

## **CORRECTIVE ASSIGNMENT AND ASSUMPTION OF AGENCY DOCUMENTS**

This **Corrective Assignment and Assumption of Agency Documents** (the "Corrective Assignment") is dated as of July 1, 2009 from **TRENTON ROAD, LLC**, having its principal office at 300 Jordan Road, Troy, New York 12108 (the "Assignor") and **COLONIAL SQUARE ASSOCIATES, LLC**, having its principal office at 300 Jordan Road, Troy, New York 12108 (the "Assignee").

WHEREAS, Assignor requested the Agency enter into a transaction in which the Agency assisted with a certain facility consisting of (i) the acquisition of a 58.81± acre parcel of land located on Trenton Road in the City of Utica, commonly known as the Weaver Property (the "Land"); (ii) construction on the Land of a new mixed-use residential development project consisting of one hundred forty-four (144) senior rental apartments in three (3) three-story buildings and a one-story community building (collectively, the "Senior Development"); ten (10) townhouse buildings consisting of four (4) units each with attached garages, seventy (70) single-family homes with attached garages (collectively, "Single-Family Development"), together with all planned infrastructure (the "Infrastructure") (the Senior Development, the Single-Family Development and the Infrastructure referred to collectively as the "Improvements"); and (iii) acquisition and installation of machinery and equipment in the Improvements (the "Equipment"), all for the purpose of developing an intergenerational community known as Colonial Square Subdivision (the Land, the Improvements and the Equipment referred to collectively as the "Facility"); and

WHEREAS, the Assignor sold, assigned and transferred to the Assignee, all of Assignor's rights, duties and obligations with respect to the Facility under those certain documents, dated as of July 1, 2007, between the Assignor and City of Utica Industrial Development Agency (the "Agency Documents") by way of an Assignment and Assumption of Agency Documents dated as of July 31, 2007 (the "Assignment"), and

WHEREAS, it was the intention of the parties to assign only the Assignor's right obligations and duties under the Agency Documents only with respect to the Senior Development; and


WHEREAS, the parties wish to correct the Assignment by way of this Corrective Assignment.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

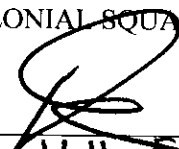
1. As of July 1, 2007, Assignor does hereby sell, assign and transfer to the Assignee, all of Assignor's rights, duties and obligations only with respect to the Senior Development under the Agency Documents.
2. The Assignment is hereby void.
3. By acceptance of this Assignment, Assignee assumes the performance of all the Assignor's duties and obligations only with respect to the Senior Development under the Agency Documents as of July 1, 2007 and will henceforth hold Assignor harmless from any liability or loss resulting from the performance or non-performance of those duties and obligations only with respect to the Senior Development.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this **Corrective Assignment** to be executed in their respective names by their duly authorized officers, all as of July 1, 2009.

TRENTON ROAD, LLC

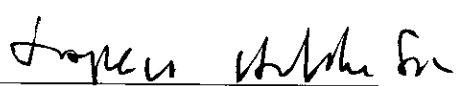
By:   
Name: Walter F. Uccellini  
Title: Manager

COLONIAL SQUARE ASSOCIATES, LLC

By:   
Name: Walter F. Uccellini  
Title: Manager

The undersigned hereby consents to the corrective assignment of the Agency Documents.

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Joseph H. Hobika, Sr.  
Chairman



---

**BOND, SCHOENECK & KING, PLLC**  
ATTORNEYS AT LAW ■ NEW YORK FLORIDA KANSAS

---

August 4, 2009

David H. Williams, Assessor  
City of Utica  
One Kennedy Plaza  
Utica NY 13502

*Re: City of Utica Industrial Development Agency 2009 Partial Facility Assignment  
(Colonial Square LLC Facility – Phase I)*

Dear Mr. Williams:

Please be advised Trenton Road, LLC sold 22 building lots of the Single-Family Development of Colonial Square Subdivision to Colonial Square LLC; the deed was recorded today. As part of that real estate transfer, Trenton Road, LLC also assigned to Colonial Square LLC all of its rights and obligations under the City of Utica Industrial Development Agency 2007 Lease-Leaseback Transaction with Trenton Road, LLC, only with respect to the 22 building lots.

Enclosed for your files please find a copy of the Partial Assignment and Assumption of Agency Documents evidencing the same. I direct your attention to the fact that all PILOT bills for these particular lots should be sent directly to Colonial Square LLC.

Should you have any questions on the enclosed, please do not hesitate to contact our offices.

Very truly yours,

Laura S. Ruberto  
Paralegal

Enclosures

c: Attached Distribution List (w/enclosures)

**Distribution List**

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

David R. Roefaro, Mayor  
City of Utica  
One Kennedy Plaza  
Utica, New York 13502

Kathy Pilbeam, Director  
Real Property Tax Services  
Oneida County  
800 Park Avenue  
Utica, New York 13501

Receiver of Taxes  
City of Utica  
One Kennedy Plaza  
Utica, New York 13502

County of Oneida  
Receiver of Taxes  
800 Park Avenue  
Utica, New York 13501

Barbara K. Klein, President  
Board of Education  
Utica City School District  
1115 Mohawk Street  
Utica, New York 13501

James Willis, Superintendent of Schools  
Utica City School District  
1115 Mohawk Street  
Utica, New York 13501

Receiver of Taxes  
Utica City School District  
1115 Mohawk Street  
Utica, New York 13501

**PARTIAL ASSIGNMENT AND ASSUMPTION  
OF  
AGENCY DOCUMENTS**

This **Partial Assignment and Assumption of Agency Documents (the "Partial Assignment")** dated August 3, 2009 is by and between **TRENTON ROAD, LLC**, a New York limited liability company having its principal office at 300 Jordan Road, Troy, New York 12108 (the "Assignor") and **COLONIAL SQUARE LLC**, a New York limited liability company having an address of 105 Main Street, Whitesboro, New York 13492 (the "Assignee").

WHEREAS, the Assignor requested the City of Utica Industrial Development Agency (the "Agency") enter into a transaction in which the Agency assisted with a certain facility consisting of (i) acquisition of a 58.81± acre parcel of land located on Trenton Road in the City of Utica, commonly known as the Weaver Property (the "Land"); (ii) construction on the Land of a new mixed-use residential development project consisting of one hundred forty-four (144) senior rental apartments in three (3) three-story buildings and a one-story community building (collectively, the "Senior Development"); up to one hundred ten (110) single-family homes consisting of both detached homes and twin homes (collectively, "Single-Family Development"), together with all planned infrastructure (the "Infrastructure") (the Senior Development, the Single-Family Development and the Infrastructure referred to collectively as the "Improvements"); and (iii) acquisition and installation of machinery and equipment in the Improvements (the "Equipment"), all for the purpose of developing an intergenerational community known as Colonial Square Subdivision (the Land, the Improvements and the Equipment referred to collectively as the "Facility"); and

WHEREAS, the Assignor conveyed to the Agency a leasehold interest in the Facility by way of a Lease Agreement dated as of July 1, 2007 (the "Lease Agreement"), a memorandum of which was recorded in the Oneida County Clerk's Office on July 31, 2007 at Instrument No. R2007-001017; and

WHEREAS, the Agency leases the Facility back to the Assignor by way of a Leaseback Agreement dated as of July 1, 2007 (the "Leaseback Agreement"), a memorandum of which was recorded in the Oneida County Clerk's Office on July 31, 2007 at Instrument No. R2007-001018; and

WHEREAS, the Agency and the Assignor entered into a Payment-In-Lieu-of-Tax Agreement dated as of July 1, 2007 (the "PILOT Agreement") to make provisions for payments-in-lieu-of-taxes relating to the Facility; and

WHEREAS, the Agency and the Assignor entered into a Environmental Compliance and Indemnification Agreement dated as of July 1, 2007 (the "Indemnification Agreement") whereby the Assignor agrees to indemnify the Agency against all liability in connection with the Facility; and

WHEREAS, the Assignor assigned certain of its rights and obligations under the Lease Agreement, the Leaseback Agreement, the PILOT Agreement and the Indemnification Agreement (collectively, the "Agency Documents") only with respect to the Senior Development to Colonial Square Associates, LLC by way of a Corrective Assignment and Assumption of Agency Documents dated as of July 1, 2009 to be effective July 31, 2007; and

WHEREAS, the Assignor and the Assignee entered into a Purchase and Sale Agreement dated June 16, 2009 pursuant to which the Assignee will purchase from Assignor twenty-two (22) .20±-acre building lots in the Single-Family Development known as Lots 1, 2, 4, 5, 11 – 24, 45, 46, 67, 68 (more particularly set forth on Schedule A attached hereto and made a part hereof) for construction of twenty-two (22) single-family townhomes (the "Phase I Single-Family Development"); and

WHEREAS, the parties wish to enter into this Assignment and Assumption to ensure that all of the Assignor's rights, obligations and responsibilities under the Agency Documents with respect to the Phase I Single-Family Development are transferred to and assumed by Assignee.

NOW THEREFORE, in consideration of the foregoing and the covenants and conditions hereinafter contained and for other good and valuable consideration, the parties agree as follows:

1. **Assignment.** Assignor hereby sells, transfers and assigns to Assignee all of Assignor's rights, obligations and responsibilities in and under the Agency Documents as each of the same pertain to the Phase I Single-Family Development. Notwithstanding, this assignment does not relieve Assignor from primary liability for any of its obligations or indemnities under the Agency Documents.

2. **Assumption.** Assignee hereby accepts the foregoing, sale, transfer and assignment and assumes and undertakes all covenants, stipulations, agreements, obligations and restrictions of and on the part of Assignor under the Agency Documents with respect to the Phase I Single-Family Development from and after the date hereof or otherwise attributable to the period commencing on the date hereof and continuing thereafter, it being understood and agreed that Assignor is and shall remain responsible for the obligations on its part accruing under the Agency Documents prior to the date hereof.

3. **Rents and Other Amounts Payable.** In accordance with Section 2.6(c) of the Leaseback Agreement, Assignee shall pay an administrative fee for the Phase I Single-Family Development as follows: Three Thousand Dollars (\$3,000.00) per year commencing on the Closing Date and the first business day of July thereafter during the term of the Leaseback Agreement. No assignment hereunder shall affect Assignor's obligation to pay all amounts due pursuant to Section 2.6 of the Leaseback Agreement.

4. **Assignor-Assignee Indemnification.** Assignor and Assignee each covenants and agrees to hold the other harmless from, and to indemnify the other for, any and all liability, cost, expense or damage which the other may sustain by reason of any covenant, stipulation, agreement and obligation which it has herein agreed to be responsible for under the Agency Documents.

5. **Agency Indemnification.** Assignor and Assignee agree that the Agency, its directors, members, officers, agents (except Assignor) and employees shall not be liable for, and Assignor and Assignee agree to defend, indemnify, release and hold harmless the Agency, its directors, members, officers, agents (except Assignor) and employees, from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the presence of any property or person on, in or about the Facility or (ii) liability arising from or expense incurred by the Agency granting its consent to this Assignment and Assumption, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrong doing of the Agency or any of its directors, members officers, agents (except Assignor) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence of the Agency or any of its directors, members, officers, agents (except Assignor) and employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. In the event of any claim against the Agency or its respective directors, members, officers, agents and employees by any employee or contractor of Assignor or Assignee or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligation of Assignor and Assignee hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or any other employee benefit acts.

6. **Notice.** Any notice which Assignor or Assignee shall be required or permitted to give to the other shall be in writing and sent to the other by registered or certified mail, return receipt requested, at the other's address written below or such other address as the other shall designate from time to time by notice given in accordance with this paragraph, and any notice shall be deemed given when deposited in a United States Mail Depository, postage prepaid, addressed in accordance with this paragraph, except that a notice of change of address shall be deemed given when delivered.

To the Assignor:            Trenton Road, LLC  
   300 Jordan Road  
   Troy, New York 12108  
   Attn.: Walter F. Uccellini, Member

To the Assignee: Colonial Square LLC  
105 Main Street  
Whitesboro, New York 13492  
Attn.: Steven Buck, Member

7. **Representation.** Assignor represents that the Agency Documents are in full force and effect, and have not been modified except as mentioned herein, and that neither Assignor nor the Agency are in default of their respective obligations thereunder.

8. **Benefit.** This Assignment and Assumption shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.


[signature page follows]



IN WITNESS WHEREOF, the parties have hereunto set their respective hands the day and year first above written.

**ASSIGNOR:**

**TRENTON ROAD, LLC**

By:   
Name: Michael J. Uccellini  
Title: Manager

**ASSIGNEE:**

**COLONIAL SQUARE LLC**

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT:**


The City of Utica Industrial Development Agency hereby consents to the Assignment and Assumption of Agency Documents from Trenton Road, LLC to Colonial Square LLC

**CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Joseph H. Hobika, Sr.  
Title: Chairman

**ACKNOWLEDGMENT:**

**COLONIAL SQUARE ASSOCIATES, LLC**

By:   
Name: Michael J. Uccellini  
Title: Assistant Manager

IN WITNESS WHEREOF, the parties have hereunto set their respective hands the day and year first above written.

**ASSIGNOR:**

**TRENTON ROAD, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNEE:**

**COLONIAL SQUARE LLC**

By: Steven G. Buck  
Name: **STEVEN G. BUCK**  
Title: **MEMBER**

**ACKNOWLEDGMENT:**

The City of Utica Industrial Development Agency hereby consents to the Assignment and Assumption of Agency Documents from Trenton Road, LLC to Colonial Square LLC

**CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY**

By: Joseph H. Hobika Sr.  
Name: Joseph H. Hobika, Sr.  
Title: Chairman

**ACKNOWLEDGMENT:**

**COLONIAL SQUARE ASSOCIATES, LLC**

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF RENSSELAER )

On the 23<sup>rd</sup> day of July 2009 before me, the undersigned a notary public in and for said state, personally appeared Michael J. Uccellini, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

JACQUELIN RITTMANN  
Notary Public, State of New York  
No. 01R16158002  
Qualified in Albany County  
Commission Expires December 18, 2010

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF ONEIDA )

On the 3<sup>rd</sup> day of August 2009 before me, the undersigned a notary public in and for said state, personally appeared **Steven Buck**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LAURA S. RUBERTO  
Notary Public, State of New York  
Appointed in Oneida County  
Commission Expires Aug. 1, 2010

Schedule A

ALL THAT PIECE OR PARCEL OF LAND in the City of Utica, County of Oneida and State of New York identified as Lot Nos. 1, 2, 4, 5, 11, 12, 13, 14, 15-24, 45, 46, 67 and 60 and shown on the map entitled "Colonial Square Subdivision" prepared by Snyder Engineering & Land Surveying, LLP, dated October 30, 2008, last revised February 5, 2009 and filed in the Oneida County Clerk's Office on March 17, 2009 at Instrument No. M2009-000038.