

UNOFFICIAL COPY

CCHI2105261LD DG 4 of 5
PREPARED BY AND WHEN
RECORDED RETURN TO:

Doc#: 2206039212 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 03/01/2022 10:47 AM Pg: 1 of 10

Eugene S. Kraus, Esq.
Scott & Kraus, LLC
150 South Wacker Drive, Suite 2900
Chicago, Illinois 60606

Property Address:

435-449 West Madison Street
Oak Park, Illinois 60302

Parcel Identification Number:
16-18-206-001-0000
16-18-206-002-0000

The above space for Recorder's use only.

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of February 24, 2022 by and from **OAK PARK LAND I, LLC**, a Delaware limited liability company (the "Borrower"), to and for the benefit of **PARKWAY BANK AND TRUST COMPANY**, a Illinois state chartered banking institution, its successors and assigns (the "Lender").

RECITALS:

A. Borrower is the owner of a leasehold estate for certain real property located in Cook County, State of Illinois more particularly described in Exhibit A attached hereto (the "Property").

B. Lender has agreed to make a loan to Borrower in the maximum principal amount of Twelve Million Five Hundred Fifty-Two Thousand Four Hundred Ninety-Eight and No/100 Dollars (\$12,552,498.00) (the "Loan") pursuant to that certain Construction Loan Agreement of even date herewith by and between Borrower and Lender (the "Loan Agreement"). The Loan is evidenced by a Promissory Note of even date herewith from Borrower to Lender in the original principal amount of Twelve Million Five Hundred Fifty-Two Thousand Four Hundred Ninety-Eight and No/100 Dollars (\$12,552,498.00) (the "Note").

C. The Loan is secured by: (i) that certain Construction Leasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents of even date herewith on the Property (the "Mortgage"), and (ii) certain other documents evidencing or securing the Loan (together with the Note, the Loan Agreement, the Mortgage and all other documents evidencing or securing the Loan, the "Loan Documents").

UNOFFICIAL COPY

D. The obligations of Borrower under the Loan Agreement, the Note, the Mortgage, this Assignment, and the other Loan Documents are collectively referred to herein as the "Obligations".

E. Borrower is required as a condition to the making of the Loan to transfer and assign to Lender all of Borrower's right, title and interest in, to and under the Leases and Rents (as defined below).

AGREEMENT:

NOW, THEREFORE, as an inducement for the making of the Loan, Borrower hereby represents, warrants, covenants and agrees as follows:

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

"Event of Default" means an Event of Default, as defined in the Loan Agreement.

"Leases" means all leases (other than the Ground Lease, as defined in the Loan Agreement), subleases, rental contracts, occupancy agreements, licenses and other arrangements (in each case whether existing now or in the future) pursuant to which any person or entity occupies or has the right to occupy or use any portion of the Property, and includes (a) any supplement, modification, amendment, renewal or extension of any Lease and (b) any security or guaranty for any Lease.

"Lessees" means the lessees under the Leases or any subtenants or occupants of the Property.

"Rents" means all rents, issues, income, revenues, royalties, profits and other amounts now or in the future payable under any of the Leases, including those past due and unpaid.

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 Obligations, Borrower hereby absolutely and unconditionally transfers, sets over and assigns to Lender all present and future right, title and interest of Borrower in, to and under the Leases and the Rents, together with all advance payments, security deposits and other amounts paid or payable to or deposited with Borrower under any of the Leases and all other rights and interests of Borrower under or in respect of any of the Leases. This Assignment is intended to be and is an absolute present assignment from Borrower to Lender, it being intended hereby to establish a complete and present transfer of all Leases and Rents with the right, but without the obligation, to collect all Rents.

3. **License**. Except as hereinafter set forth, Borrower shall have a license to collect the Rents accruing under the Leases as they become due (the "License"), but not in advance, and to enforce the Leases. Subject to Section 8.1 hereof, the License shall automatically terminate upon the occurrence and during the continuance of an Event of Default.

UNOFFICIAL COPY

4. **Representations and Warranties.** Borrower hereby represents and warrants to Lender, to the extent applicable, that: (a) Borrower is the absolute owner of the entire lessor's interest in each of the Leases, with absolute right and title to assign the Leases and the Rents; (b) to Borrower's knowledge, the Leases are valid, enforceable and in full force and effect and have not been modified, amended or terminated; (c) there are no outstanding assignments or pledges of the Leases or of the Rents and no other party has any right, title or interest in the Leases or the Rents; (d) there are no existing defaults under the provisions of the Leases on the part of the lessor and to Borrower's knowledge, there are no existing defaults under the provisions of the Leases on the part of the Lessees thereunder; (e) to Borrower's knowledge, no Lessee has any defense, set-off or counterclaim against Borrower; (f) except as disclosed in writing to Lender, no Lessee has any purchase option or first refusal right or any right or option for additional space with respect to the Property; (g) Borrower has not accepted prepayments of installments of rent or any other charges under any Lease for a period of more than one (1) month in advance; and (h) to Borrower's knowledge, except as otherwise disclosed to Lender in writing, all work required to be performed by Borrower, as landlord, as of the date hereof under any Lease has been completed in accordance with the provisions of the Lease.

5. **Covenants of Borrower.**

5.1 **New Leases and Lease Terminations and Modifications.** Borrower shall not (a) except in the ordinary course of business, enter into, cancel, surrender or terminate (except as a result of a material default by the Lessees thereunder and failure of such Lessee to cure the default within the applicable time periods set forth in the Lease), amend or modify any Lease, or (b) make any subsequent assignment or pledge of a Lease, without the prior written consent of Lender. Any attempt to do any of the foregoing without the prior written consent of Lender shall be null and void;

5.2 **Performance under Leases.** The Borrower shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and the Borrower shall not do or suffer to be done anything to impair the security thereof;

5.3 **Collection of Rents.** The Borrower shall not collect any of the Rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

5.4 **Further Assignment.** The Borrower shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all Rents, except as specifically permitted by the Loan Documents;

5.5 **Reserved.**

5.6 **Reserved;**

5.7 **Defending Actions.** The Borrower shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any Lessee or guarantor thereunder, and shall pay all costs and expenses of the Lender, including court costs

UNOFFICIAL COPY

and reasonable attorneys' fees, in any such action or proceeding in which the Lender may appear;

5.8 **Enforcement.** The Borrower shall, in the ordinary course of its business and in its reasonable business judgment, enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the Lessees and guarantors thereunder;

5.9 **Reserved;**

5.10 **Subordination.** The Borrower shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent; and

5.11 **Reserved.**

6. **Cancellation of Lease.** In the event that any Lease permits cancellation thereof on payment of consideration and the privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Lender, and if an Event of Default has occurred, shall be applied, at the election of Lender, to the Obligations in whatever order Lender shall choose in its discretion or shall be held in trust by Lender as further security, without interest, for the payment of the Obligations. Prior to such Event of Default, Borrower may use and apply such termination payments to expenses of the Property.

7. **Reserved.**

8. **Default of Borrower.**

8.1 **Remedies.** Upon the occurrence and during the continuance of an Event of Default, Borrower's License to collect Rents shall immediately cease and terminate, unless Lender shall otherwise notify Borrower in writing that such License is not being terminated by Lender. Lender shall thereupon be authorized, to the extent permitted by law, at its option to enter and take possession of all or part of the Property, in person or by agent, employee or court appointed receiver, and to perform all acts necessary for the operation and maintenance of the Property in the same manner and to the same extent that Borrower might reasonably so act. In furtherance thereof, Lender shall be authorized, but under no obligation, to collect the Rents arising from the Leases, and to enforce performance of any other terms of the Leases including, but not limited to, Borrower's rights to fix or modify rents, sue for possession of the leased premises, relet all or part of the leased premises, and collect all Rents under such new Leases. Borrower shall also pay to Lender, promptly upon and during the continuance of any Event of Default: (a) all rent prepayments and security or other deposits held by Borrower pursuant to any Lease assigned hereunder; and (b) all charges for services or facilities or for escalations which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default. Lender will, after payment of all proper costs, charges and any damages, apply the net amount of such Rents to the Obligations. Lender shall have sole discretion as to the manner in which such Rents are to be applied, the reasonableness of the costs to which they are applied, and the items that will be credited thereby.

UNOFFICIAL COPY

8.2 Notice to Lessee. Borrower hereby irrevocably authorizes each Lessee, upon demand and notice from Lender of the occurrence of an Event of Default, and during the continuance thereof, to pay all Rents under the Leases to Lender. Borrower agrees that each Lessee shall have the right to rely upon any notice from Lender directing such Lessee to pay all Rents to Lender, without any obligation to inquire as to the actual existence of an Event of Default, notwithstanding any notice from or claim of Borrower to the contrary. Borrower shall have no claim against any Lessee for any Rents paid by Lessee to Lender.

8.3 Assignment of Defaulting Borrower's Interest in Lease. Lender shall have the right to assign Borrower's right, title and interest in and to the Leases to any person acquiring title to the Property through foreclosure or otherwise. Such assignee shall not be liable to account to Borrower for the Rents thereafter accruing.

8.4 No Waiver. Lender's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Lender's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Lender has under the Loan Agreement, the Note, the Mortgage and any of the other Loan Documents. Lender's rights and remedies hereunder may be exercised as often as Lender deems expedient.

8.5 Costs and Expenses. The cost and expenses (including any receiver's fees and fees) incurred by Lender pursuant to the powers contained in this Assignment shall be immediately reimbursed by Borrower to Lender on demand, shall be secured hereby and, if not paid by Borrower, shall bear interest from the date due at the Default Rate. Lender shall not be liable to account to Borrower for any action taken pursuant hereto, other than to account for any Rents actually received by Lender.

9. Indemnification of Lender. Borrower hereby agrees to indemnify, defend, protect and hold Lender harmless from and against any and all liability, loss, cost, expense or damage (including reasonable attorney fees) that Lender may or might incur under the Leases or by reason of this Assignment. Such indemnification shall also cover any and all claims and demands that may be asserted against Lender under the Leases or this Assignment. Nothing in this section shall be construed to bind Lender to the performance of any Lease provisions, or to otherwise impose any liability upon Lender, including, without limitation, any liability under covenants of quiet enjoyment in the Leases in the event that any Lessee shall have been joined as party defendant in any action to foreclose the Mortgage and shall have been barred thereby of all right, title, interest, and equity of redemption in the Property. This Assignment imposes no liability upon Lender for the operation and maintenance of the Property or for carrying out the terms of any Lease before Lender has entered and taken possession of the Property. Any loss or liability incurred by Lender by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Lender's request, be immediately reimbursed by Borrower. Such reimbursement shall include interest at the Default Rate provided in the Note, costs, expenses and reasonable attorney fees. Lender may, upon entry and taking of possession, collect the Rents and apply them to reimbursement for any such loss or liability. The provisions of this Section 9 shall survive repayment of the Obligations and any termination or satisfaction of this Assignment.

UNOFFICIAL COPY

10. **Additions to, Changes in and Replacement of Obligations.** Lender may take security in addition to the security already given Lender for the payment of the Obligations or release such other security, and may release any party primarily or secondarily liable on the Obligations, may grant or make extensions, renewals, modifications or indulgences with respect to the Obligations or the Mortgage and replacements thereof, which replacements of the Obligations or the Mortgage may be on the same terms as, or on terms different from, the present terms of the Obligations or the Mortgage, and may apply any other security held by it to the satisfaction of the Obligations, without prejudice to any of its rights hereunder.

11. **Power of Attorney.** In furtherance of the purposes of this Assignment, Borrower hereby appoints Lender as Borrower's attorney-in-fact, with full authority in the place of Borrower, at the option of Lender at any time after the occurrence and during the continuance of an Event of Default, and in the name of Borrower or Lender, to (a) collect, demand and receive the Rents and other amounts payable under any Lease, (b) bring suit and take other action to enforce the Leases, (c) enforce, supplement, modify, amend, renew, extend, terminate and otherwise administer the Leases and deal with Lessees in relation to the Leases, (d) give notices, receipts, releases and satisfactions with respect to the Leases and the Rents and other amounts payable under any Lease, and (e) take such other action as Lender may reasonably deem necessary or advisable in connection with the exercise of any right or remedy or any other action taken by Lender under this Assignment

12. **No Mortgagee in Possession; No Other Liability.** The acceptance by Lender of this Assignment, with all of the rights, power, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Property 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 Property, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by any Lessee, occupant or other party, or for any dangerous or defective condition of the Property, nor thereafter at any time or in any event obligate Lender to appear in or defend any action or proceeding relating to the Leases or to the Property; (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 under the Leases; or (c) require Lender to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by Lessees and not assigned and delivered to Lender. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person in or about the Property.

13. **Termination of Assignment.** Lender shall terminate and release this Assignment as to all or a portion of the Property to the same extent as the Mortgage is released in whole or in part.

14. **Miscellaneous.**

14.1 **Severability.** If any term of this Assignment or the application hereof to any person or set of circumstances, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such provision or part thereof to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each

UNOFFICIAL COPY

term of this Assignment shall be valid and enforceable to the fullest extent consistent with applicable law.

14.2 Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties only and are not part of this Assignment.

14.3 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.

14.4 Notices. All notices or other written communications hereunder shall be given in the manner set forth in the Loan Agreement.

14.5 Modification. No cancellation of this Assignment or any part hereof shall be enforceable without Lender's prior written consent. This Assignment shall not be amended, modified or supplemented without the written agreement of Borrower and Lender at the time of such amendment, modification or supplement.

14.6 Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the state in which the Property is located.

14.7 Successors and Assigns; Gender; Joint and Several Liability. 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 Property, and all subsequent holders of the Note and the Mortgage, subject in all events to the provisions of the Mortgage regarding transfers of the Property by Borrower. In this Assignment, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. If there is more than one (1) party constituting Borrower, all obligations of each Borrower hereunder shall be joint and several.

14.8 Reserved.

15. **WAIVER OF JURY TRIAL**. BORROWER AND LENDER, BY ITS ACCEPTANCE HEREOF, 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 BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

16. **JURISDICTION AND VENUE**. BORROWER AND LENDER HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER OR LENDER, AS APPLICABLE, AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS

UNOFFICIAL COPY

ASSIGNMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. BORROWER AND LENDER HEREBY EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER OR BORROWER, AS APPLICABLE, IN ANY OF SUCH COURTS, AND BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THE MORTGAGE. BORROWER AND LENDER WAIVE ANY CLAIM THAT COOK COUNTY, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY LENDER AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The Leasehold estate, created by Memorandum of Lease, executed by: Oak Park Land LLC, a Delaware limited liability company as lessor, and Oak Park Land I, LLC, a Delaware limited liability company as lessee, dated June 14, 2021, which lease was recorded June 21, 2021 as document 2117245115, which lease demises the land for a term of years beginning June 14, 2021 and ending June 13, 2050. Leasing the following described land:

PARCEL 1:

LOT 25 (EXCEPT THE WEST 51 1/2 FEET) IN BLOCK 8 IN S. T. GUNDERSON AND SON'S ADDITION TO OAK PARK, BEING A SUBDIVISION OF THE EAST 1/2 OF LOT 4 IN THE SUBDIVISION OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE WEST 51 1/2 FEET OF LOT 25 IN BLOCK 8 IN S. T. GUNDERSON AND SON'S ADDITION TO OAK PARK, BEING A SUBDIVISION OF THE EAST 1/2 OF LOT 4 IN THE SUBDIVISION OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs:

16-18-206-001-0000

16-18-206-002-0000

Commonly Known as:

435-449 West Madison Street

Oak Park, Illinois 60302