

UNOFFICIAL COPY



2000717086

Doc# 2000717086 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/07/2020 02:15 PM PG: 1 OF 11

CC# 190482460 DG ² Def 3

This instrument prepared by and after recording return to:

Riemer & Braunstein LLP
100 Cambridge Street
Boston, Massachusetts 02114
Attention: Kevin J. Lyons, Esq.

Property Address:
3131 North Clark Street
Chicago, Illinois

PIN(s): 14-29-205-008-0000, 14-29-205-009-0000, 14-29-205-011-0000, 14-29-205-012-0000, 14-29-205-013-0000, 14-29-205-014-0000, 14-29-205-016-0000, 14-29-205-017-0000

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS is made this 20th day of December, 2019 (this "Assignment") by IRC POINT AT CLARK, L.L.C., a Delaware limited liability company, having an address at c/o IRC Retail Centers, 814 Commerce Drive, Suite 300, Oak Brook, Illinois 60523 (hereinafter called "Assignor" and the term Assignor shall include, wherever the context permits, its successors and assigns), to CITIZENS BANK, NATIONAL ASSOCIATION, a national banking association, having a place of business at 1215 Superior Avenue, Cleveland, Ohio 44114, as agent (hereinafter called "Agent"; the term Agent shall include, whenever the context permits, its successors and assigns) for certain Lenders (as hereinafter defined) under a certain Credit Agreement dated as of even date herewith by and among, INP HOLDINGS I, LLC and INP HOLDINGS II, LLC, each a Delaware limited liability company (collectively, jointly and severally, as "Borrower"), which are Affiliates of Assignor, both having an address at c/o IRC Retail Centers, 814 Commerce Drive, Suite 300, Oak Brook, Illinois 60523, Agent and the other lending institutions which become parties to the Credit Agreement (Agent and the other lending institutions which become parties to the Credit Agreement are collectively hereinafter referred to as the "Lenders" and individually as the "Lender") (hereinafter, as same may be amended, restated, renewed, replaced, supplemented or otherwise modified from time to time, collectively, the "Credit Agreement").

WITNESSETH THAT:

1. Grant of Assignment. This Assignment is granted pursuant to the terms, provisions and conditions of the agreement captioned Credit Agreement. *Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Credit Agreement.* The term "Mortgage" shall mean that certain Mortgage, Security Agreement and Fixture Filing dated as of the date hereof by Assignor in favor of Agent on behalf of Lenders and

Box 400

S
P
S
M
SC
E
INT

UNOFFICIAL COPY

encumbering, among other things, the Property (hereinafter defined), as the same may be hereinafter amended, restated, renewed, replaced or otherwise modified.

Assignor, for good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, transfers and assigns to Agent and the Lenders, and grants to Agent and the Lenders a continuing pledge of and security interest in, the entire present and future interest of Assignor in, to and under: (a) all leases, subleases, licenses, rental agreements or other occupancy agreements and all amendments or addenda related thereto ("Leases") now or hereafter in existence, with respect to all or any portion of the property described on Exhibit A attached hereto, together with the improvements and other structures now or hereafter situated thereon ("Property"); (b) all rents, fees (including service fees to be paid in connection with any Leases), income and profits of any kind arising from such interests in the Leases or due under such Leases and any renewals or extensions thereof for the use and occupation of all or any portion of the Property; (c) all guaranties of and security for the Leases; and (d) all proceeds of the foregoing.

Assignor covenants and agrees that this Assignment creates and constitutes an equitable and specific lien upon the aforesaid rents, and that this Assignment does not create or constitute a pledge of or conditional security interest in such rents. This Assignment is intended to be specific, perfected and choate upon the recording of this Assignment.

Assignor is the owner of the Property. A legal description of the Property is annexed hereto as Exhibit A.

2. Obligations Secured. This Assignment is made for the purpose of securing the Obligations.
3. Warranties and Representations. ASSIGNOR WARRANTS AND REPRESENTS that it is and shall be in the future the sole owner of the entire interests described in Section 1 above and that no rent or fees reserved in the Leases have been or will be in the future otherwise assigned or anticipated, and that no rent or fees for any period subsequent to the date of this Assignment have been collected more than one (1) month in advance except for security deposits and last month's rents or fees taken in the usual course of business pursuant to Leases.
4. Covenants. Except as may be otherwise provided for or permitted by the Credit Agreement, ASSIGNOR COVENANTS with Agent: (i) to observe and perform all of the material obligations imposed upon the lessor or licensor under every such Lease and not to do anything to impair the security thereof; (ii) not to collect any of the rent, fees, charges, income and profits arising or accruing under the Leases or from the Property more than one (1) month in advance of the time when the same shall become due; (iii) not to execute any other assignment of lessor's or licensor's interest in the Leases or assignment of rents arising or accruing from the Leases or from the Property; (iv) not to alter, modify or change the terms of any Material Leases, or cancel or terminate the same, except for non-payment of rent, or accept a surrender thereof without the prior written consent of Agent and the Required Lenders in each instance not to be unreasonably withheld; (v) not to subordinate any Lease to any mortgage or other encumbrance,

UNOFFICIAL COPY

or permit, consent or agree to such subordination, without Agent's prior written consent in each instance; (vi) not to convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any Lease or of any interest therein so as to affect directly or indirectly a merger of the estates and rights, or a termination or diminution of the obligations, of any lessee or licensee thereunder subject to any rights of tenants or licensees under Leases; (vii) not to alter, modify or change the terms of any guaranty of any Material Lease, or any security for any Material Lease, or cancel or terminate any such guaranty, or release or reduce any such security, except as otherwise provided by the terms of such Material Lease, without the prior written consent of Agent and the Required Lenders, in each instance not to be unreasonably withheld; (viii) not to consent to any assignment of or subleasing or sublicensing under any such Material Lease, unless in accordance with its terms, without the prior written consent of Agent and the Required Lenders in each instance, subject to any rights of tenants or licensees under such Material Leases; (ix) not to enter into any future Material Leases of all or any part of the Property without Agent's and the Required Lenders' prior written consent in each instance not to be unreasonably withheld; (x) at Agent's request, furnish to Agent true and complete copies of all Leases and amendments and addenda thereto to the extent not previously provided to Agent; and (xi) at Agent's further request (and in confirmation of the assignment and transfer already made herein of future Leases) to assign and transfer to Agent any and all subsequent Leases upon all or any part of the Property and to execute and deliver at the request of Agent all such further assurances and assignments in the Property as Agent in good faith shall from time to time require, if and so long as no obligation or liability of any Loan Party is increased or any right of any Loan Party is diminished or decreased.

5. Further Terms, Covenants and Conditions. This Assignment is made on the following terms, covenants and conditions:

5.1 Prior to Default. So long as no Default exists (a "Continuing Default"): Assignor shall have the right and license to manage and operate the Property and to collect at the time of, but not more than one (1) month prior to, the date provided for the payment thereof, all rents, fees, income and profits arising under the Leases or from the premises described therein and, subject to the provisions of the other Loan Documents, to retain, use and enjoy the same.

5.2 After Default. At any time when a Continuing Default exists, Agent, without in any way waiving such default, may at its option, without notice, and without regard to the adequacy of the security for the obligations secured hereby and by the Mortgage revoke the right and license granted above to Assignor and:

(i) Authorize and direct the lessees or licensees named in any existing Leases or any other or future lessees or licensees or occupants of the Property, upon receipt from Agent of written notice to the effect that Agent is or the Lenders are then the holder of the Note and the Mortgage and that a Continuing Default exists thereunder, to pay over to Agent all rents, fees, income and profits arising or accruing under the Leases or from the Property and to continue to do so until otherwise notified in writing by Agent. Assignor agrees that every lessee, licensee and occupant shall have the right to rely upon any such

UNOFFICIAL COPY

statement and request by Agent that lessee, licensee or occupant shall pay such rents to Agent without any obligation or right to inquire as to whether such Continuing Default actually exists notwithstanding any notice from or claim of Assignor to the contrary and that Assignor shall have no right or claim against lessees, licensees or occupants for any such rent or fees so paid by lessee, licensees or occupants to Agent after such notice to the lessee or licensee or occupant by Agent;

(ii) To the extent permitted by applicable Law, either in person or by agent, with or without bringing any action or proceedings, or by a receiver appointed by a court, take possession of the Property and have, hold, manage, lease, license and operate the same on such terms and for such period of time as Agent may deem proper and, either with or without taking possession of the Property in its own name, demand, sue for, or otherwise collect and receive, all rents, fees, income and profits of the Property, including those past due and unpaid, with full power to make from time to time all improvements, alterations, renovations, repairs and replacements thereto or thereof as may seem proper to Agent; and

(iii) Apply such rents, fees income and profits in the order and priority set forth in the Credit Agreement.

5.3 Continuing Effect. Upon payment in full to Agent and the Lenders of the principal sum, interest, indebtedness and other monetary Obligations secured hereby and by the Mortgage, this Assignment shall become and be void and of no effect, but the affidavit of any officer, agent, or attorney of Agent or the Lenders made in good faith showing any part of said principal, interest, indebtedness or other monetary Obligations to remain unpaid shall be and constitute *prima facie* evidence, absent manifest error, of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The discharge of record of the Mortgage shall constitute a discharge of this Assignment and a release of Agent's and the Lenders' interest in the Leases, rents and fees assigned hereby and the reassignment thereof (without recourse to Agent or any Lender) to Assignor and all those claiming of record by, through or under Assignor.

5.4 No Waiver; Concurrent Rights. Nothing contained in this Assignment and no act done or omitted by Agent pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Agent of its rights and remedies hereunder or any one or more of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Agent under the terms of any of the other Loan Documents. The right of Agent to collect said principal sums, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Agent either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

5.5 No Liability. Neither Agent nor any Lender shall be liable for any loss sustained by Assignor resulting from Agent's failure to let or license the Property after a Default or from any other act or omission of Agent in managing the Property after a Default. Agent shall not be obligated to perform or discharge, nor does Agent hereby undertake to perform or discharge, any

UNOFFICIAL COPY

obligation, duty or liability under the Leases, under any ground lease, or under or by reason of this Assignment, and Assignor shall, and does hereby agree to, indemnify Agent and each of the Lenders for, and to defend and hold Agent and each of the Lenders harmless from, any and all liability, loss or damage which may or might be incurred under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Agent or any Lender 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 or any ground lease, except in all cases to the extent any such liability, loss, claim or demand arises out of the sole or gross negligence or willful misconduct of Agent or any Lender. Should Agent or any Lender incur any such liability under the Leases or under or by reason of this Assignment, or in defense of any such claims or demands (except in all cases to the extent any such liability, loss, claim or demand arises out of the sole or gross negligence or willful misconduct of Agent or any Lender), the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and by the Mortgage and by the other collateral for the Obligations, and Assignor shall reimburse Agent and the Lenders therefor within thirty (30) days of demand therefor and upon the failure of Assignor so to do, Agent may, at its option, declare all sums secured hereby immediately due and payable. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of said Property upon Agent, nor for the carrying out of any of the terms and conditions of the Leases or any ground lease; nor shall it operate to make Agent responsible or liable for any waste committed on the Property by tenants, licensees or any other parties, or for any dangerous or defective condition of the Property, or for any negligence (other than sole or gross negligence) in the management, upkeep, repair or control of said Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

5.6 Effect of Foreclosure Deed. Unless Agent otherwise elects in the instance of a Lease which is subordinate to the Mortgage and is thus terminated by the foreclosure, upon the issuance of any deed or deeds pursuant to a foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this instrument and such deed or deeds, 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 Assignor. Assignor hereby irrevocably appoints Agent and its successors and assigns as its agent and attorney in fact to execute all such instruments of assignment for further assurance pursuant to this Section 5.6 in favor of such grantee or grantees in such deed or deeds as may be necessary or desirable for such purpose.

5.7 Upon Termination of Lease in Bankruptcy. At any time when a Continuing Default exists, in the event any lessee or licensee under any of 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 such Leases assigned hereby, Assignor covenants and agrees that, if any of such Leases are so terminated or rejected, no settlement for damages shall be made without the prior written consent of Agent, in each instance, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Agent. Borrower hereby assigns any such payment to Agent and further covenants and agrees that upon the request of Agent when a

UNOFFICIAL COPY

Continuing Default exists, Borrower will duly endorse to the order of Agent any such check, the proceeds of which will be applied to the indebtedness secured by this Assignment. Assignor hereby irrevocably appoints Agent and its successors and assigns as its-attorney-in-fact to so endorse any such checks if Assignor does not do so pursuant to this Section 5.7.

5.8 Rights Contained in Mortgage. This Assignment is intended to be supplementary to, and not in substitution for, or in derogation of, any assignment of rents to secure the Obligations contained in the Mortgage or in any other Loan Document. In the event of any conflict between this Assignment and any of the other Loan Documents, the provisions of such other Loan Document shall govern.

5.9 Notices. Any notice or communications in connection herewith shall be sufficiently given only if given in the manner provided for in the Credit Agreement.

6. Setoff. The terms and provisions of Section 12 of the Credit Agreement are hereby incorporated herein by reference.

7. Governing Law; Consent to Jurisdiction; Mutual Waiver of Jury Trial.

7.1 GOVERNING LAW. THE PROVISIONS OF THIS ASSIGNMENT REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED, THE IN REM RIGHTS AND REMEDIES OF THE PARTIES, AND PROCEDURAL MATTERS IN CONNECTION WITH SUCH ENFORCEMENT, SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS ASSIGNMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

7.2 Consent to Jurisdiction. Assignor, Agent, and each of the Lenders mutually consent to nonexclusive personal jurisdiction in any state or Federal court located within the State of Illinois sitting in Chicago, and the State of Illinois.

8. JURY TRIAL WAIVER. ASSIGNOR, AGENT AND THE LENDERS HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS ASSIGNMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS. ASSIGNOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, PUNITIVE OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. ASSIGNOR (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY LENDER OR THE AGENT HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH LENDER OR THE AGENT WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (B) ACKNOWLEDGES THAT THE AGENT AND THE LENDERS HAVE BEEN INDUCED

UNOFFICIAL COPY

TO ENTER INTO THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS TO WHICH THEY ARE PARTIES BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 8. ASSIGNOR ACKNOWLEDGES THAT IT HAS HAD AN OPPORTUNITY TO REVIEW THIS SECTION 8 WITH LEGAL COUNSEL AND THAT IT AGREES TO THE FOREGOING AS ITS FREE, KNOWING AND VOLUNTARY ACT.

9. State-Specific Provisions; Cross Collateralization. In the event of any inconsistency or disagreement between the terms and provisions set forth in this Section 9 and the other terms and provisions of this Assignment, the terms and provisions of this Section 9 shall govern, control and supersede such other terms and provisions to the extent of such inconsistency or disagreement.

9.1 Absolute Assignment. This Assignment is intended to be an absolute assignment of leases, rents and profits under applicable Laws of the State of Illinois. In the event a court of competent jurisdiction construes this Assignment to be collateral that secures the Obligations of Assignor rather than an absolute assignment, this Assignment shall constitute an assignment of rents which grants a security interest in the collateral as set forth under any applicable Laws of the State of Illinois.

9.2 Cross-Collateralization. Assignor acknowledges that the Obligations are secured by this Assignment together with those certain other assignments given by each of the other Subsidiary Guarantors, as applicable, to Agent (whether one or more, collectively, the "Other Security Instruments") encumbering the real and personal property more particularly described in the Other Security Instruments (such real and personal property, collectively, the "Other Properties"), all as more specifically set forth in the Credit Agreement. During the continuance of a Default, Agent shall have the right to institute a proceeding or proceedings for the enforcement of remedies available to Agent under the terms of this Assignment and any or all of the Other Security Instruments whether by court action, power of sale (if permitted under applicable Law) or otherwise, under any applicable provision of law, for all of the Obligations and the lien and the security interest created by the Other Security Instruments shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Obligations then due and payable but still outstanding. Assignor acknowledges and agrees that the Property and the Other Properties are located in one or more states and/or counties, and therefore Agent shall be permitted to enforce payment of the Obligations and the performance of any term, covenant or condition of the Credit Agreement, the Note, this Assignment, the Loan Documents or the Other Security Instruments and exercise any and all rights and remedies under the Credit Agreement, the Note, this Assignment, the other Loan Documents or the Other Security Instruments, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Agent, in its sole discretion, in any one or more of the states or counties in which the Property or any of the Other Properties are located. Neither the acceptance of this Assignment, the other Loan Documents or the Other Security Instruments nor the enforcement thereof in any one state or county, whether by court action, foreclosure, power of sale (if permitted under applicable Law)

UNOFFICIAL COPY

or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale (if permitted under applicable Law) or otherwise, of the Credit Agreement, the Notes, this Assignment, the other Loan Documents, or any Other Security Instruments through one or more additional proceedings in that state or county or in any other state or county. Any and all sums received by Agent or any Lender under the Credit Agreement, the Notes, this Assignment and the other Loan Documents shall be applied to the Obligations in such order and priority as Agent shall determine in its sole discretion, without regard to any portion of the Loan or Loans allocated to the Property or the appraised value of the Property or any other the Other Properties.

[Remainder of Page Intentionally Left Blank]

Property of Cook County Clerk's Office

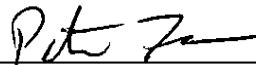
UNOFFICIAL COPY

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed and delivered as a sealed instrument as of the date first written above.

ASSIGNOR:

IRC POINT AT CLARK, L.L.C.,
a Delaware limited liability company

By: IRC Retail Centers LLC, a Delaware limited liability company, its manager

By: 

Name: Peter A. Foran

Title: Authorized Signatory

[notary acknowledgement follows]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Illinois)

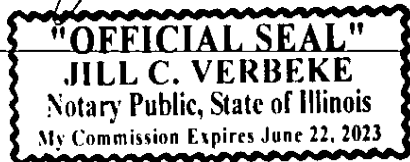
County of DuPage)

On December 18 2019, before me, Jill C. Verbeke, a Notary Public, personally appeared Peter A. Foran, as Authorized Signatory for IRC Retail Centers LLC, a Delaware limited liability company, as Manager of IRC Point at Clark, L.L.C., a Delaware limited liability company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of IL that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jill C. Verbeke



(Seal)

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOTS 1 AND 2 IN BLOCK 1 IN GEHRKE AND BRAUCKMANN'S SUBDIVISION OF BLOCK 1 (EXCEPT THE 4.28 ACRES IN THE NORTH PART OF SAID BLOCK AND WEST OF GREEN BAY ROAD) IN CANAL TRUSTEES' SUBDIVISION OF THE EAST 1/2 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

TOGETHER WITH

THOSE PARTS OF LOTS 3, 4, 5 AND 6 IN THE RESUBDIVISION OF LOT 3 IN BLOCK 1 IN GEHRKE AND BRAUCKMANN'S SUBDIVISION OF OUT LOT 1 OF CANAL TRUSTEES' SUBDIVISION OF THE EAST 1/2 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE NORTH 4.28 ACRES OF THAT PART OF SAID OUT LOT WHICH LIES WEST OF GREENBAY ROAD), ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 26, 1915, AS DOCUMENT NUMBER 5567522, LYING SOUTH OF A LINE DRAWN PARALLEL WITH AND 26.00 FEET NORTH FROM THE SOUTH LINE (AND SAID SOUTH LINE EXTENDED WEST) OF SAID RESUBDIVISION OF LOT 3, IN COOK COUNTY, ILLINOIS.

Commonly known as: 3131 North Clark Street, Chicago, IL 60657

Permanent Index Numbers: 14-29-205-008-0000, 14-29-205-009-0000, 14-29-205-011-0000, 14-29-205-012-0000, 14-29-205-013-0000, 14-29-205-014-0000, 14-29-205-016-0000, 14-29-205-017-0000