

UNOFFICIAL COPY

Doc#. 2208818084 Fee: \$98.00

Karen A. Yarbrough

Cook County Clerk

Date: 03/29/2022 07:15 AM Pg: 1 of 11

PREPARED BY
RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO

22081 669002 PK 3/3

GARFIELD & MEREL, LTD.
TWO PRUDENTIAL PLAZA,
180 N. STETSON
SUITE 1300
Chicago, IL 60601

COMMON ADDRESS:

Address: 805 W. Touhy, Park Ridge, Illinois 60068

PIN: 09-35-201-002-0000

ASSIGNMENT OF RENTS AND LEASES

805 W. Touhy, LLC
Assignor

Schaumburg Bank & Trust, N.A.,
Assignee

UNOFFICIAL COPY

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES made as of the 24th day of March, 2022, by and between

805 W. Touhy, LLC,
an Illinois limited liability company ("Assignor")
805 W. Touhy
Park Ridge, Illinois 60068

and

SCHAUMBURG BANK & TRUST, N.A. ("Assignee"),
9701 W. Higgins
Rosemont, Illinois 60018

FOR VALUE RECEIVED, Assignor hereby grants, transfers, assigns and sets over to Assignee all of the right, title and interest of Assignor (i) in and to all of the rents, issues and profits, including but not limited to earnings, deposits, escrows or security deposits due Assignor by reason of any lease ("Lease"), of and from the real estate legally described in Exhibit A attached hereto and made a part hereof (herein called the "Premises"), (ii) in and to all leases, written or oral, possession or occupancy agreements, if any, and any renewals or extensions (herein generally called "Leases") now or hereafter existing on all or any part of the Premises, and (iii) rights and claims for damages against tenants arising out of defaults under Leases, including rights to compensation with respect to rejected Leases pursuant to applicable or replacement sections of the Bankruptcy Code of the United States.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IT IS AGREED AS FOLLOWS:

1. Assignor hereby grants, transfers and assigns to Assignee all of the right, title and interest of Assignor in and to the said Leases and in and to the right to the use and possession of the Premises, including any and all of the rents, issues, profits and avails now due, which may hereafter become due under and by virtue of any lease (including the existing Leases, future Leases and occupancy agreements) whether written or oral, or any letting of or any agreement for the use or occupancy of any part of the Premises which may have been heretofore or may be hereafter made or agreed to between Assignor or any other present, prior or subsequent owner of the Premises or any interest therein or which may be made or agreed to by the Assignee, its successors or assigns under the powers herein granted, and any tenant or occupant of all or any part of the Premises, for the purpose of securing:

UNOFFICIAL COPY

- a) Payment of the indebtedness evidenced by that certain Note executed by Assignor and payable to Assignee in the amount of \$4,000,000.00 dated the same date hereof, (herein called the "Note") and any extension, modifications or renewals of the Note and secured in part by a Mortgage (herein generally called the "Mortgage") of the same date, to Assignee, as mortgagee, upon the Premises, which Mortgage was duly recorded in the Office of the Recorder of Deeds of Cook County, which Mortgage and Note are held by or for the benefit of the Assignee.
- b) All other documents delivered or given to Assignee as further security or consideration for the Note, including this Assignment of Rents and Leases.
- c) Payment of all other sums with interest thereon becoming due and payable to the Assignee hereunder or under the Note and Mortgage and any other Mortgages granted as security for the Note.
- d) Performance and discharge of each and every term, provision, condition, obligation, covenant and agreement of Assignor herein contained, in the Note or in the Mortgage or in any other Mortgage granted as security for the Note.

For purposes herein, the Note, Mortgage and all other documents securing the Note are hereinafter collectively referred to as the "Loan Documents."

2. Assignor represents and agrees that (a) Assignor or its beneficiary or its agents is lessor under any Leases for the Premises or any portions thereof; (b) to Assignor's best knowledge (as of the date hereof), there are no defaults (or matters that with the passage of time or notice, or both, would constitute defaults) under any Lease; (c) Assignor is entitled to receive all of the rents, issues and profits and to enjoy all the other rights and benefits mentioned herein and assigned hereby; (d) the aforementioned rents, issues, profits and rights have not been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time until the Note is paid in full be sold, assigned, transferred or set over by the Assignor or by any person or persons whomsoever except subject to this Assignment; (e) that the Assignor has good right to sell, assign, transfer and set over the same and to grant to and confer upon the Assignee the rights, interest, powers and/or authorities herein granted and conferred; and (f) no rents or other sums due under any Leases have been prepaid, for more than sixty (60) days except for applicable security deposits.

3. Assignor will, from time to time, execute upon request of the Assignee, any and all instruments requested by the Assignee to carry this instrument into effect or to accomplish any other purposes deemed by the Assignee to be necessary or appropriate in connection with this Assignment of Rents and Leases or the Premises including, without limitation, specific assignments of any lease or agreement relating to use or occupancy of the Premises or any part thereof now or hereafter in effect and not specifically defined herein as a Lease, as may be necessary or desirable, in the sole opinion of Assignee.

4. This Assignment of Rents and Leases shall in no way operate to restrict or prevent the Assignee from pursuing any remedy which it now or hereafter may have because of any present or

UNOFFICIAL COPY

future breach of the terms or conditions of the Loan Documents.

5. Assignee shall not in any way be responsible for failure to do any or all of the things for which rights, interests, powers and/or authority are herein granted it; and the Assignee shall not be responsible for or liable upon any of the agreements, undertakings or obligations imposed upon the lessor under said Leases or other agreement with respect to the Premises.

6. Assignee shall be accountable only for such cash as it actually receives under the terms hereof.

7. Failure of the Assignee to do any of the things or exercise any of the rights, interests, powers and/or authorities hereunder shall not be construed to be a waiver of any of the rights, interests, powers or authorities hereby assigned and granted to the Assignee.

8. Assignee shall execute such further assignments of this Assignment of Rents and Leases and any and all rights accruing thereunder to any subsequent assignee and holder of the Loan Documents for which this Assignment of Rents and Leases is given as additional security as may be deemed advisable by any such subsequent assignee or holder.

9. It is understood that the assignment of said Leases and of the rents, issues and profits of and from the Premises as effected hereby is an absolute assignment which is effective as of the date hereof and, upon demand by Assignee after occurrence of an event of default under the Loan Documents ("Event of Default") to the lessee under any Leases or to any person liable for any of the rents, issues and profits of and from the Premises or any part thereof, such lessee or person liable for any of such rents, issues and profits shall be, and is hereby irrevocably authorized and directed to, pay to or upon the order of Assignee, and without inquiry of any nature, all rents then owing or thereafter accruing under said Leases or any other instrument or agreement, oral or written, giving rights to an obligation to pay rents, issues or profits in connection with the Premises.

10. So long as there shall exist no Event of Default by Assignor under the Loan Documents, Assignee shall not demand from lessees under said Leases or other persons liable therefor, any of the rents, issues and profits hereby assigned but shall permit the Assignor to collect, upon but not prior to accrual (except as otherwise set forth herein), all such rents, issues and profits from the Premises and the said Leases and to retain and enjoy the same and all lessees under any Leases and all other persons liable for rents, issues and profits of and from the Premises shall comply with any demands for rents made by Assignee pursuant to the provisions of this Assignment of Rents and Leases without questioning the validity of actions or demands of Assignee. The Assignor hereby agrees to defend, indemnify and hold such lessees or other persons harmless from all loss, costs, damages, suits, or claims resulting from the payment of rents to Assignee in compliance with any demand therefore made by the Assignee pursuant to this Assignment.

11. Upon or at any time after an Event of Default under the Loan Documents, the Assignee may, at Assignee's option, before or after the indebtedness evidenced by the Note is declared due in accordance with its terms and before or after any required cure periods, at Assignee's option, without notice, either in person or by agent, and with or without bringing any action or proceedings, or by a

UNOFFICIAL COPY

receiver to be appointed by a court, may enter upon, take possession of, and manage and operate the Premises, including possession of documents and books and records relating thereto, and each and every part and parcel thereof; and in connection therewith, the Assignee may make, cancel, enforce or modify Leases, fix or modify rents, repair, maintain and improve the Premises, employ contractors, subcontractors and workmen in and about the Premises, pay liens on the Premises at its option, obtain and evict tenants, in its own name sue for or otherwise collect or reserve any and all rents, issues and profits, including those past due and unpaid, employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of Assignee's rights hereunder and pay the reasonable fees and expenses thereof, and otherwise do and perform any and all acts and things which Assignee may deem necessary or appropriate in and about the Premises for the protection thereof or the enforcement of Assignee's rights hereunder or under the Loan Documents; and any and all amounts expended by Assignee in connection with the foregoing shall constitute so much additional indebtedness secured hereby and by the Loan Documents. Assignee shall apply any monies collected by Assignee, first to the operation of the Premises as aforesaid, less costs and expenses incurred, including reasonable attorneys' fees and the balance upon any indebtedness secured hereby in such order and manner as Assignee may determine. The entering upon and taking possession of the Premises, the collection of rents, issues and profits, the exercise of any of the rights herein above specified and the application of collections, as aforesaid, shall not cure, waive, modify or affect any default hereunder or under the Loan Documents, nor shall it act to cause the Assignee to become a Mortgagee in Possession. At Assignee's option, upon taking possession, it may exclude Assignor and its agents from the Premises. The manner of application of such sums and the items which shall be credited or paid out of same shall be within the sole discretion of Assignee and nothing herein contained shall obligate Assignee to use any such sums for a purpose other than reducing the indebtedness hereby secured unless it shall elect so to do. Assignee shall be subrogated to any lien discharged out of rents, income and profits of the Premises.

12. Any tenants or occupants of any part of the Premises are hereby authorized to recognize the claims and demands of Assignee hereunder without investigating the reason for any action taken by the Assignee or the validity or the amount of indebtedness owing to the Assignee or the existence of any default hereunder or under the Loan Documents or the application to be made by the Assignee of any amounts to be paid to Assignee. The sole signature of the Assignee under this Agreement and the sole receipt of the Assignee for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Premises. Checks for all or any part of the rentals collected under this Assignment of Rents and Leases shall, at the option of Assignee, be drawn to the exclusive order of the Assignee.

13. The acceptance by the Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of actual physical possession of the Premises by the Assignee, be deemed or construed to constitute the Assignee a Mortgagee in Possession nor impose any obligation whatsoever upon the Assignee, it being understood and agreed that the Assignee does not hereby undertake to perform or discharge any obligation, duty or liability of the landlord under any leases or under or by reason of this Assignment. Assignee shall have no liability to Assignor or anyone for any action taken or omitted to be taken by it hereunder, except for its willful misconduct. Should the Assignee incur any liability, loss or damage under or by reason of this Assignment or for any action taken by the Assignee hereunder, or in defense

UNOFFICIAL COPY

against any claim or demand whatsoever which may be asserted against the Assignee arising out of any lease, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate applicable to the Note at the time of incurrence (or if the Note has been paid in full at the time of incurrence, then at the rate applicable to the Note at the time of such payment in full), shall be secured by this Assignment and by the other Loan Documents, and the Assignor shall reimburse the Assignee therefore immediately upon demand, Assignor's obligation to so pay to survive payment of the indebtedness hereby secured and the release of this Assignment.

14. After an Event of Default, the Assignor does hereby irrevocably constitute and appoint the Assignee the true and lawful attorney of the Assignor with full power of substitution for Assignor and in Assignor's name, place and stead to ask, demand, collect, receive, receipt for, use for, compound and give acquittance for, any and all sums due or to become due under any Lease, with full power to settle, adjust or compromise any claim thereunder as fully as the Assignor could do, and to endorse the name of the Assignor or any of them on all commercial paper given in payment or in part payment thereof, and in the Assignee's discretion to file any claim or take any other action or proceeding, either in the Assignee's name or in the name of the Assignor or any of them or otherwise, which the Assignee may deem necessary or appropriate to protect and preserve the right, title and interest of the Assignee in and to such sums and the security intended to be afforded hereby.

15. Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur after an Event of Default under said Leases or under or by reason of this Assignment of Rents and Leases and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases. Should the Assignee incur any such liability, loss or damage under said Lease or under or by reason of this Assignment of Rents and Leases, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse the Assignee therefor immediately upon demand, and upon the failure of Assignor so to do, the Assignee may declare all sums secured hereby immediately due and payable.

16. Assignor will not (a) except in the ordinary course of business modify, change, alter, supplement, amend, surrender or accept surrender of any of the Leases; (b) execute any other assignment or pledge of the rents from the Premises or any part thereof, or of the Assignor's interest in any of the Leases, except to Assignee; (c) execute any Lease except for actual occupancy by the lessee thereunder; or (d) permit any Leases to become subordinate to any lien other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent.

17. Assignee has not received nor been transferred any security deposited by any lessee with the lessor under the terms of any Lease and the Assignee assumes no responsibility or liability for any security so deposited.

18. Assignor has not, and will not, accept rent in advance under any Lease or other agreement or lease of all or any part of the Premises excepting only monthly rents for current months which may be paid in advance, but in no event more than two (2) months in advance.

UNOFFICIAL COPY

19. Assignor will (a) cause this Assignment to be served upon the lessee under each Lease after an Event of Default; (b) at Assignor's sole cost and expense, cause this Assignment to be recorded and filed and re-recorded and re-filed in each and every public office in which such filing and recording may be necessary to constitute record notice of this Assignment and the terms and provisions hereof as applicable to the Premises; (c) at all times promptly and faithfully abide by, discharge or perform all of the covenants, conditions and agreements contained in each Lease to be performed by Landlord; (d) enforce or secure the performance of all of the covenants, conditions and agreements of the Leases on the part of the lessees to be kept and performed; (e) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Assignor, as lessor, and of the lessees thereunder, and pay all costs and expenses of Assignee, including reasonable attorneys' fees in any such action or proceeding in which Assignee may appear; (f) furnish to Assignee, within ten (10) days after a request by Assignee to do so, a written statement containing the names of all lessees of the Premises, or any part thereof, the terms of their respective Leases, the spaces occupied and the rentals payable thereunder; and (g) exercise within ten (10) days of the demand therefor by Assignee, any right to request from the lessee under any Lease a certificate with respect to the status thereof ("Estoppel Certificate").

20. Upon payment in full of all indebtedness secured hereby, this Assignment of Rents and Leases shall become and be void and of no effect.

21. This Assignment of Rents and Leases includes and establishes a present absolute and primary transfer and assignment of all rents, earnings, income, issues and profits of the Premises, and not merely the passing of a security interest, but so long as no Event of Default shall exist under the Loan Documents and no event shall exist which by lapse of time or service of notice, or both, has or would become an Event of Default thereunder, the Assignor shall have the right and license to collect, use and enjoy all rents and other sums due or to become due under and by virtue of any Lease as they respectively become due.

22. This Assignment of Rents and Leases applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. Wherever the term "Assignor" is used herein, such reference shall be deemed to mean each Assignor whose name appears below, severally, and all such Assignors, jointly and severally, and their respective heirs, legatees, devisees, executors, successors and assigns. Wherever the term "Assignee" is used herein, such term shall include all successors and assigns, including each and every from time to time owner and holder of the Note, of the Assignee named herein who shall have, hold and enjoy all of the rights, powers and benefits hereby afforded and conferred upon Assignee as fully and with the same effect as if such successors and assigns of Assignee were herein by name designated as Assignee.

23. The rights and remedies of the Assignee hereunder are cumulative and are not secondary to or in lieu of but are in addition to any rights or remedies which the Assignee shall have under the said Loan Documents or any other instrument or document or under applicable law and the exercise by Assignee of any rights and remedies herein contained shall not be deemed a waiver of any other rights or remedies of Assignee, whether arising under the Loan Documents or otherwise,

UNOFFICIAL COPY

each and all of which may be exercised whenever Assignee deems it in its interest to do so. The rights and remedies of the Assignee may be exercised from time to time and as often as such exercise is deemed expedient and the failure of the Assignee to enforce any of the terms, provisions and conditions of this Assignment for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

24. The right of the Assignee to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to the Assignee shall, to the extent not prohibited by law, extend also to the period from and after the filing of any suit to foreclose the lien of the Mortgage, including any period allowed by law for the redemption of the premises after any foreclosure sale.

25. In the event any lessee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Assignor covenants and agrees that if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Assignee. The Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to whatever portion of the indebtedness secured by this Assignment that Assignee may elect.

26. Wherever notices are required hereunder, the same shall be in writing and shall be delivered either personally, by United States certified or registered mail, postage prepaid, return receipt requested, or by a national overnight delivery service, e.g. Federal Express, which shall be deemed received two (2) days after the deposit thereof with the United States Postal Service or the first business day following delivery of the notice to the overnight delivery service and shall be mailed to the parties at their respective addresses set forth below or to such other addresses as either shall direct for notices to it in writing:

a) If to the Assignee:

Schaumburg Bank & Trust, N.A.
9701 W. Higgins, Suite 360
Rosemont, Illinois 60018
Attn: Matt Hammer

b) If to the Assignor:

805 W. Touhy, LLC,
an Illinois limited liability company
805 W. Touhy
Park Ridge, IL 60068

UNOFFICIAL COPY

Attn: William Wallace and Jason Skiersch

27. All provisions hereof are severable and if any provisions hereof shall be invalid or unenforceable, the validity and enforceability of the remaining portions hereof shall in no way be affected thereby.

28. **THE UNDERSIGNED HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS INSTRUMENT OR AN AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED IN CONNECTION HERewith, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS INSTRUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

29. **THIS INSTRUMENT HAS BEEN DELIVERED AT CHICAGO, ILLINOIS, AND SHALL BE CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS, IN WHICH STATE IT SHALL BE PERFORMED BY THE UNDERSIGNED ALL ACTIONS ARISING DIRECTLY OR INDIRECTLY AS A RESULT OR IN CONSEQUENCE OF THIS INSTRUMENT SHALL, IN THE SOLE AND ABSOLUTE DISCRETION OF THE BANK, BE INSTITUTED AND LITIGATED ONLY IN COURTS HAVING SITUS IN THE CITY OF CHICAGO OR IN COOK COUNTY, ILLINOIS, AND THE UNDERSIGNED HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED AND HAVING ITS SITUS IN SAID CITY OR COUNTY AND WAIVES ANY RIGHT TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION.**

[Signatures on following page]

UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

LOT 4 IN BLOCK 6 IN L. HODGE'S ADDITION TO PARK RIDGE IN THE NORTH WEST QUARTER OF THE SOUTH EAST 1/4 SOUTHERLY OF RAILROAD IN SECTION 35, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 805 W. Touhy, Park Ridge, Illinois

PIN: 09-35-201-002-0000

Property of Cook County Clerk's Office