

UNOFFICIAL COPY

CTFC 8951214 2014

This Instrument was prepared by:

Adam R. Moreland
Chuhak & Tecson, P.C.
30 S. Wacker Drive, Suite 2600
Chicago, Illinois 60606



Doc#: 1409922023 Fee: \$56.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/09/2014 08:50 AM Pg: 1 of 10

Upon recording to
be returned to:

LAKE FOREST BANK & TRUST COMPANY
727 North Bank Lane
Lake Forest, Illinois 60045
Attention: Commercial Real Estate Department

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT (this "Agreement") is made as of April 7, 2014, by and between BARCO IV, LLC, an Illinois limited liability company (the "Assignor"), whose mailing address is 225 E. Deerpath Rd., Lake Forest, Illinois 60045, to and for the benefit of LAKE FOREST BANK & TRUST COMPANY, its successors and assigns, whose mailing address is 727 North Bank Lane, Lake Forest, Illinois 60045 (the "Assignee").

WITNESSETH:

WHEREAS, Assignor is the owner of the fee simple estate in and to the real estate described in Exhibit A attached hereto and by this reference incorporated herein (the "Mortgaged Premises"); and,

WHEREAS, pursuant to a Loan Agreement dated of even date herewith (the "BARCO IV Loan Agreement"; capitalized terms used herein and not defined herein shall have the respective meanings assigned thereto in the BARCO IV Loan Agreement), Assignee has agreed to make a loan to Assignor in the amount of One Million Ninety-Five Thousand Eighty-Nine and 00/100 Dollars U.S. (\$1,095,089.00) to be used by Assignor toward reimbursement of acquisition costs related to the Mortgaged Premises (the "BARCO IV Loan"); and

WHEREAS, pursuant to a Loan Agreement dated of even date herewith (the "BARCO I Loan Agreement"), Assignee has agreed to make a loan to BARCO I, LLC, an Illinois limited liability company ("BARCO I"), in the amount of One Million Three Hundred Fifteen Thousand Four Hundred Seventy-Two and 00/100 Dollars U.S. (\$1,315,472.00) to be used by BARCO I to refinance existing indebtedness (the "BARCO I Loan"); and

WHEREAS, pursuant to a Loan Agreement dated of even date herewith (the "BARCO II Loan Agreement"), Assignee has agreed to make a loan to BARCO II, LLC, an Illinois limited liability company ("BARCO II"), in the amount of Seven Hundred Ninety-Two Thousand Fifty and 00/100 Dollars U.S. (\$792,050.00) to be used by BARCO II to refinance existing

UNOFFICIAL COPY

indebtedness (the “BARCO II Loan”); and

WHEREAS, pursuant to a Loan Agreement dated of even date herewith (the “BARCO III Loan Agreement” and, collectively with the BARCO I Loan Agreement, BARCO II Loan Agreement and BARCO IV Loan Agreement, the “Loan Agreement”), Assignee has agreed to make a loan to BARCO III, LLC, an Illinois limited liability company (“BARCO III” and, collectively with Assignor, BARCO I and BARCO II, the “Borrower”), in the amount of One Million Twenty Thousand Three Hundred Sixty-Five and 00/100 Dollars U.S. (\$1,020,365.00) to be used by BARCO III to refinance existing indebtedness (the “BARCO III Loan” and, collectively with the BARCO I Loan, BARCO II Loan and BARCO IV Loan, the “Loan”); and

WHEREAS, the BARCO IV Loan shall be evidenced by that certain Promissory Note (the “BARCO IV Note”) dated as of the date hereof executed by Assignor payable to the order of Assignee in the original principal amount of One Million Ninety-Five Thousand Eighty-Nine and 00/100 Dollars U.S. (\$1,095,089.00), whereby Assignor promises to pay the said principal sum and interest at the rate and in installments as provided in the BARCO IV Note; and

WHEREAS, the BARCO I Loan shall be evidenced by that certain Promissory Note (the “BARCO I Note”) dated as of the date hereof executed by BARCO I payable to the order of Assignee in the original principal amount of One Million Three Hundred Fifteen Thousand Four Hundred Seventy-Two and 00/100 Dollars U.S. (\$1,315,472.00), whereby BARCO I promises to pay the said principal sum and interest at the rate and in installments as provided in the BARCO I Note; and

WHEREAS, the BARCO II Loan shall be evidenced by that certain Promissory Note (the “BARCO II Note”) dated as of the date hereof executed by BARCO II payable to the order of Assignee in the original principal amount of Seven Hundred Ninety-Two Thousand Fifty and 00/100 Dollars U.S. (\$792,050.00), whereby BARCO II promises to pay the said principal sum and interest at the rate and in installments as provided in the BARCO II Note; and

WHEREAS, the BARCO III Loan shall be evidenced by that certain Promissory Note (the “BARCO III Note” and, collectively with the BARCO I Note, BARCO II Note and BARCO IV Note, the “Note”) dated as of the date hereof executed by BARCO III payable to the order of Assignee in the original principal amount of One Million Twenty Thousand Three Hundred Sixty-Five and 00/100 Dollars U.S. (\$1,020,365.00), whereby BARCO III promises to pay the said principal sum and interest at the rate and in installments as provided in the BARCO III Note; and

WHEREAS, the Loan shall be evidenced by that certain Master Loan Agreement dated as of the date hereof, by and between Borrower and Assignee (“Master Loan Agreement”); and

WHEREAS, the Note is secured by that certain Construction Mortgage and Security Agreement and UCC Fixture Filing (the “Mortgage”) of even date herewith executed by Assignor in favor of Assignee encumbering the Mortgaged Premises. The Note, the Loan Agreement, the Master Loan Agreement, the Mortgage, this Agreement and the other loan documents described in the Loan Agreement, whether now or hereafter existing, being collectively referred to herein as the “Loan Documents”; and

UNOFFICIAL COPY

NOW, THEREFORE, for the purpose of securing payment of the indebtedness evidenced by the Note and the payment of all advances and other sums with interest thereon becoming due and payable to Assignee under the provisions hereof or of the Loan Documents, or any sums secured by said instruments, and the performance and discharge of each and every obligation covenant and agreement of Assignor herein or arising from the Loan Documents, and also in consideration of TEN AND NO/100 (\$10.00) DOLLARS, the receipt whereof is hereby acknowledged; it is hereby agreed as follows:

1. Assignment Clause. Assignor, intending to be legally bound and in consideration of the making of the Loan, does hereby sell, assign, transfer and set over unto Assignee all right, title and interest of Assignor in and to (i) all rents, issues, profits and avails and other sums of every kind and nature, including, but not limited to, payments or contributions for taxes, operating expenses and the like (collectively the "Rents"), payable by lessees or guarantors under "Leases" (as hereinafter defined) of and from the Mortgaged Premises, (ii) all right, title and interest of Assignor in and to any leases which may be hereafter entered into for all or any portion of the Mortgaged Premises (collectively the "Leases"), and any and all extensions and renewals thereof, and including any security deposits or interests therein now or hereafter held by Assignor and the benefit of any guarantees executed in connection with any of the Leases, (iii) rights and claims for damages against tenants arising out of defaults under Leases, including rights to compensation with respect to rejected Leases pursuant to Section 365(a) or replacement Section thereto of the Bankruptcy Code of the United States, and (iv) the proceeds payable upon exercise of any option including an option to terminate or an option to purchase contained in any Lease. This Assignment is absolute and is effective immediately; provided, however, that until notice is sent by Assignee to Assignor in writing that an "Event of Default" (as hereinafter defined) has occurred under the Note or under any other Loan Document (each such notice to Assignor is hereinafter referred to as the "Notice"), Assignor may receive, collect and enjoy the Rents accruing from the Mortgaged Premises. The security of this Assignment is and shall be primary and on a parity with the Mortgaged Premises conveyed by the Mortgage, and not secondary. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents to secure said indebtedness contained in the Mortgage or in any other Loan Document.

2. Representations. Assignor represents and warrants that it has made no prior assignment or pledge of Assignor's interest in the Rents assigned hereby or of the Assignor's interest in any of the Leases.

3. Negative Covenants of Assignor. Assignor will not (i) execute an assignment or pledge of the Rents from the Mortgaged Premises or any part thereof, or of the Assignor's interest in any of the Leases, except to Assignee; or (ii) intentionally omitted; or (iii) accept prepayments of any installments of Rents to become due under any of the Leases for more than one (1) month; or (iv) intentionally omitted; or (v) in any manner materially impair the value of the Mortgaged Premises or permit the value of the Mortgaged Premises to be materially impaired; or (vi) permit the Leases to become subordinate to any lien other than a lien created by the Loan Documents or a lien for general real estate taxes not delinquent; or (vii) intentionally omitted.

4. Affirmative Covenants of Assignor. Assignor will at its sole cost and expense

UNOFFICIAL COPY

(i) fulfill and perform in all material respects each and every covenant and condition of each of the Leases by the lessor thereunder to be fulfilled or performed; (ii) enforce or secure in all material respects the performance of all of the covenants, conditions and agreements of the Leases on the part of the lessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of Assignor, as lessor, and of the lessees thereunder, and pay all costs and expenses of Assignee, including attorneys' fees in any such action or proceeding in which Assignee may appear; (iv) transfer and assign to Assignee any and all Leases subsequently entered into, upon the same terms and conditions as are herein contained, and make, execute and deliver to Assignee upon demand any and all instruments required to effectuate said assignment; (v) furnish to Assignee, within ten (10) days after a written request by Assignee to do so, a written statement containing the names of all lessees of the Mortgaged Premises or any part thereof, the terms of their respective Leases, the spaces occupied and the rentals payable thereunder; (vi) intentionally omitted; (vii) intentionally omitted; (viii) pay immediately upon demand all reasonable sums expended by Assignee under the authority hereof, together with interest thereon at the "Default Rate" provided in the Note; and (ix) furnish loss of rents insurance in accordance with the provisions of the Mortgage.

5. Agreement of Assignor.

A. Should Assignor fail to make any payment or to do any act as herein provided for, then after thirty (30) days written notice and failure of Assignor to cure (except in the event of emergency situations) Assignee, but without obligation so to do, and without releasing Assignor from any obligation hereof, may make or do the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof, 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 the Assignor in the Leases contained, and in exercising any such powers to incur and pay necessary costs and expenses, including attorneys' fees, all at the expense of Assignor. In the event Assignee exercises any of the foregoing rights, except in the event of emergency situations presenting risk of physical damage to property or injury to person, Assignee shall deliver thirty (30) days advance notice of any such action to Assignor.

B. This Assignment shall not operate to place responsibility for the control, management, care and/or repair of the Mortgaged Premises upon Assignee and Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all liability, loss or damage which it shall 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 undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except any such claims or demands resulting from the gross negligence or willful acts or actions of Assignee. 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 attorneys' fees, shall be secured hereby, and Assignor shall

UNOFFICIAL COPY

reimburse Assignee therefor with interest at the "Default Rate" provided in the Note immediately upon demand.

C. Nothing herein contained shall be construed as constituting Assignee a "Mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Premises by Assignee, pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor, except with respect to any liability resulting from the gross negligence or willful acts or actions of Assignee.

D. A demand on any lessee by Assignee for the payment of the Rents upon the occurrence of any Event of Default under any Loan Agreement claimed by Assignee, which demand may be sent by regular mail, shall be sufficient warrant to the lessee to make future payment of Rents to Assignee without the necessity for further consent by Assignor.

E. Assignor does further specifically authorize and instruct each and every present and future lessee of the whole or any part of the Mortgaged Premises to pay all unpaid Rents agreed upon in any tenancy to Assignee upon receipt of demand from Assignee as provided aforesaid to pay the same, and Assignor hereby waives the right, claim or demand it may now or hereafter have against any such lessee by reason of such payment of Rents to Assignee or compliance with other requirements of Assignee pursuant to this Assignment.

F. Upon issuance of a deed or deeds pursuant to a foreclosure of the Mortgage, all right, title and interest of the Assignor in and to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by the Assignor. During the existence of an Event of Default, Assignor hereby irrevocably appoints Assignee and its successors and assigns, as its agent and attorney-in-fact, to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose.

G. Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification, or amendment of any of the Leases prohibited by the terms of this Assignment and any amounts received by Assignor as Rents from the Mortgaged Premises for any month in which occurs the act giving rise to any Event of Default under any of the Loan Documents, shall be held by Assignor as Trustee for Assignee and all such amounts shall be accounted for to Assignee and shall not be commingled with other funds of the Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Assignee as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith. By way of example and not of limitation, a notice of the foregoing may be given by an instrument recorded with the Recorder of Deeds of the county in which the Mortgaged Premises is located stating that Assignor has received or will receive such amounts in trust for Assignee.

H. Assignor hereby irrevocably appoints Assignee as its true and lawful attorney with full power of substitution and with full power for Assignee in its own name and

UNOFFICIAL COPY

capacity or in the name and capacity of Assignor, from and after the service on Assignor of the Notice of any Event of Default not having been cured, to demand, collect, receive and give complete acquittances for any and all Rents accruing from the Mortgaged Premises, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the Rents. Lessees of the Mortgaged Premises are hereby expressly authorized and directed to pay any and all Rents and other amounts due Assignor pursuant to the Leases directly to Assignee or such nominee as Assignee may designate in writing delivered or mailed to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.

In the event any lessee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Assignor covenants and agrees that if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, whose consent shall not be unreasonably withheld or delayed, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to principal and interest due Lender prior to the occurrence of an Event of Default and, during the existence of an Event of Default, to whatever portion of the indebtedness secured by this Assignment Assignee may elect.

6. Event of Default. "Event of Default" shall mean the occurrence of any one or more of the events (subject to applicable notice and cure periods if any) defined as an Event of Default in the Loan Agreement, all of which are hereby incorporated by reference herein. During the existence of an Event of Default hereunder, Assignee may, at its option, from and after the Notice and without regard to the adequacy of the security for the indebtedness hereby secured, either in person, or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate the Mortgaged Premises or any part thereof; and do any acts which Assignee deems proper to protect the security hereof; and, either with or without taking possession of the Mortgaged Premises, in the name of Assignor or in its own name sue for or otherwise collect and receive such Rents, including those past due and unpaid, and apply the same, less reasonable and customary costs and expenses of operation and collection, including, but not being limited to, attorneys' fees, management fees and broker's commissions, upon any indebtedness secured hereby, and in such order as Assignee may determine. Assignee reserves, within its own discretion, the right to reasonably determine the method of collection and the extent to which enforcement of collection of delinquent Rents shall be prosecuted, and shall not be accountable for more monies than it actually receives from the Mortgaged Premises. The entering upon and taking possession of the Mortgaged Premises or the collection of such Rents and the application thereof, as aforesaid, shall not cure or waive any Event of Default under the Loan Documents. Assignor agrees that it will facilitate in all reasonable ways Assignee's collection of Rents, and will, upon request by Assignee, promptly execute a written notice to each lessee directing the lessee to pay Rents to Assignee.

UNOFFICIAL COPY

7. Assignee's Right to Exercise Remedies. No remedy conferred upon or reserved to Assignee herein or in the Loan Documents or in any other agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy, and all representations herein and in the Loan Documents, contained shall be cumulative and concurrent, and shall be in addition to every other remedy given hereunder and thereunder or now or hereafter existing at law or in equity or by statute. The remedies may be pursued singly, successively or together against the Assignor and/or the Mortgaged Premises at the sole discretion of Assignee. No delay or omission of Assignee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein, and every power and remedy given by this Assignment to Assignee may be exercised from time to time as often as may be deemed expedient by Assignee.

8. Defeasance. Provided that no Event of Default has occurred, Assignor shall have the right to collect upon, but not more than 30 days prior to accrual, all Rents from the Mortgaged Premises and to retain, use and enjoy the same. Upon the payment in full of all indebtedness secured hereby and the compliance with all obligations, covenants and agreements herein and in the Loan Documents, this Assignment shall become and be void and of no effect and Assignee shall promptly deliver a release to Assignor in form mutually agreed upon by the parties, but the affidavit of any officer of Assignee showing any part of said indebtedness remaining unpaid or showing non-compliance with any such terms or conditions shall be and constitute conclusive evidence of the validity effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

9. Miscellaneous.

A. This Assignment may not be modified, amended, discharged or waived orally, except by an agreement in writing and signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

B. The covenants of this Assignment shall bind the Assignor, the successors and assigns of Assignor, all present and subsequent encumbrances, lessees and sub-lessees of the Mortgaged Premises or any part thereof, and shall inure to the benefit of Assignee, its successors and assigns.

C. As used herein the singular shall include the plural as the context requires, and all obligations of each Assignor shall be joint and several.

D. The article headings in this instrument are used for convenience in finding the subject matters, and are not to be taken as part of this instrument, or to be used in determining the intent of the parties or otherwise in interpreting this instrument.

E. In the event any one or more of the provisions contained in this Assignment or in the Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Assignee, not affect any other provision of this Assignment, but this Assignment shall be

UNOFFICIAL COPY

construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

F. This Assignment shall be governed by and construed in accordance with the laws of the State in which the Mortgaged Premises is located.

G. Each Notice given to Assignor pursuant to this Assignment shall be sufficient and shall be deemed served if sent as provided in the Loan Agreement. Notices or demands to lessees or tenants of the Mortgaged Premises may be sent by regular mail service.

H. The terms "Assignor," "Assignee," "Borrower" and "Beneficiary" shall be construed to include the heirs, personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

I. In the event of any conflicts or inconsistencies between the terms and provisions hereof and those of any other Loan Document, then the terms and provisions deemed most favorable to Assignee shall govern.

WITNESS WHEREOF, the undersigned have caused these presents to be executed on the day and year first above written.

ASSIGNOR:


BARCO IV, LLC, an Illinois limited liability company

By: Barco Holdings, LLC, an Illinois limited liability company, its Sole Member

By: Brick House Farms IV, LLC, an Iowa limited liability company, its Sole Member

By: Brick House Investments LLC, a Minnesota limited liability company, its Sole Member

By: The TLP Group LLC, a Delaware limited liability company, its Sole Member

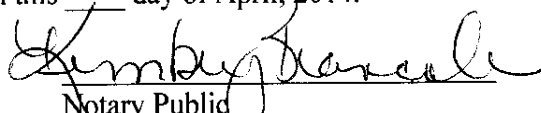
By: 
Name: David Popovich
Its: Chief Financial Officer

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF Lake) SS

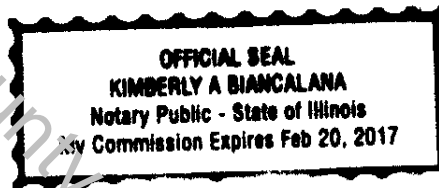
I, the undersigned, a Notary Public in and for the said County, in the State aforesaid do hereby certify that David Popovich, personally known to me, and known to me to be the Chief Financial Officer of The TLP Group LLC, a Delaware limited liability company, the Sole Member of Brick House Investments LLC, a Minnesota limited liability company, the Sole Member of Brick House Farms IV, LLC, an Iowa limited liability company, the Sole Member of Barco Holdings, LLC, an Illinois limited liability company, the Sole Member of BARCO IV, LLC, an Illinois limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and the free and voluntary act of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4th day of April, 2014.


Notary Public

My commission expires:

2/20/2017



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOT 61 IN SCOTT'S SUBDIVISION OF THE WEST 1/2 OF THE WEST 1/2 OF BLOCK 1 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1653 N. HALSTED, CHICAGO, ILLINOIS

PIN NO.: 14-33-313-019-0000