

UNOFFICIAL COPY

CA. H.F. 2200409MS LK (4)

THIS DOCUMENT WAS PREPARED BY,  
AND AFTER RECORDING, RETURN TO:

Mike Wazlawek, Esq.  
Polsinelli PC  
100 S. Fourth St., Suite 1000  
St. Louis, Missouri 63102

PERMANENT TAX INDEX NUMBER:

PIN #29-29-200-016-0000

PROPERTY ADDRESS:

16842-16888 Lathrop Ave  
Harvey, Illinois 60426



Doc# 2225722019 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 09/14/2022 10:29 AM PG: 1 OF 10

*This space for Recorder's use only.*

**ASSIGNMENT OF LEASES AND RENTS**  
(With Future Advances and Future Obligations  
Governed by 765 ILCS 5/39 and 735 ILCS 5/15-1302)

This **ASSIGNMENT OF LEASES AND RENTS** (this "Assignment") is made and entered into as of September 13, 2022, by **16842-88 LATHROP LLC**, an Illinois limited liability company with an address of 1425 President Street, Brooklyn, New York 11213 ("**Grantor**" or "**Assignor**"), to and for the benefit of **MIDLAND STATES BANK**, an Illinois banking corporation ("**Grantee**" or "**Lender**").

**WITNESSETH:**

**WHEREAS**, Grantor and Lender are parties to that certain Loan Agreement dated as of even date herewith (as the same may from time to time be amended, modified, extended, renewed or restated, the "**Loan Agreement**"; all capitalized terms used and not otherwise defined in this Assignment shall have the meaning ascribed to them in the Loan Agreement); and

**WHEREAS**, as evidence of the indebtedness incurred under the Loan Agreement, Grantor has executed and delivered to the Lender the Note, payment of which is secured by, among other things, the Security Instrument covering the real estate described on Exhibit A, which is attached hereto and incorporated herein by this reference (the "**Property**"), as well as other security; and

# UNOFFICIAL COPY

**WHEREAS**, the execution and delivery of this Assignment is a condition precedent to the performance by the Lender of its obligations under the Loan Agreement and is intended by the parties to be an immediate and absolute assignment to Lender, without the need of Lender to take any affirmative actions in order to secure the benefit of this Assignment.

**NOW, THEREFORE**, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby covenants and agrees as follows:

1. Assignment. Grantor hereby sells, assigns, transfers, conveys, and sets over unto Lender and its successors and assigns, presently and absolutely, and not only as collateral, all of the right, title, and interest of Grantor in, to and under: (i) any and all leases, licenses or agreements for the use or occupancy of the whole or any part of the Property, whether such leases, licenses or agreements are now or at any time hereafter existing (such leases, licenses or agreements being hereinafter collectively called "**Leases**" or singularly a "**Lease**"), together with all amendments and supplements to and renewals and extensions of the Leases at any time made; (ii) all current and future rents, earnings, issues, income, and profits arising from the Property and/or from said Leases and all other sums due or to become due under and pursuant thereto; (iii) any and all guarantees under any of said Leases; (iv) any and all current and future proceeds payable under any policy of insurance covering loss of rents for any cause; and (v) any and all current and future rights, powers, privileges, options and other benefits of Grantor as lessor under the Leases, including, but not by way of limitation:

1.1. The immediate and continuing right to receive and collect all current and future rents, income, revenues, issues, profits, condemnation awards, moneys, termination or cancellation payments, and security payable or receivable under the Leases or pursuant to any of the provisions thereof whether as rent or otherwise;

1.2. The right to pursue and collect any claim under any Debtor Relief Laws of any tenant;

1.3. The right to accept or reject any offer made by a tenant pursuant to its Lease to purchase the Property or any part thereof and any other property subject to the Lease as therein provided and to perform all other necessary or appropriate acts with respect to such purchases as agent and attorney-in-fact for Grantor;

1.4. The right to make all waivers and agreements, to give and receive all notices, consents, and releases, and to take such action upon the happening of a default under any Lease as Grantor might have taken, including the right to commence, conduct, and consummate proceedings at law or in equity as shall be permitted under any provision of any Lease or by Applicable Law; or

1.5. To do any and all other things whatsoever which the Grantor is or may become entitled to do under or by virtue of the Leases or any of them.

**ALL OF THE ABOVE BEING SUBJECT**, however, to the right and license hereinafter granted by Lender to Grantor.

This Assignment is made for the purpose of securing: (a) the full and prompt payment when due, whether by acceleration or otherwise, with such interest and charges as may accrue thereon, either before or after maturity thereof, of the Note; (b) the full and prompt payment and performance of any and all of the other Obligations; (c) the full and prompt payment and performance of any and all of the 16802-24 Obligations, the California Obligations, the West 154<sup>th</sup> Obligations and/or the West Veterans Obligations;

# UNOFFICIAL COPY

and (d) any and all other indebtedness, however incurred, which may now or hereafter be due and owing from Grantor to Lender now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether expressed or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations and extensions thereof. The foregoing amounts, obligations, and indebtedness shall not be deemed extinguished by virtue of the fact that the Note may at any time not evidence a debt actually outstanding. This Assignment shall remain in full force and effect until: (y) the payment in full of all advances of principal and interest on the Note; and (z) the payment and performance and observance by Grantor of all of their respective duties, obligations, and indebtedness under this Assignment and the other Loan Documents.

This Assignment secures future advances and future obligations and is governed by 765 ILCS 5/39 and 735 ILCS 5/15-1302. The total amount outstanding at any one time which is secured by this Assignment, excluding any interest and any amounts advanced by Lender for the protection of the security interest herein granted or amounts advanced or obligations incurred for the completion of a contemplated improvement under a construction loan agreement, shall not exceed Eight Million Eight Hundred Thousand and 00/100 Dollars (\$8,800,000.00).

The lien of this Assignment secures payment of existing obligations and future advances and future obligations made or incurred pursuant to the Loan Agreement and the other Loan Documents, to the same extent as if such future advances or future obligations were made or incurred on the date of execution of this Assignment, without regard to whether or not there is any advance made at the time this Assignment is executed and without regard to whether or not there is any indebtedness outstanding at the time any advance is made. Lender agrees to make future advances to Grantor in accordance with the Loan Agreement.

2. Representations and Warranties. Grantor represents and warrants to Lender that:

- 2.1. Grantor has good right and authority to make this Assignment;
- 2.2. Grantor has not heretofore alienated, assigned, pledged, or otherwise disposed of or encumbered any Leases, or any of the sums due or to become due thereunder or otherwise assigned hereunder;
- 2.3. Grantor has not performed any acts or executed any other instruments which might prevent Lender from deriving the full benefits of any of the terms and conditions of this Assignment or which would limit Lender in enjoying such benefits;
- 2.4. Grantor has not accepted, anticipated, or collected rent or any other payments due or to become due under any existing Lease for any period subsequent to the month in which such rent or other payment has become due and payable;
- 2.5. Grantor has not executed or granted any amendment or modification of any existing Lease, either orally or in writing; and
- 2.6. There is no default under any Lease now existing and no event has occurred and is continuing which, with the lapse of time or the giving of notice or both, would constitute an event of default under any Lease.

# UNOFFICIAL COPY

### 3. Covenants. Grantor hereby covenants and agrees:

3.1. Promptly to observe, perform, and discharge the obligations and conditions of this Assignment and all of the other Loan Documents to which it is a party;

3.2. To enforce the performance of all obligations, terms, covenants, conditions, and agreements to be performed by any tenant pursuant to the Leases and any guarantor thereof; and

3.3. To appear in and defend any action or proceeding arising under or in any manner connected with the Leases, or the obligations, duties, or liabilities of Grantor and any tenant thereunder and upon request by Lender, to do so in the name and behalf of Lender, but at the expense of Grantor.

In addition, if any tenant under any Lease is or becomes the subject of any proceeding under any Debtor Relief Laws, as amended from time to time, or any other Applicable Law which provides for the possible termination or rejection of any Lease assigned hereby, Grantor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of the Lender, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to the Grantor and the Lender. The Grantor hereby assigns any such payment to the Lender and further covenants and agrees that upon the request of the Lender, it will duly endorse to the order of the Lender any such check, for application by the Lender to the Obligations secured hereby.

4. Negative Covenants. Except as otherwise permitted by the Loan Documents, Grantor also covenants and agrees that it will not, without in each instance obtaining the prior written consent of Lender:

4.1. Enter into, renew, extend or modify any Lease for space,

4.2. Alter or modify the terms of any guaranty of any Lease, or cancel or terminate any such guaranty;

4.3. Cancel any Lease nor accept a surrender thereof;

4.4. Reduce the rent payable under any Lease or accept payment of any installment of rent in advance of the due date thereof;

4.5. Change, amend, alter, or modify any Lease or any of the terms or provisions thereof, nor grant any concession in connection therewith;

4.6. Consent to the release of the obligations of a tenant or guarantor under any Lease;

4.7. Assign, pledge, encumber, or otherwise transfer any Lease or Grantor's right thereunder except to the Lender;

4.8. Consent to an assignment of any tenant's interest under any Lease or to a subletting of the premises described therein; or

4.9. Incur any indebtedness for borrowed money or otherwise to any tenant or guarantor of any Lease if such indebtedness may under any circumstances be availed of by such tenant or guarantor as an offset against the rent or other payments due thereunder.

# UNOFFICIAL COPY

Any of the above acts, if done without the consent of Lender, shall be, at the option of Lender, without any force or effect as against Lender.

5. Further Assurances. Grantor also covenants and agrees that Grantor will, upon the request of Lender, execute and deliver to Lender such further instruments and do and perform such other acts and things as Lender may deem necessary or appropriate to make this Assignment and the various covenants of Grantor herein contained effective and to more effectively vest in and secure to Lender the sums due or hereafter to become due under the Leases. This covenant and agreement shall include, without limitation, the execution of such additional assignments as shall be deemed necessary by Lender to effectively vest in and secure to Lender all rents, income, and profits from any and all Leases. Grantor further agrees that it will, from time to time, upon written demand therefor, deliver to Lender an executed counterpart of each and every Lease then affecting all or any portion of the Property.

6. Event of Default. The occurrence of an “**Event of Default**” under the Loan Agreement shall be considered an Event of Default under this Assignment.

7. Payment of Rents. Grantor hereby consents to and irrevocably authorizes and directs the tenants under the Leases and any successor to the interest of said tenants, upon written demand and notice from Lender of Lender’s right to receive the rents and other amounts under such Leases, from and after the occurrence and during the continuance of an Event of Default, to pay to Lender the rents and other amounts due or to become due under the Leases, and said tenants shall have the right to rely upon such demand and notice from Lender and shall pay such rents and other amounts to Lender without any obligation or right to determine the actual existence of any Event of Default or event claimed by Lender as the basis for Lender’s right to receive such rents and other amounts, notwithstanding any notice from or claim of Grantor to the contrary. Grantor shall have no right or claim against any tenant for any such rents and other amounts so paid by a tenant to Lender. To the extent that Grantor receives any rent prepayments, termination payments, charges for services or facilities or for escalations under any Lease following an Event of Default, Grantor shall pay such sums to Lender, in addition to any security deposits received by Grantor under any Leases.

Notwithstanding the foregoing provisions, which shall be construed as making and establishing a present and absolute transfer and assignment of the Leases and the rents, earnings, issues, income, and profits arising therefrom, so long as no Event of Default shall exist and be continuing, Grantor shall act as Lender’s licensee and have the right and license to occupy the Property as landlord or otherwise, and to collect, use, and enjoy the rents, issues, and profits and other sums, only as the same become due under the provisions of such Lease, and to enforce the covenants of the Leases.

8. Remedies. Upon the occurrence and during the continuance of an Event of Default, Lender, at its option, shall have the complete right, power, and authority:

8.1. To terminate the right and license granted to Grantor in the paragraph immediately preceding and thereafter, without taking possession, to demand, collect, and receive and sue for the rents and other sums payable under the Leases and, after deducting all necessary and proper costs and expenses (including attorneys’ fees) of collection as determined by Lender, to apply the net proceeds thereof upon any indebtedness secured hereby. Lender may elect not to collect rents under this Assignment, but that election shall not prejudice Lender’s rights to collect rents subsequently. Lender shall never be liable for failure to collect rent, but shall be accountable for rent received before foreclosure of the Security Instrument;

# UNOFFICIAL COPY

8.2. To declare all sums secured hereby immediately due and payable, and, at its option, to exercise all of the rights and remedies contained herein and in any of the other Loan Documents;

8.3. Without regard to the adequacy of the security, with or without process of law, personally or by agent or attorney, or under the Security Instrument, or by a receiver to be appointed by court, then and thereafter to enter upon, take and maintain possession of and operate the Property, or any part thereof, together with all documents, books, records, papers, and accounts relating thereto and hold, operate, manage, and control the Property, or any part thereof, as fully and to the same extent as Grantor could do if in possession and in such event, without limitation and at the expense of Grantor, from time to time, cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments, and improvements to the Property, or any part thereof, and insure and reinsure the same, and lease the Property, or any part thereof, for such times and on such terms as Lender deems desirable, including leases for terms expiring beyond the maturity of the indebtedness secured by the Security Instrument, and modify, amend or renew existing leases, on such terms as Lender deems desirable, and cancel any lease or sublease for any cause or on any ground which would entitle Grantor to cancel the same.

8.4. Following the occurrence and during the continuance of an Event of Default, if any tenant under a Lease has filed, files or has filed against it any petition under or pursuant to any Debtor Relief Laws, or undertakes or is subject to similar action, Lender shall have, and is hereby assigned by Grantor, all of the rights which would otherwise inure to the benefit of Grantor in such proceedings, including, without limitation, the right to seek "adequate protection" of Grantor's interests, to compel rejection of such Lease, and/or to seek such claims and awards as may be sought or granted in connection with the rejection of such Lease. Unless otherwise consented to by Lender in writing, Lender's exercise of any of the rights provided herein shall preclude Grantor from the pursuit and benefit thereof without any further action or proceeding of any nature. Lender, however, shall not be obligated to make timely filings of claims under any Debtor Relief Laws, or to otherwise pursue creditor's rights therein or hereunder.

Should Lender exercise the rights granted herein as specified upon the occurrence and during the continuance of an Event of Default, thereafter Grantor shall make payment of all of Lender's proper charges and expenses, including compensation for the services of Lender, its attorneys and agents in connection with the operation, management, and control of the Property and the conduct of the business thereof, and such further sums as may be sufficient to indemnify Lender from and against any liability, loss, or damage on account of any matter or thing done in good faith in pursuance of the rights and powers of Lender hereunder. Lender may, at its option, credit the net amount of income which Lender may receive by virtue of this Assignment and from the Property to any and all amounts due or owing to Lender under the terms and provisions of the Loan Agreement or the other Loan Documents. The balance of such net income shall be released to or upon the order of Grantor. The manner of the application of such net income and the item which shall be credited, subject to Applicable Law, shall be within the sole discretion of the Lender.

9. Construction. The acceptance by Lender of this Assignment, with all of the rights, powers, privileges, and authority so created, shall not, prior to entry upon and taking possession of the Property by Lender, be deemed or construed to constitute Lender a mortgagee in possession nor thereafter or in any event to impose any obligation whatsoever upon Lender to appear in or defend any action or proceeding relating to the Leases or the Property, or 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 to assume any obligation or responsibility for any security deposits or other deposits delivered to Grantor by

# UNOFFICIAL COPY

any tenant and not assigned and delivered to Lender or render Lender liable in any way for any injury or damage to person or property sustained by any person, firm, or corporation in or about the Property.

10. No Waiver. Grantor agrees that neither the collection of rents and the application thereof as provided for herein nor the entry upon and taking of possession of the Property, or any part thereof, by Lender shall cure or waive any Event of Default or waive, modify, or affect any notice of the occurrence of an Event of Default hereunder or under the Loan Agreement or the other Loan Documents, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Lender, once exercised, shall continue for so long as Lender shall elect. If Lender shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time upon the occurrence of any subsequent Event of Default.

11. Remedies Cumulative. The rights and remedies of Lender hereunder are cumulative and not in lieu of, but are in addition to, any rights or remedies which Lender shall have under the Loan Agreement, the other Loan Documents, or at law or in equity, and said rights and remedies may be exercised by Lender either prior to, simultaneously with, or subsequent to, any action taken hereunder. Said rights and remedies of Lender may be exercised from time to time and as often as such exercise is deemed expedient by Lender in its absolute discretion, and the failure of Lender to avail itself of any of the terms, provisions, and conditions of this Assignment or any rights granted herein 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.

12. Effectiveness. The right of Lender to collect and receive the rents assigned hereunder or to take possession of the Property, or to exercise any of the rights or powers herein granted to Lender shall, to the extent not prohibited by Applicable Law, also extend to the period from and after the filing of any suit to foreclose the lien of the Security Instrument, including any period allowed by Applicable Law for the redemption of the Property after any foreclosure sale.

13. Indemnity. Grantor agrees to indemnify and hold Lender harmless of and from and against any and all liability, loss, damage, or expense, which Lender may or might incur under or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on the part of Lender to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Lender incur any such liability, loss, or damage under or by reason of this Assignment, or in the defense against any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees, together with interest thereon at the rate provided for in the Note subsequent to the occurrence and during the continuance of an Event of Default, shall be secured by this Assignment and by the Security Instrument, and Grantor shall reimburse Lender therefor promptly upon demand, and upon failure of Grantor so to do, Lender may declare all sums secured hereby immediately due and payable.

14. Notice. Any notice, demand or other communication hereunder shall be given in the manner provided for in the Loan Agreement.

15. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

16. Assignment. This Assignment shall be assignable by Lender and all representations, warranties, obligations, covenants, powers, and rights herein contained shall be binding upon, and inure to the benefit of, Grantor and Lender and their respective successors and assigns.

# UNOFFICIAL COPY

17. Release. On the payment in full of all indebtedness hereby secured, as evidenced by the recording of a full release of the Security Instrument and without the recording of another security instrument in favor of the Lender affecting the Property, this Assignment will become and be void and of no further effect.

18. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms thereof to produce or account for more than one such counterpart.

19. Joint and Several; Construction. The word Grantor, as used herein, shall designate one or more Grantors. In the event that more than one Grantor is a party to these presents, the liability of each Grantor shall be joint and several, each Grantor to be fully liable hereunder irrespective of the death, incapacity, or other disqualification of any other Grantor or Grantors and Lender may proceed against one or less than all of the Grantors, such proceeding not being deemed an election, and Lender may, at any time thereafter in the event full payment has not been realized, proceed against the other Grantor or Grantors.

*Signature Page Follows*





# UNOFFICIAL COPY

## EXHIBIT A

Parcel 1:

The South 205 feet of the North 1,050 feet of the East 651 feet of the West 1/2 of the Northeast 1/4 of Section 29, Township 36 North, Range 14, East of the Third Principal Meridian, except that part thereof lying East of the West line of Lathrop Avenue as taken by document no. 5380915 in Book 128, Page 128 dated March 3, 1914, in Cook County, Illinois.

Parcel 2:

A Non-exclusive easement for ingress and egress in favor of Parcel 1 as created, defined and limited by the Declaration of Easement recorded November 2, 1989 as document no. 89521320 over and across the North 20 feet of the West 446.0 feet of the East 651 feet of the Northwest 1/4 of the Northeast 1/4 (except the North 1,050 feet) of said Section 29.

Parcel 3:

A Non-exclusive easement for ingress and egress and public utilities in favor of Parcel 1 as created, defined and limited by the Declaration of Easement recorded July 18, 1977 as document 24017013 over the south 30 feet of the land lying north of and adjoining the land insured herein and more particularly described on Exhibit "A" attached thereto.

*Prop Address: 16842 - 10888 S. LATHROP, HARVEY IL. 60426*

*PIN # 29-29-200-016-0502*