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Doc#: 2022607282 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 08/13/2020 11:39 AM Pg: 1 of 8

**This Instrument Prepared By And After
Recording Return To:**

RFLF 5, LLC
Suite 3150
222 W. Adams Street
Chicago, Illinois 60606
Attention: Kevin Werner

Property Identification Number(s):

See Exhibit A

Common Address(es):

See Exhibit A

[Above space reserved for recording information.]

ASSIGNMENT OF RIGHTS TO ENCUMBER AND TRANSFER

This ASSIGNMENT OF RIGHTS TO ENCUMBER AND TRANSFER (this "*Assignment*") is made as of June 30, 2020, by ICARUS HOLDINGS CHICAGO, LLC, an Illinois Limited Liability Company ("*Assignor*"), in favor of RFLF 5, LLC, a Delaware limited liability company, with an address at 222 W. Adams Street #3150, Chicago, IL 60606 (and its successors and assigns, collectively, the "*Lender*").

RECITALS:

A. Reference is made to that certain Loan Agreement dated as of even date herewith (as the same may be amended, modified, supplemented, restated and/or replaced from time to time, the "*Loan Agreement*"), by and among Lender, Assignor and certain affiliates of Assignor (Assignor and such affiliates of Assignor are hereinafter sometimes referred to, individually, collectively, jointly and severally, as "*Borrower*").

B. Pursuant to the terms and conditions of the Loan Agreement, the Lender has agreed to extend certain a loan to Borrower in the aggregate maximum principal amount of in the principal sum of FIVE HUNDRED EIGHTY-ONE THOUSAND DOLLARS AND 00/100 (\$581,000.00) (the "*Loan*"). The Loan is evidenced by, among other things: (i) that certain Promissory Note of Mortgagor of even date herewith and with a maturity date of June 29, 2025 (as the same may be amended, modified, supplemented, restated and/or replaced from time to time, the "*Note*"); and (ii) the other "Loan Documents" (as such term is used and defined in the Loan Agreement). This Assignment, the Loan Agreement, the Note, and said other "Loan Documents" as any or all of the

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foregoing may be amended, modified, supplemented, restated and/or replaced from time to time, are hereinafter sometimes referred to, individually and collectively, the "**Loan Documents**").

C. As a condition precedent to making the Loan, the Lender has required, among other things, that the Assignor execute and deliver this Assignment in favor of the Lender.

D. In order to induce the Lender to make the Loan, and all other monies to be advanced under the Note, the Loan Agreement and the other Loan Documents, Assignor has agreed to execute and deliver this Assignment favor of the Lender.

AGREEMENT:

NOW, THEREFORE, as an inducement to the Lender to make the Loan, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby represents, warrants, covenants and agrees as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:

"**Default**" means a Default, as defined in the Loan Agreement.

"**Premises**" means that certain real property located in Cook County, State of Illinois, more particularly described in Exhibit A attached hereto, together with all improvements thereon all easements and appurtenants with respect thereto.

"**Assigned Rights**" means any and all right to voluntarily encumber the Premises or otherwise convey, sell, lease, mortgage, hypothecate or effectuate any other transfer of all or any part of Assignor's rights, title, interests and estates in and to the Premises or any interest therein, including without limitation, the right of Assignor to voluntarily record any document against the Premises with the County in which the Premises are located, the right of Assignor to voluntarily sign or record any mortgage against the Premises or to otherwise effectuate any Prohibited Transfer.

"**Secured Obligations**" means, individually and collectively as the case may be, the prompt payment (when and as due and payable) and performance (as applicable) of any and all:

- (a) payment obligations of each Borrower under the Note, Loan Agreement and other Loan Documents, including without limitation, all required payments of principal of, and interest on, the Note and/or the Loan;
- (b) covenants and agreements contained in the Loan Agreement, the Notes and the other Loan Documents; and
- (c) other indebtedness which this Assignment by its terms secures.

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Capitalized terms used in this Assignment and not otherwise defined are used as defined in the Loan Agreement.

2. **Assignment.** As security for the payment and performance of the Secured Obligations, Assignor hereby absolutely and unconditionally transfers, sets over and assigns to Lender all present and future right, title and interest of Assignor in, to and under the Assigned Rights. This Assignment is intended to be and is an absolute present assignment from Assignor to Lender, it being intended hereby to establish a complete and present transfer of the Assigned Rights. Notwithstanding the foregoing, Lender, at Lender's sole and absolute discretion, may authorize Assignor to use the Assigned Rights during the pendency of this Assignment; provided, however, that: (x) any such authorization from Lender must be in writing for each use of the Assigned Rights by Assignor and (y) in no event shall Assignor be authorized by Lender to use the Assigned Rights in order to record, or authorize the recordation of, any document against the Premises (or any portion thereof), unless such document also contains Lender's original signature and corresponding acknowledgement therein.

3. **THIRD PARTY NOTICE.** ASSIGNOR DESIRES TO ENTER INTO THIS ASSIGNMENT, WHICH IS TO BE RECORDED AT THE REQUIREMENT OF LENDER, IN ORDER FOR THIRD PARTIES TO HAVE NOTICE OF THE EXISTENCE OF THIS ASSIGNMENT AND LENDER'S RIGHTS HEREUNDER, AND SO THAT ASSIGNOR MAY SPECIFICALLY STATE OF RECORD THAT THE ASSIGNMENT IS A BURDEN UPON THE PREMISES AND RUNS WITH TITLE TO THE PREMISES. WITHOUT LIMITING THE FOREGOING, BY RECORDING OF THIS ASSIGNMENT, ALL THIRD PARTIES SHALL BE DEEMED NOTIFIED THAT, IN ORDER TO BE EFFECTIVE, ANY DOCUMENT RECORDED DURING THE PENDENCY OF THIS ASSIGNMENT SHALL ALSO REQUIRE LENDER'S EXECUTION AND ACKNOWLEDGEMENT THEREIN. ACCORDINGLY, IF ANY SUCH DOCUMENT IS RECORDED WITHOUT ALSO CONTAINING LENDER'S EXECUTION AND ACKNOWLEDGMENT THEREIN DURING THE PENDENCY OF THIS ASSIGNMENT, THE RECORDING OF SUCH DOCUMENT SHALL BE DEEMED AN UNLAWFUL CLOUDING OF TITLE TO THE PREMISES UNDER 720 ILCS 5/32-13.

4. **Indemnification of Assignee.** Assignor hereby agrees to indemnify, defend, protect and hold Lender harmless from and against any and all liability, loss, cost, expense or damage (including reasonable attorneys' fees) that Lender may or might incur by reason of this Assignment. This Assignment imposes no liability upon Lender for the operation and maintenance of the Premises before Lender has entered and taken possession of the Premises. The provisions of this Section 4 shall survive repayment of the Secured Obligations and any termination or satisfaction of this Assignment.

5. **No Mortgagee in Possession; No Other Liability.** The acceptance by Lender, with all of the rights, power, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Premises by Lender be deemed or construed to: (a) constitute Lender as a mortgagee in possession nor place any responsibility upon Lender for the care, control, management or repair of the Premises, nor shall it operate to make Lender responsible or liable for any waste committed on the Premises by any occupant or other party, or for any dangerous or defective condition of the Premises, nor thereafter at any time or in any event obligate Lender to

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appear in or defend any action or proceeding relating to the Premises; or (b) require Lender to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to the Premises. Lender shall not be liable in any way for any injury or damage to person or Premises sustained by any person in or about the Premises. The provisions of this Section 5 shall survive repayment of the Secured Obligations and any termination or satisfaction of this Assignment.

6. **Termination of Assignment.** Lender shall terminate and release this Assignment as to all or a portion of the Premises to the same extent as the Mortgage with respect to the Premises is released in whole or in part. Upon any such termination, the Assigned Rights related to the portion of the Premises released from this Assignment as a result thereof shall immediately and automatically revert back to Assignor or any applicable successor(s) or assign(s) of Assignor.

7. **Miscellaneous.**

(a) **Time is of the Essence.** Time is of the essence in this Assignment.

(b) **Captions and Pronouns.** The captions and headings of the various Sections of this Assignment are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable. Any use of the term "including" herein shall mean including without limitation, or including but not limited to, and shall not be deemed to be exclusive or to create an exclusive reference.

(c) **Assignor Not a Joint Venturer or Partner.** Assignor and Lender acknowledge and agree that in no event shall the Lender be deemed to be a partner or joint venturer with Assignor.

(d) **Waiver of Consequential Damages.** Assignor covenants and agrees that in no event shall the Lender be liable for consequential damages, whatever the nature of a failure by the Lender to perform its obligation(s), if any, under the Loan Documents, and Assignor hereby expressly waives all claims that it now or may hereafter have against the Lender for such consequential damages.

(e) **Severability.** Wherever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law. Any term or provision of this Assignment that is invalid or unenforceable in any situation shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation. In the event that any clause, term, or condition of this Assignment shall be held invalid or contrary to law: (i) this Assignment shall remain in full force and effect as to all other clauses, terms, and conditions; (ii) the subject clause, term, or condition shall be revised to the minimum extent necessary to render the modified provision valid, legal and enforceable; and (iii) the remaining provisions of this Assignment shall be amended to the minimum extent

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necessary so as to render the Assignment as a whole most nearly consistent with the parties' intentions in light of the modification or removal of the invalid or illegal provision.

(f) Interpretation of Agreement. Should any provision of this Assignment require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Assignment, including, without limitation, all Exhibits attached to this Assignment.

(g) Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be construed together and shall constitute one instrument. It shall not be necessary in making proof of this Assignment to produce or account for more than one such counterpart. Copies of signatures transmitted by mail, facsimile, email or any other electronic method, shall be considered authentic and binding.

(h) Joint and Several Obligations. If this Assignment is executed by more than one Assignor the obligations and liabilities of Assignor under this Assignment shall be joint and several and shall be binding upon and enforceable against each Assignor and their respective successors and assigns.

(i) Complete Agreement. This Assignment, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Assignor and the Lender.

(j) Successors and Assigns. The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all subsequent owners of the Premises, and all subsequent holders of the Notes and the Assignment, subject in all events to the provisions of the Assignment regarding transfers of the Premises by Assignor.

(k) Notice. Any notice which any party hereto may desire or may be required to give to any other party hereto shall be made in the manner provided in the Loan Agreement.

8. Governing Law.

(a) Substantial Relationship. The parties agree that the State of Illinois has a substantial relationship to the parties and to the underlying transactions embodied by the Loan Documents.

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(b) Governing Law. This Assignment and the obligations of Assignor hereunder that affect the Premises shall be governed by and interpreted and determined in accordance with the laws of the State of Illinois.

9. WAIVER OF JURY TRIAL. ASSIGNOR AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG ASSIGNOR AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP AMONG ASSIGNOR AND LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE LENDER TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

10. ADDITIONAL WAIVERS. ASSIGNOR EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY THE LENDER ON THIS ASSIGNMENT, ANY AND EVERY RIGHT IT MAY HAVE TO: (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING; OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY THE LENDER.

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

ASSIGNOR: ICARUS HOLDINGS CHICAGO, LLC, an Illinois Limited Liability Company

By 

Print Name: DAVID PEZZOLA
Title: MANAGER of ICARUS INVESTMENT GROUP, LLC, MEMBER of ICARUS HOLDINGS CHICAGO, LLC

Property of Cook County Clerk's Office

STATE OF Illinois)
)
) SS
COUNTY OF Cook

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID PEZZOLA personally known to me to be the MANAGER of ICARUS INVESTMENT GROUP, LLC, MEMBER of ICARUS HOLDINGS CHICAGO, LLC, an Illinois Limited Liability Company, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30 day of June, 2020



Notary Public



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EXHIBIT A

LEGAL DESCRIPTION

Legal Description:

LOTS 13 IN BLOCK 2 IN HARRIET FARLIN'S SUBDIVISION OF LOTS 8, 9, AND 10 IN BLOCK 1 IN DYER AND DAVISSON'S SUBDIVISION OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address:

3455 South Prairie Avenue, Chicago, IL 60616

Property Identification Number(s):

17-34-121-032-0000

Property of Cook County Clerk's Office