

# UNOFFICIAL COPY

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Karen A. Yarbrough  
Cook County Clerk  
Date: 02/25/2021 01:52 PM Pg: 1 of 11

This document prepared by  
and after recording return to:

Dmitry Fiksson  
5445 N. Sheridan Road Apt 3105  
Chicago, IL 60640

**Property Address:**  
9606 S. Loomis Street  
Chicago, IL 60643

**PIN:** 25-08-103-076-0000

(The Above Space for Recorder's Use Only)

## ASSIGNMENT OF RENTS AND LEASES

**THIS ASSIGNMENT OF RENTS AND LEASES** (hereinafter, this "Assignment") is made effective as of the **17th day of December, 2020**, by **Hayes Investment Corporation, INC**, an Illinois Corporation created and existing under and by virtue of the Laws of the State of Illinois (the "Borrower"), having an address at **5433 S. Laflin Street, Chicago, IL 60609** to **Dmitry Fiksson** ("Lender"), whose address is **5445 N. Sheridan Road Apt 3105, Chicago, IL 60640**.

## RECITALS

**WHEREAS**, Borrower, has executed and delivered to Lender a Secured Promissory Note dated as of even date herewith (together with all renewals, amendments, supplements, restatements, extensions and modifications thereof and thereto; the "Note"), wherein Borrower promises to pay to the order of Lender the principal amount of **One Hundred Thousand No/100 Dollars (\$100,000.00)** in repayment of a loan in like amount (the "Loan"), together with interest thereon, at the rate of interest and otherwise as set forth in the Note, which Note is due and payable on or before the Maturity Date (as defined in the Note); and

**WHEREAS**, as security for the repayment of the Loan, in addition to this Assignment, there has been executed and delivered to Lender by Borrower a Mortgage (together with all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, the "Mortgage") dated as of even date herewith from

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Borrower to Lender, granting to Lender a first lien on the real estate described in **Exhibit A** attached herein and hereby made a part hereof (the "**Premises**"), as well as certain other loan documents from the Borrower (the Note, the Mortgage, this Assignment, and all other documents or instruments given as security for repayment of or additional evidence of the Loan from the Borrower, whether now or hereafter existing, and all renewals, amendments, supplements, restatements, modifications thereof and thereto are hereinafter referred to collectively as the "**Loan Documents**"); and

**WHEREAS**, as security for the repayment of the Loan, in addition to the other Loan Documents, Lender requires that Borrower execute and deliver to Lender this Assignment.

**WHEREAS**, Borrower warrants and represents that:

**Ownership.** Borrower is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

**Right to Assign.** Borrower has the full right, power and authority to enter into this Assignment and to assign and convey the Rents to Lender.

**No Prior Assignment.** Borrower has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

**No Further Transfer.** Borrower will not sell, assign, encumber, or otherwise dispose of any of Borrower's rights in the Rents except as provided in this Assignment.

## I

### THE GRANT

**NOW, THEREFORE**, as further security for the repayment of the Loan and consideration of the matters recited hereinabove, Borrower does, hereby sell, assign and transfer to Lender all of Borrower's right, title and interest in, to and under, together with all rents, issues, deposits and profits now due and which may hereinafter become due, under or by reason of any lease or any letting of, or any agreement for the use, sale, or occupancy of the Premises or any portion thereof (whether written or verbal) which may have been heretofore or may hereafter be made or agreed to or which may be made or agreed to by Lender under the powers herein granted, including without limitation sale contracts, escrow and other agreements, it being Borrower's intention hereby to establish an absolute transfer and assignment of all such leases, contracts and agreements pertaining thereto (such leases, contracts and agreements being collectively referred to hereinbelow as "agreements" and any such individual lease, contract, escrow or other agreement being referred to hereinbelow as an "agreement"), and all the avails thereof, to Lender; and

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Borrower does hereby irrevocably appoint **Dmitry Fiksson** and/or its true and lawful attorney in its name and stead subject to the limitations set forth in **Paragraph 3.1** hereof (with or without taking possession of the Premises) to rent, lease, let or sell all or any portion of the Premises to any party or parties at such price and upon such terms as Lender in its sole discretion may determine, and to collect all of such rents, issues, deposits, profits and avails now due or that may hereafter become due under any and all of such agreements or other tenancies now or hereafter existing on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability, and rights of recourse and indemnity as Lender would have upon taking possession of the Premises pursuant to the provisions set forth hereinbelow.

This Assignment confers upon Lender a power coupled with an interest and it cannot be revoked by Borrower.

## II GENERAL AGREEMENTS

**2.1 Available Rents.** Borrower represents and agrees that it will not accept rent for right of future possession paid by any person in possession of any portion of the Premises in excess of two instalments thereof paid in advance and that no payment of rents to become due for any portion of the Premises has been or will be waived, conceded, released, reduced, discounted, or otherwise discharged or compromised by Borrower which would have a material adverse effect on the Loan without the prior written consent of Lender, not to be unreasonably withheld or delayed. Borrower waives any right of set-off against any person in possession of any portion of the Premises. Borrower agrees that it will not assign any of such rents, issues, profits, deposits or avails, except to a purchaser or grantee of the Premises.

**2.2 License to Collect Rents.** Until a Default (as defined in the Mortgage) has occurred and is continuing, Borrower shall have a license to collect all rentals and other income due with respect to the Premises which license may be terminated by Lender after a Default has occurred and Lender elects to exercise its rights pursuant to Section 4.1 of this Assignment.

**2.3 Management of Premises.** At all times while Lender is not in actual possession of the Premises, Borrower shall manage the Premises, or cause the Premises to be managed, in accordance with sound business practices.

**2.4 Future Assignments.** Borrower further agrees to assign and transfer to Lender all future leases and agreements pertaining to all or any portion of the Premises and to execute and deliver to Lender, immediately upon demand of Lender, all such further assurances and assignments pertaining to the Premises as Lender may from time to time require.

**2.5 Performance of Lease Obligations.** Borrower shall, at its own cost: (i) at all times perform and observe all of the material covenants, conditions and agreements of the lessor under the terms of any or all leases or similar agreements affecting all or any

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part of the Premises; (ii) at all times enforce and secure the performance and observance of all of the material covenants, conditions and agreements of the lessees under the terms of any or all of said leases or other agreements; (iii) appear in and defend any action or other proceeding arising out of or in any manner connected with said leases and other agreements, and to pay any and all costs of Lender incurred by reason of or in connection with said proceedings, including reasonable attorneys' fees and court costs, and (iv) promptly furnish Lender with copies of any notices of default either sent or received by Borrower under the terms of or pursuant to any of said leases or other agreements.

**2.6 Tenant Certificates.** Borrower further agrees to furnish Lender, within ten (10) days of Lender's request, with a written statement containing the names, spaces and rentals of all lessees of the Premises or any part thereof, and to exercise, within ten (10) days of Lender's request, any rights of Borrower to demand from any lessee a certificate regarding the status of said lessee's lease as may be required to be given by such lessee pursuant to its lease.

## III

### DEFAULTS AND REMEDIES

**3.1 Exercise of Rights.** Although it is the intention of Borrower and Lender that this Assignment be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Lender shall not exercise any of the rights and powers conferred upon it herein unless and until a "Default" (as defined in the Mortgage) has occurred in the payment of interest or principal due under the Note or in the performance or observance of any of the other provisions of the Note, the Mortgage, this Assignment or any of the other Loan Documents and such Default has not been cured within any applicable notice or cure period; provided, however, that nothing contained herein shall be deemed to affect or impair any rights Lender may have under the Note or any of the other Loan Documents.

**3.2 Application of Rents.** Lender, in the exercise of the rights and powers conferred upon it herein, shall have full power to use and apply the rents, issues, deposits, profits and avails of the Premises to the payment of or on account of the following, in such order as Lender may in its sole discretion determine:

(a) operating expenses of the Premises (including without limitation all costs of management, sale and leasing thereof, which shall include reasonable compensation to Lender and its agents, if management be delegated thereto, reasonable attorneys' fees and costs, and lease or sale commissions and other compensation and expenses of seeking and procuring tenants or purchasers and entering into leases or sales), establishing any claims for damages, and premiums on Insurance authorized hereinabove;

(b) taxes, special assessments, water and sewer charges on the Premises now or that may hereafter become due;

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(c) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Premises;

(d) any indebtedness secured by the Mortgage, or any deficiency that may result from any foreclosure sale pursuant thereto; and

(e) any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

**3.3 Authorization to Lessees.** Borrower does further specifically authorize and instruct each and every present and future lessee or purchaser of all or any portion of the Premises to pay all unpaid rentals or deposits agreed upon in any lease or agreement pertaining to the Premises to Lender upon receipt of demand from Lender to pay the same without any further notice or authorization by Borrower, and Borrower hereby waives any rights or claims it may have against any lessee by reason of such payments to Lender.

**3.4 Right of Possession.** In the event Lender is authorized under Paragraph 3.1 hereof to exercise its rights hereunder (whether before or after declaration of the entire principal amount secured hereby to be immediately due, before or after institution of legal proceedings to foreclose the lien of the Mortgage, or before or after sale thereunder), Borrower agrees, immediately upon demand of Lender, to surrender to Lender and Lender (personally or by its agents or attorneys) shall be entitled to take actual possession of the Premises or any portion thereof, and in any such case Lender in its sole discretion may enter upon and take and maintain possession of all or any portion of the Premises, together with all the documents, books records, papers and accounts of Borrower or the then owner of the Premises relating thereto may exclude Borrower and its employees and agents wholly therefrom and may, as attorney-in-fact or agent of Borrower, or in its own name as Lender and under the powers herein granted, hold, operate, manage and control the Premises and conduct business thereon either personally or by its agents, with full power to use such measures, legal or equitable, as in its sole discretion may be deemed proper or necessary to enforce the payment of security of such rents, issues, deposits, profits and avails of the Premises (including without limitation actions for the recovery of rent, actions in forcible detainer and actions in distress for rent). Borrower hereby grants Lender full power and authority to exercise each and every one of the rights, privileges and powers herein granted at any and all times thereafter, without notice to Borrower, and with full power to cancel or terminate any lease (and any sublease) or agreement pertaining to the Premises or any cause or on any ground that would entitle Borrower to cancel the same, to disaffirm any such lease (and any sublease) or agreement made subsequent to the Mortgage or subordinated to the liens thereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises that Lender in its sole discretion deems appropriate, to insure (and reinsure) the same for all risks incidental to Lender's possession, operation and management thereof, and to receive all such rents, issues, deposits, profits and avails. Borrower further agrees to cooperate and facilitate Lender's collection of said funds and, upon Lender's request, shall promptly execute written notice to all lessees to make all rental payments to Lender.

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**3.5 Indemnity.** Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligations, duty or liability under any leases or agreements pertaining to the Premises, and Borrower shall and does hereby agree to indemnify and hold Lender harmless from and against any and all liability, loss and damage that Lender may or might incur under any such leases or agreements or under or by reason of the assignment thereof, as well as any and all claims and demands whatsoever which be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part, to perform or discharge any of the terms, covenants or conditions contained in such leases or agreements, except if any of the aforementioned arise solely out of Lender's gross negligence or willful misconduct. Should Lender incur any such liability, loss or damage under such leases or agreements, or under or by reason of the assignment thereof, or in the defense of any claims or demands relating thereto, Borrower shall reimburse Lender for the amount thereof (including without limitation reasonable attorneys' fees and expenses and court costs) immediately upon demand.

**3.6 Limitation of Liability.** Nothing herein contained shall be construed as making or constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions set forth herein. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

**3.7 Nature of Remedies.** It is understood and agreed that the provisions set forth herein shall be deemed a special remedy given to Lender and shall not be deemed exclusive of any of the remedies granted in the Note, the Mortgage or any of the other Loan Documents, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted.

**3.8 Continual Effectiveness.** It is expressly understood that no judgment or decree entered on any debt secured or intended to be secured by any of the other Loan Documents shall operate to abrogate or lessen the effect of this Assignment, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness secured thereby, in whatever form such indebtedness may be, and until the indebtedness secured thereby shall have been paid in full and all bills incurred by virtue of the authority contained herein have been fully paid out of the rents, issues, deposits, profits and avails of the Premises, by Borrower, or by any guarantor of payment of the Note, or until such time as this Assignment may be voluntarily released. This Assignment shall also remain in full force and effect during the pendency of any foreclosure proceedings pursuant to the Mortgage, both before and after sale, until the issuance of a deed pursuant to a foreclosure decree, unless the indebtedness secured by the Mortgage is fully satisfied before the expiration of any period of redemption.

## IV

### MISCELLANEOUS

**4.1 Notices.** Any notice that Lender or Borrower may desire or be required to give to the other shall be in writing and shall be mailed or delivered in accordance with

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the terms of the Mortgage to the intended recipient thereof at its address hereinabove set forth as such intended recipient may, from time to time, by notice in writing, designate to the sender pursuant hereof. Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Assignment is not required to be given.

**4.2 Governing Law; Litigation.** This Assignment shall be construed and enforced according to the laws of the State of Illinois. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS ASSIGNMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH 4.2.

**4.3 Rights and Remedies.** All rights and remedies set forth in this Assignment are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment thereon, issue execution therefor and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby. Unless expressly provided in this Assignment to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein regarding any breach or default by any other interested party referred to herein, in the performance by such other party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or waiver of the performance by such Party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other obligations hereunder.

**4.4 Interpretation.** If a court of competent jurisdiction finds any provision of this Assignment to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Assignment. Unless otherwise provided or required by law, the illegality or invalidity of any provision of this Assignment shall not affect the legality validity or enforceability of any other provision of this Assignment. The headings of sections and paragraphs in this Assignment are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof. As used in this Assignment, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words "including", "include" or "includes"

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are used in this Assignment, they should be interpreted in a non-exclusive manner as though the words "without limitation," immediately followed the same.

**4.5 Successors and Assigns.** This Assignment and all provisions hereof shall be binding upon Borrower, its successors, assigns and legal representatives, and all other persons or entities claiming under or through Borrower and the word "Borrower," when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Assignment. The word "Lender," when used herein, shall include Lender's successors, assigns and legal representatives, including all other holders, from time to time, of the Note. This Assignment shall run with the land constituting the Premises.

**4.6 Jury Waiver.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS ASSIGNMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF BORROWER AND LENDER WITH RESPECT TO THIS ASSIGNMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT BORROWER OR LENDER MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF BORROWER AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

**4.7 CROSS-COLLATERALIZATION.** In addition to the Note, this Assignment secures all obligations, debts and liabilities, plus interest thereon, of the Borrower to the Lender, or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Borrower may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable

**4.8. WAIVER.** No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Lender. No delay or omission on the part of the Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a

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provision of this Assignment shall not prejudice or constitute a waiver of any of Lender's rights or of any of Borrower's obligations as to any future transactions.

#### **4.9. ENFORCEMENT COSTS. If:**

(i) this Assignment is placed in the hands of an attorney (including Lender's in-house counsel) for collection or enforcement or is collected or enforced through any legal proceeding;

(ii) any attorney (including Lender's in-house counsel) is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Assignment;

then Borrower shall pay to Lender upon demand all reasonable attorney fees, costs and expenses, including without limitation, court costs, filing fees, recording costs, and all other costs and expenses incurred in connection therewith (all of which are referred to herein as "Enforcement Costs"), in addition to all other amounts due hereunder.

(signature page to follow)

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IN WITNESS WHEREOF, the Mortgagor has caused this Assignment of Rents to be duly signed, sealed and delivered, jointly and severally, effective as of the day and year above written.

**BORROWER:**

**Jeffrey Hayes**

Managing Member of Hayes Investment Corporation, INC

By: Jeffrey Hayes

State of IL )

) SS

County of Cook )

I, Lori Palmer, a Notary Public in and for said County, in the State of Illinois, DO HEREBY CERTIFY that **Jeffrey Hayes**, who is personally known to me or proved to me on the basis of satisfactory evidence to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that **Jeffrey Hayes**; and that he/she signed, sealed and delivered the Mortgage for and on behalf of said limited liability company, as a voluntary act, for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this 17 day of December, 2020



Lori Palmer  
Notary Public

My commission expires 2/2/21

UPON RECORDATION RETURN TO:

**Dmitry Fiksson**

5445 N. Sheridan Road Apt 3105

Chicago, IL 60640

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## EXHIBIT A

### LEGAL DESCRIPTION

THE SOUTH 1/3 OF LOT 28 AND ALL OF LOT 29 IN BLOCK 1 IN MARIA E. HILLARD'S SUBDIVISION OF LOTS 1,2,3,4,5,6,7,8,9 AND 33,34,35,36,37,38,39,40,41,42,43, AND THE NORTH 34 FEET OF LOTS 10 AND 32 IN BLOCK 3 IN HILLARD AND DOBINS FIRST ADDITION TO WASHINGTON HEIGHTS, IN SECTION 8, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Commonly known as 9606 S. LOOMIS STREET, CHICAGO, IL 60643

Property Index No. 25-08-103-076-0000

Property of Cook County Clerk's Office