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Doc#: 2235308104 Fee: \$98.00

Karen A. Yarbrough

Cook County Clerk

Date: 12/19/2022 11:24 AM Pg: 1 of 10

DOCUMENT PREPARED BY AND AFTER
RECORDING RETURN TO:

Ginsberg Jacobs LLC
300 South Wacker Drive
Suite 2750
Chicago, Illinois 60606
Attention: Barrett J. Schulz, Esq.

PROPERTY ADDRESS:
1706-1710 Sherman Avenue
Evanston, Illinois 60201

PIN NUMBER(S):
11-18-126-014-0000

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of December 14, 2022, by and from **THE VARSITY, LLC**, an Illinois limited liability company, with an address at 1780 Ash Street, Suite 200, Northfield, Illinois 60093 ("Assignor"), to and for the benefit of **FIRST BANK CHICAGO**, an Illinois state chartered bank, with an address at 633 Skokie Boulevard, Northbrook, Illinois 60062, its successors and assigns ("Assignee" or "Lender").

RECITALS:

A. Assignor is the owner of certain real property located in Cook County, State of Illinois, as more particularly described in Exhibit A attached hereto (the "Property").

B. Assignor and Lender entered into a certain loan arrangement (the "Loan") pursuant to that certain Loan and Security Agreement dated as of even date herewith, by and between Assignor and Lender (as amended, modified and restated from time to time, the "Loan Agreement"), which Loan is evidenced by that certain Promissory Note dated as of even date herewith, made by Assignor in favor of Lender (as amended, modified and restated from time to time, the "Note"), pursuant to which Lender made a loan to Assignor in the original principal amount of Twelve Million Six Hundred Ten Thousand Dollars (12,610,000.00).

C. The Loan is secured, among other items, by (i) a certain Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents (as amended, modified and restated from time to time, the "Mortgage"), dated as of even date herewith, executed and delivered by Assignor to Lender, encumbering the Property; (ii) those certain Guaranty of Payment and Guaranty of Completion (each, as amended, modified and restated from time to time, the "Guaranty") each dated as of even date herewith made by STEVEN B. ROGIN, STEVEN M. BROWN, CHRISTOPHER S. DILLION, The FIRST AMENDMENT AND RESTATEMENT OF STEVEN B. ROGIN REVOCABLE TRUST under Trust Agreement dated September 13, 2020, The STEVEN M. BROWN REVOCABLE TRUST under Trust Agreement dated December 18, 2001, and The CHRISTOPHER S. DILLION DECLARATION OF TRUST DATED MAY 18, 2022 (individually and collectively, on a joint and several basis, "Guarantor"),

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to and for the benefit of Lender; and (iii) certain other documents securing repayment of the Note (together with the Mortgage, this Assignment, the Loan Agreement, the Guaranty, the Note, and all other documents evidencing or securing the Loan are hereinafter collectively referred to as the "Loan Documents"). All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Agreement and the Loan Documents are hereby made a part of this Assignment to the same extent and with the same force and effect as if they were fully set forth herein and Assignor covenants and agrees to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms.

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

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

AGREEMENT:

NOW, THEREFORE, as an inducement to make the Loan, Assignor 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.

"Lease" or "Leases" means all forms of lease and occupancy agreements for Property, or any portion thereof, now existing or hereafter entered into by or on behalf of the Borrower, including without limitation the Ground Lease (as defined in the Loan Agreement). As of the date hereof, the only Lease is the Ground Lease.

"Lessees" means the lessees under the Leases.

"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.** (a) As security for the payment and performance of the Obligations, Assignor hereby absolutely and unconditionally transfers, sets over and assigns to Assignee all present and future right, title and interest of Assignor 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 Assignor under any of the Leases and all other rights and interests of Assignor under or in respect of any of the Leases. This Assignment is intended to be and is an absolute present assignment from Assignor to Assignee, it being intended hereby to establish a complete

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and present transfer of all Leases and Rents with the right, but without the obligation, to collect all Rents.

(b) It is the intention of the parties hereto that any and all other leases and occupancy agreements affecting the Property, or any portion thereof presently in effect or hereafter entered into by the Assignor shall be covered by the provisions of this Assignment and each of same hereafter entered into shall, upon the creation thereof, automatically be deemed included within the definition of "Leases" and "Rents", all such leases and occupancy agreements and all of the Assignor's right, title and interest in all such leases and occupancy agreements, and the monthly fees, rents, additional rents, charges, issues, profits and other sums payable thereunder being assigned to the Assignee until the end of the respective terms thereof and any renewals or extensions thereof, subject to all of the terms, covenants and provisions of this Assignment. The inclusion of any such lease or occupancy agreement under this Assignment and the provisions hereof shall be evidence for all purposes of the physical delivery of each such lease or occupancy agreement to the Assignee and, if requested by the Assignee, the Assignor agrees so to deliver the same to the Assignee. The Assignor shall, upon the request of the Assignee, execute and deliver in recordable form all instruments which the Assignee may reasonably request to evidence further and confirm such assignment of each such lease and occupancy agreement.

3. **License.** Except as hereinafter set forth, Assignor shall have a license to collect the Rents accruing under the Leases as they become due ("License"), but not more than thirty (30) days in advance of the date when due, and to enforce the Leases. The License shall be revoked, at Assignee's option, upon the occurrence of an Event of Default. Assignor covenants and agrees that in exercising its License it shall hold all Rents in trust and shall apply the same first to the payment of the reasonable expenses of owning, maintaining, repairing, operating and renting the Property, and then to payment of the Obligations.

4. **Intentionally Omitted.**

5. **Covenants of Assignor.**

5.1 **New Leases and Lease Terminations and Modifications.** Except as permitted in the Loan Agreement, Assignor shall not enter into, cancel, surrender or terminate (except as a result of a material default by 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 make any subsequent assignment or pledge of a Lease, or consent to the subordination of the interest of any Lessee in any Lease, or consent to any assignment by any Lessee or any subletting without the prior written consent of Assignee. Any attempt to do any of the foregoing without the prior written consent of Assignee (if such consent is required and which shall not be unreasonably withheld, conditioned or delayed) shall be null and void.

5.2 **Performance under Leases.** Assignor 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** Assignor shall not do or suffer to be done anything to impair the security thereof. With respect to any Lease, Assignor shall not (a) release the liability of any Lessee or any guaranty thereof, (b) consent to any Lessee's withholding of rent or making monetary advances and off-setting the same against future rentals, (c) consent to any Lessee's

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claim of a total or partial eviction, (d) consent to a termination or cancellation, except as specifically provided above, or (e) enter into any oral leases with respect to all or any portion of the Property; provided, however, with respect to Section 5.2(a) Assignor may settle with tenants in default under their respective Lease(s) for less than the total amount owed, after making commercially reasonable determination of the costs of collection and likelihood of repayment.

5.3 Collection of Rents. Assignor shall not collect any of the Rents, issues, income or profits assigned hereunder more than one (1) month in advance of the time when the same shall become due, except for security or similar deposits.

5.4 Further Assignment. Assignor 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 Lease Guaranty. Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law.

5.6 Waive Rental Payments. Assignor shall not waive or excuse the obligation to pay rent under any Lease.

5.7 Defending Actions. Assignor 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 Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear.

5.8 Enforcement. Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by Lessees and guarantors thereunder;

5.9 Notice. Assignor shall immediately notify Assignee of any material breach by a Lessee or guarantor under any Lease;

5.10 Subordination. Assignor 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 Bankruptcy of Lessee. If any Lessee is or becomes 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, Assignor 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 Assignee.

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 Assignee, and if an Event of Default has occurred, shall be applied, at the election of Assignee, to the Obligations in whatever order

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Assignee shall choose in its discretion or shall be held in trust by Assignee as further security, without interest, for the payment of the Obligations. Prior to such Event of Default, Assignor may use and apply such termination payments to expenses of the Property.

7. **Assignee's Rights Upon Lessee Bankruptcy.** Upon the occurrence of an Event of Default, and if a Lessee under a Lease files or has filed against it any petition in bankruptcy or for reorganization, or undertakes or is subject to similar action, Assignee shall have, and is hereby assigned by Assignor, all of the rights which would otherwise inure to the benefit of Assignor in such proceedings, including, without limitation, the right to seek "adequate protection" of its interests, to compel rejection of any Lease, and 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 Assignee in writing, Assignee's exercise of any of the rights provided herein shall preclude Assignor from the pursuit and benefit thereof without any further action or proceeding of any nature. Assignee, however, shall not be obligated to make timely filings of claims in any bankruptcy, reorganization or similar action, or to otherwise pursue creditor's rights therein.

8. **Default of Assignor.**

8.1 **Remedies.** Upon the occurrence of an Event of Default, Assignor's License to collect Rents shall immediately cease and terminate. Assignee shall thereupon be authorized 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 Assignor might reasonably so act. In furtherance thereof, Assignee 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, Assignor'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. Assignor shall also pay to Assignee, promptly upon any Event of Default: (a) all rent prepayments and security or other deposits paid to Assignor 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. Assignee will, after payment of all proper costs, charges and any damages, apply the net amount of such Rents to the Obligations. Assignee 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.

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

8.3 **Assignment of Defaulting Assignor's Interest in Lease.** Assignee shall have the right to assign Assignor's right, title and interest in and to the Leases to any person acquiring title

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to the Property through foreclosure or otherwise. Such assignee shall not be liable to account to Assignor for the Rents thereafter accruing.

8.4 No Waiver. Assignee'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. Assignee's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Assignee has under the Loan Agreement, the Note, the Mortgage and any of the other Loan Documents. Assignee's rights and remedies hereunder may be exercised as often as Assignee deems expedient.

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

9. Indemnification of Assignee. Assignor hereby agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, expense or damage (including reasonable attorneys' fees) that Assignee 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 Assignee under the Leases or this Assignment. Nothing in this section shall be construed to bind Assignee to the performance of any Lease provisions, or to otherwise impose any liability upon Assignee, 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 Assignee for the operation and maintenance of the Property or for carrying out the terms of any Lease before Assignee has entered and taken possession of the Property. Any loss or liability incurred by Assignee by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Assignee's request, be immediately reimbursed by Assignor. Such reimbursement shall include interest at the Default Rate provided in the Note, costs, expenses and reasonable attorney fees. Assignee 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.

10. Additions to, Changes in and Replacement of Obligations. Assignee may take security in addition to the security already given Assignee 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. [Reserved.]

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12. **No Mortgagee in Possession; No Other Liability.** The acceptance by Assignee 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 Assignee, be deemed or construed to: (a) constitute Assignee as a mortgagee in possession nor place any responsibility upon Assignee for the care, control, management or repair of the Property, nor shall it operate to make Assignee 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 Assignee to appear in or defend any action or proceeding relating to the Leases or to the Property; (b) require Assignee 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 Assignee to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by Lessees and not assigned and delivered to Assignee. Assignee 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.** Assignee 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 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, provided such counterpart has been executed by the party against which relief is being sought.

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 amendment, modification or cancellation of this Assignment or any part hereof shall be enforceable without Assignee's prior written consent.

14.6 **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

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Mortgage regarding transfers of the Property by Assignor. 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 Assignor, all obligations of each Assignor hereunder shall be joint and several.

14.7 Expenses. Assignor shall pay on demand all costs and expenses incurred by Assignee in connection with the review of Leases, including reasonable fees and expenses of Assignee's outside counsel.

15. Governing Law and Consent to Jurisdiction.

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

15.2 Place of Delivery. Assignor agrees to furnish to Assignee at Assignee's office in Chicago, Illinois all further instruments, certifications and documents to be furnished hereunder, if any.

15.3 Governing Law. This Assignment and the obligations of Assignor hereunder shall be governed by and interpreted and determined in accordance with the laws of the State of Illinois.

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

[Signature page follows.]

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

ASSIGNOR:

THE VARSITY, LLC, an Illinois limited liability company

By: *Steven Rogin*
Name: Steven B. Rogin
Title: Co-Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Steven B. Rogin, the Co-Manager of **THE VARSITY, LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14th day of December, 2022.



Jane M. Kipnis
Notary Public

My Commission Expires:
7/19/26

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THAT PART OF LOTS 7, 8, 9, 10 AND 11 IN THE RESUBDIVISION OF BLOCK 17 IN EVANSTON IN THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 7; THENCE RUNNING SOUTH ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 80.0 FEET; THENCE RUNNING WEST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID LOT 7, A DISTANCE OF 35.0 FEET; THENCE SOUTH ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID LOT 7, A DISTANCE OF 5.0 FEET; THENCE RUNNING WEST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID LOTS 7 TO 11, BOTH INCLUSIVE, A DISTANCE OF 185.00 FEET; THENCE RUNNING NORTH ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID LOT 7, A DISTANCE OF 85.0 FEET TO A POINT IN THE NORTH LINE OF SAID LOT 11, BEING 220.0 FEET FROM THE NORTH EAST CORNER OF SAID LOT 7; THENCE EAST ALONG THE NORTH LINE OF SAID LOTS 7 TO 11, BOTH INCLUSIVE, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Commonly Known As: 1706-1710 Sherman Avenue, Evanston, IL 60201

Permanent Index Number: 11-18-126-014-0000