

UNOFFICIAL COPY



2305249044

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

Doc# 2305249044 Fee \$88.00

Tom Buranosky, Esq.
Fox Swibel Levin & Carroll LLP
200 West Madison Street, Suite 3000
Chicago, Illinois 60606

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/21/2023 01:37 PM PG: 1 OF 9

Property of Cook County Clerk's Office

For recording purposes only

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") dated as of February 15, 2023, is made and executed by HPIV CHICAGO, LLC, a Delaware limited liability company, whose principal office is located at 1400 N. Water Street, Suite 500, Milwaukee, WI 53202 ("Assignor"), in favor of LAKE FOREST BANK & TRUST COMPANY, N.A., whose principal office is located at 727 North Bank Lane, Lake Forest, Illinois 60045 and is a subsidiary of Wintrust Financial Corporation (together with its successors and assigns, "Assignee").

RECITALS:

I. Subject to the terms of that certain Loan Agreement of even date herewith (the "Loan Agreement") by and among Assignor and Assignee, Assignee has agreed to make a loan to Assignor in a principal amount of FIFTEEN MILLION SEVENTY-ONE THOUSAND AND NO/100THS DOLLARS (\$15,071,000.00) (the "Loan").

II. The Loan will be evidenced by a certain Mortgage Note (said note and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor are referred to herein as the "Note") in the aggregate maximum principal amount of the Loan, which is (i) executed by Assignor, (ii) payable to Assignee in the principal amount of the Loan, and (iii) dated the Effective Date. The payment of the Note is secured by, among other things: (a) this Assignment; (b) a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage") of even date herewith from Assignor to Assignee pertaining to property (the "Mortgaged Property") legally described in Exhibit A attached hereto and all improvements thereon and appurtenances thereto form a part; and (c) various other Loan Documents (as defined in the Loan Agreement).

GRANTING CLAUSES

To secure the payment of the indebtedness evidenced by the Note and the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this

CCH122016455U-DS (6 of 20)

UNOFFICIAL COPY

Assignment, the Loan Agreement, the Mortgage, the Note and the other Loan Documents, and all renewals, extensions, replacements and amendments hereof or thereof now or hereafter executed by Assignor to secure or guarantee the payment of indebtedness under the Note (all indebtedness secured hereby being hereinafter sometimes referred to as "**Borrower's Liabilities**"), Assignor hereby assigns to Assignee all of the right, title and interest of Assignor in:

(a) All oral and written leases, subleases, sub-subleases with, or other agreements for use or occupancy made by, any person or entity (including, without limitation, any leases which may be described in any separate schedule which may be attached hereto or in any supplement to this Assignment recorded hereafter), and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to all or any part of the Mortgaged Property, whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "**Leases**");

(b) The rents which are due or may hereafter become due pursuant to any of the Leases and any other payments in addition to rent made by or due from any and all lessees, users or occupants under the Leases including, without limitation, security deposits and any monies, awards, damages or other payments made or due under the Leases (which rents and payments together with any and all other rents, issues and profits which may now or hereafter arise in connection with the ownership or operation of the Mortgaged Property are herein collectively referred to as the "**Rents**");

(c) Following the occurrence and during the continuance of an Event of Default, all rights, powers, privileges, options and other benefits (collectively, "**Rights**") of Assignor under the Leases, including, without limitation:

(i) The immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, insurance proceeds, condemnation awards, monies and security deposits or the like;

(ii) The right to make all waivers and agreements, including any waivers pertaining to the obligations of lessees;

(iii) The right to give all notices, permissions, consents and releases, including consents to any instrument which subordinates or makes paramount the interest of a lessee to the Mortgage;

(iv) The right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

(v) The right to do any and all other things whatsoever which Assignor is or may become entitled to do under the Leases including, without limitation, the right to cancel or alter leases;

(vi) The right to exercise any option required or permitted under any of the Leases;

(vii) The right to execute new leases of the Mortgaged Property; and

(viii) The rights, powers, privileges and other benefits of Assignor under any and all guaranties (the "**Guaranties**") of any of the Leases;

UNOFFICIAL COPY

(the Leases, Rents and Rights being sometimes collectively referred to as the “**Collateral**”) and Assignor authorizes Assignee in accordance with the terms hereof following an occurrence and during the continuance of an Event of Default:

- (d) To manage the Mortgaged Property and take possession of the books and records relating thereto;
- (e) To prosecute or defend any suits in connection with the Mortgaged Property or enforce or take any other action in connection with the Leases in the name of Assignee, Assignor;
- (f) To make such repairs to the Mortgaged Property as Assignee may deem advisable; and
- (g) To do any and all other things with respect to the Mortgaged Property and the Collateral which an absolute owner or landlord has the right to do.

I. COVENANTS AND WARRANTIES

1.1 **Present Assignment.** Notwithstanding that this Assignment constitutes a present assignment of leases and rents, Assignor may collect the Rents and manage the Mortgaged Property in the same manner as if this Assignment had not been given, but only if and so long as an Event of Default (defined hereafter) has not occurred and is continuing. If an Event of Default occurs and is continuing, the right of Assignor to collect the Rents and to manage the Mortgaged Property shall thereupon automatically terminate and such right together with the other rights, powers and authorizations contained herein shall belong exclusively to Assignee for so long as such Event of Default is continuing.

1.2 **Power Coupled with Interest.** This Assignment of Leases and Rents confers upon Assignee a power coupled with an interest and cannot be revoked by Assignor.

1.3 **No Other Assignment.** Assignor represents and covenants as follows: (i) Assignor is the sole owner of the lessor’s entire interest in the Leases and the other Collateral and has full right to assign the Collateral; (ii) there has been no previous assignment by Assignor (that has not been terminated) and, without Assignee’s prior written consent, Assignor will permit no future assignment (as collateral or otherwise) of the Assignor’s right, title or interest in any of the Leases or other Collateral (other than pursuant to the other Loan Documents); (iii) the Leases are valid and enforceable in accordance with their terms and, to Assignor’s knowledge, have not been altered, modified or amended in any manner whatsoever; (iv) to Assignor’s knowledge, the lessees are not in default under the Leases and have no defenses, set-offs or counterclaims against the lessor under the Leases and have not been granted any concessions by the lessor; (v) no rent reserved in the Leases has been assigned other than to Assignor and other than by Assignor to Assignee pursuant to this Assignment; and (vi) no rent for any period subsequent to the date hereof has been collected more than thirty (30) days in advance of the time when said rent becomes or would become due under the terms of the Leases.

1.4 **Covenants.** Assignor covenants that without Assignee’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Assignor will not (i) modify, change, alter, supplement, amend, exercise enforcement rights or terminate or accept a termination of any of the Leases (other than, in each instance, as permitted in accordance with the express provisions of the applicable Lease or the Loan Documents), (ii) execute any new Lease; (iii) consent to any assignment or subletting of the lessee’s interest under any of the Leases to the extent that Assignor has the right to consent to such assignment under any such Lease; (iv) accept rent more than thirty (30) days in advance of the due date thereof under any of the Leases, (v) other than as expressly permitted in the Leases, waive,

UNOFFICIAL COPY

release, reduce, discount or otherwise discharge or compromise any of the payment of rents to accrue under the Leases; or (vi) assign any of the rents or profits of the Premises except to Assignee as provided herein and in the Mortgage.

1.5 **Further Assurances.** Assignor shall execute and deliver, at the written request of Assignee, all such further assurances and assignments as Assignee from time to time shall determine are reasonably necessary to effectuate the terms and provisions of this Assignment.

1.6 **Assignee to be Creditor of Lessees.** Assignee shall be deemed to be the creditor of each lessee under the Leases in any assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, receivership or probate proceedings affecting such lessee (without any obligation on the part of Assignee to file claims or otherwise to pursue creditor's rights in such proceedings). All monies received in connection with any such proceedings or occurrences shall constitute additional Rents hereunder.

II. DEFAULTS AND REMEDIES

2.1 **Event of Default.** The term "Event of Default," wherever used in this Assignment, shall mean any one or more of the following events:

(a) If Assignor shall fail to keep, perform or observe any covenant, condition or agreement on the part of Assignor in this Assignment and such failure shall continue for thirty (30) days following the delivery of written notice to Assignor; provided, however, if such default is of the kind or nature that (in Assignee's judgment) it is curable but is not capable of being cured within thirty (30) days, and provided, further, that Assignor commences to cure such default within such thirty (30) day period and is diligently and in good faith attempting to effect such cure, the cure period shall be extended to ninety (90) days.

(b) If an "Event of Default" or "Default" shall occur under and as defined in any of the other Loan Documents, including without limitation the Mortgage.

2.2 Exercise of Assignee's Rights.

(a) Assignee may exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Assignee and without waiving such Default;

(b) In the event Assignee elects to invoke any of its rights hereunder and thereafter, for any reason, relinquishes to Assignor such rights, this Assignment shall not be terminated, but shall remain in full force and effect until the Loan is indefeasibly paid in full, it being the intent of the parties that Assignee shall, until the Loan is indefeasibly paid in full have all the rights granted hereby and be able to exercise them from time to time if an Event of Default occurs and is continuing.

2.3 **Nature of Remedies.** No delay or omission on the part of Assignee in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to Assignee under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the other Loan Documents. Said remedies shall be cumulative and concurrent, may be pursued separately, successively or together against Assignor or the Mortgaged Property at the sole discretion of Assignee and may be exercised as often as occasion therefor shall arise.

UNOFFICIAL COPY

2.4 Application of Rents. After an occurrence and during the continuance of an Event of Default hereunder after expiration of all applicable notice and cure periods, Assignee may apply the Rents, after payment of certain expenses and capital expenditures relating to the Mortgaged Property, on account of Borrower's Liabilities in such order and manner as set forth in Section 18 of the Mortgage. Without limitation of the foregoing, the expenses and capital expenditures relating to the Mortgaged Property that may be paid by Assignee include taxes, insurance, assessments, management fees, usual and customary commissions to real estate brokers for leasing real estate, and the reasonable expenses and fees of all attorneys, agents and employees engaged in connection with the exercise of the rights and powers granted to Assignee hereunder. The receipt by Assignee of any Rents pursuant to this Assignment following an Event of Default and the exercise of any remedies provided for herein or in the other Loan Documents shall not cure such Event of Default or affect or prejudice the exercise of such remedies.

2.5 Limitation of Assignee's Obligations. Assignee's obligations as to any Rents actually collected shall be discharged by application of such Rents to any of the purposes specified in Paragraph 2.4 hereof. Assignee shall not be liable for uncollected Rents or for failure to collect Rents or for any claim for damages or set-offs arising out of Assignee's management of the Mortgaged Property, other than to the extent due to the gross negligence or willful misconduct of Assignee or its designee. Assignee shall not be liable to any lessee for the return of any security deposit made under any Lease unless Assignee shall have received such security deposit from the lessor or such lessee. Assignee shall not by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the lessor under any of the Leases, nor shall Assignee be responsible for any act committed by the lessor, or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making Assignee a mortgagee in possession of the Mortgaged Property or any part thereof.

2.6 Reimbursement. Assignor shall reimburse Assignee for and indemnify Assignee against all reasonable and out-of-pocket expenses, losses, damages and liabilities which Assignee may incur by reason of this Assignment or the exercise of any of the rights granted hereunder unless caused by Assignee's negligence or willful misconduct. Any and all amounts due to Assignee under this Paragraph 2.6 shall be immediately due and payable, shall be added to Borrower's Liabilities, shall bear interest after disbursement by Assignee at the Default Rate (as described in the Note) and shall be secured by this Assignment and the other Loan Documents.

2.7 Authorization to Lessees. Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Assignee upon written demand from Assignee stating that an Event of Default has occurred without inquiry as to whether any such Default has occurred or whether Assignee is rightfully entitled to such rent. Following receipt of any such demand, no lessee shall be given credit for any rent paid other than to Assignee thereafter until Assignee instructs such lessee otherwise in writing.

III. MISCELLANEOUS

3.1 Modification of Loan Terms. If the time of payment of any indebtedness secured hereby is extended at any time or times, if any Note is renewed, modified or replaced or if any security for any Note is released, Assignor and any other parties now or hereafter liable therefor or interested in the Mortgaged Property shall be deemed to have consented to such extensions, renewals, modifications, replacements and releases, and their liability and the lien hereof and of the other Loan Documents shall not be released and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Assignee.

UNOFFICIAL COPY

3.2 **Successors and Assigns.** This Assignment shall inure to the benefit of Assignee and any successors and assigns of each and be binding upon Assignor, the heirs, legal representatives, successors and assigns of Assignor and all persons and entities (including owners and lessees) which may hereafter have any interest in the Mortgaged Property.

3.3 **No Merger.** Notwithstanding the conveyance or transfer of title to any or all of the Mortgaged Property to any lessee under any of the Leases, the lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this Assignment.

3.4 **Notices.** All notices or other communications required or permitted to be given pursuant to this Assignment shall be in writing and shall be considered as properly given if mailed by first-class United States mail, postage prepaid, registered or certified with return receipt requested, or sent by Federal Express or other overnight delivery service, or by delivering same in person to the intended addressee. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or three (3) business days after being deposited in the United States mail as required above. Notice given in any other manner shall be effective only if and when received by the addressee. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address or any other address within the United States of America. For purposes of notice, the addresses of the parties shall be as set forth below:

Assignee: Lake Forest Bank & Trust Company, N.A.
727 North Bank Lane
Lake Forest, Illinois 60045
Attn: Brad Bremen

With a copy to: Fox Swibel Levin & Carroll LLP
200 West Madison Street
Suite 3000
Chicago, IL 60606
Attention: Tom Buranosky

Assignor: HPIV Chicago, LLC
c/o Hammes Partners IV, L.P.
1400 N. Water Street, Suite 500
Milwaukee, WI 53202
Attention: Asset Management

With a copy to: ReedSmith LLP
Three Logan Square
Suite 3100
1717 Arch Street
Philadelphia, PA 19103
Attention: Jim Mogan

Any party by notice to the others may designate additional or different addresses for subsequent notices or communications.

UNOFFICIAL COPY

3.5 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Assignment are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

3.6 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Assignment or in any other Loan Document shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other Loan Document (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

3.7 **Changes.** Neither this Assignment nor any term hereof may be released, changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Assignor and Assignee relating to this Assignment shall be superior to the rights of the holder of any intervening lien or encumbrance.

3.8 **Governing Law.** This Assignment shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Illinois.

3.9 **Future Advances.** This Assignment is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of Assignee, or otherwise, as are made by Assignee under the Loan Documents, to the same extent as if such future advances were made on the date of the execution of this Assignment. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured hereby shall, in no event, exceed two (2) times the aggregate face amount of the Note.

[The remainder of this page is intentionally left blank.]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Assignor has executed this Assignment on the date first above written.

ASSIGNOR:

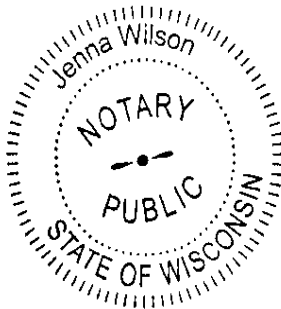
HPIV CHICAGO, LLC, a Delaware limited liability company

By: _____
Name: Todd W. Kibler
Title: Authorized Representative

STATE OF Wisconsin)
) SS.
COUNTY OF Milwaukee

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Todd W. Kibler, the Authorized Representative of HPIV CHICAGO, LLC, a Delaware 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 signed and delivered the said instrument, as his 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 12th day of February, 2023.



Jenna Wilson
NOTARY PUBLIC

My Commission Expires:

9/16/2024

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOT 3 IN FINAL PLAT OF RESUBDIVISION OF NORTHWEST MEDICAL SUBDIVISION, BEING A RESUBDIVISION OF LOTS 1, 2, 3, 4, 5, 6, AND 7 IN NORTHWEST MEDICAL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 24, 2007 AS DOCUMENT NUMBER 0723603040 IN THE VILLAGE OF ARLINGTON HEIGHTS, IN COOK COUNTY, ILLINOIS.

Common Address: 1410 NORTH ARLINGTON HEIGHTS ROAD, ARLINGTON HEIGHTS, IL
PIN(s): 03-20-301-044-0000

Property of Cook County Clerk's Office