the Assigned Lease or terminate the term thereof or accept a surrender thereof or cancel the Assigned Lease or waive or release the Landlord from the performance or observance by the Landlord of any obligation or condition thereof, without the prior written consent of the Bank.

(c) the Assignor will give prompt notice to the Bank of any notice of default by the Assignor under any of the Assigned Lease received by the Assignor together with a complete copy of any such notice.

(d) the Bank shall not be obligated to perform or discharge any obligation under the Assigned Lease or under or by reason of this Assignment, and the Assignor hereby agrees to indemnify the Bank against, and hold it harmless from, any and all liability, loss or damage which it may or might incur under the Assigned Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against the Bank by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms of the Assigned Lease; should the Bank incur any such liability, loss or damage under the Assigned Lease or under or by reason of the Assignment, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate then in effect under the Note plus two percent (2%) per annum, shall be deemed to be Liabilities and shall be secured by the Loan Documents, and the Assignor shall reimburse the Bank therefor immediately upon demand.

(e) the Bank may, at any time, and from time to time, conduct an audit of the Assigned Lease, including, without limitation, a verification of the Assigned Lease, and the rents payable thereunder, and a verification that the tenant under the Assigned Lease is actually in possession of the portions of the Premises described in such Assigned Lease, respectively.

5. The Assignor represents and warrants that:

(a) it has not executed any prior assignment or pledge of its rights, nor are its rights encumbered, with respect to the Assigned Lease, except as they are encumbered by the Loan Documents;

(b) it has good right to assign the Assigned Lease;

(c) it has not done anything which might prevent the Bank from, or limit the Bank in, acting under the provisions hereof;

(d) the Assigned Lease to be executed and delivered hereafter will be valid and enforceable and unmodified except as otherwise stated herein.

6. The Landlord under the Assigned Lease is hereby authorized, upon demand of the Bank, to relinquish possession of the Premises to the Bank as tenant under said Assigned Lease without liability for any inquiry by the Landlord of the Bank's right thereto.

7. An Event of Default under any of the Loan Documents shall constitute an Event of Default hereunder, entitling the Bank to all rights and remedies contained herein and therein, without any prior notice to or demand upon the Assignor and without any judicial proceeding, order or authorization.

8. The Assignor shall execute and deliver to the Bank, at the request of the Bank, such additional instruments, assignments, or agreements, including any further assignment of the Assigned Lease, as in the opinion of the Bank are appropriate to effectuate the terms hereof or to perfect, or maintain the perfection of, the Bank's interest in the Assigned Lease.

9. This Agreement shall be binding on the Assignor, its successors and assigns, and inure to the benefit of the Bank, its successors and assigns, and without limitation, shall inure to the benefit of any participants in, or assignees of, the Loan Documents.

10. Nothing contained in this Agreement shall in any way impair or affect any right or remedy which the Bank might now or hereafter have, but rather the rights and remedies given by the provisions of this paragraph shall be in addition to all other rights and remedies which the Bank may have.

11. By signing below, the Landlord acknowledges its acceptance of the terms and conditions of this Agreement.

12. This Conditional Assignment of Lease shall remain in full force and effect as long as the Assignor remains indebted to the Bank under the Loan Documents.

**IT IS UNDERSTOOD AND AGREED** that a full and complete release of the Mortgage shall operate as a full and complete release of all the Bank's rights and interest hereunder, and that after the Mortgage has been fully released this instrument shall be void and of no further effect.

**IN WITNESS WHEREOF**, the Assignor and Landlord have caused this Agreement to be executed on the dates set forth below their respective signatures.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

**ASSIGNOR:  
JAY EARL ASSOCIATES, LLC**

by \_\_\_\_\_  
David J. Kaplan, Manager

Date Signed \_\_\_\_\_

**LANDLORD:  
CITY OF DANBURY**

\_\_\_\_\_  
\_\_\_\_\_

by \_\_\_\_\_  
Mark D. Boughton, Mayor

Date Signed \_\_\_\_\_

STATE OF CONNECTICUT )  
COUNTY OF FAIRFIELD ) ss. Danbury

The foregoing instrument was acknowledged, before me, this \_\_\_\_\_ day of January, 2005, by DAVID J. KAPLAN, Manager of JAY EARL ASSOCIATES, LLC, as his free act and deed and the free act and deed of said limited liability company.

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Commissioner of the Superior Court

STATE OF CONNECTICUT )  
COUNTY OF FAIRFIELD ) ss. Danbury

The foregoing instrument was acknowledged, before me, this \_\_\_\_\_ day of January, 2005, by MARK D. BOUGHTON, Mayor of the CITY OF DANBURY, as his free act and deed and the free act and deed of said City of Danbury..

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Commissioner of the Superior Court

**Schedule A**

**ALL THAT** certain piece or parcel of land situate in the City of Danbury, County of Fairfield and State of Connecticut, bounded and described as follows:

SOUTHERLY: by other land of the Lessee, 364.79 feet;  
WESTERLY: by land of the City of Danbury, 60 feet;  
NORTHERLY: by land of the City of Danbury. 380 feet, -more or less;  
EASTERLY: by Airport Road (a/k/a Kenosia Avenue Extension), 60 feet.

Location, of land is established by an Airport map dated February f3, 1963 by John Green, Civil Engineer. Starting at marker #12 - 60' in direction 364.37' paralleling the south Erhardt line to K.enosia Avenue Road then Northwesterly to marker #13..