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Doc#. 1811349018 Fee: \$66.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/23/2018 12:05 PM Pg: 1 of 10

Illinois Anti-Predatory
Lending Database
Program

40037109 3/5
Certificate of Exemption



GIT

Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 16-31-108-014-0000**

Address:

Street: 3229-37 HARLEM AVENUE

Street line 2:

City: BERWYN

State: IL

ZIP Code: 60402

Lender: CHANTICO ASHEVILLE, LP

Borrower: 3229 S HARLEM, INC

Loan / Mortgage Amount: \$1,300,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: 674095E0-4914-4206-95FC-58F94813B402

Execution date: 4/16/2018

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*This Document Prepared By And
When Recorded Return To:*

Chris Cirillo
BROTSCHUL POTTS LLC
30 N. LaSalle
Suite 1402
Chicago, Illinois 60602
(312) 551-9003

40037109

For Recorder's Use Only

MORTGAGE

THIS MORTGAGE (this "**Mortgage**"), made as of April 12, 2018, by 3229 S. HARLEM, INC., an Illinois corporation, whose principal place of business is 747 N La Salle Dr. Ste 500B, Chicago, IL 60654 (herein referred to as "**Mortgagor**"), in favor of CHANTICO ASHEVILLE, LP, a Delaware limited partnership, whose principal place of business is 180 South Broadway, Suite 406, White Plains, NY 10605 (herein referred to as "**Mortgagee**").

WITNESSETH:

THAT WHEREAS, Mortgagor and Mortgagee have concurrently herewith executed that certain Loan Agreement (the "**Loan Agreement**"), the terms and provisions of which are incorporated herein by reference, providing for a loan from Mortgagee to Mortgagor in the amount of ONE MILLION THREE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$1,300,000.00) (the "**Loan**"), evidenced by that certain Note in the amount of ONE MILLION THREE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$1,300,000.00) (the "**Note**"); and

WHEREAS, as a condition to Mortgagee providing the Loan, Mortgagor must provide a mortgage on the Premises (as hereinafter defined); and

WHEREAS, Mortgagor, in exchange for the receipt of the Loan, is willing to provide a mortgage on the Premises in favor of Mortgagee, as more specifically set forth herein.

NOW, THEREFORE, Mortgagor, to secure the payment and performance of the Indebtedness (as hereinafter defined), and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does, by these presents, grant, remise, release and convey unto the Mortgagee, its successors and assigns, that certain real property described in Exhibit A attached hereto (the "**Premises**").

This Mortgage shall also secure any and all renewals or extensions of the whole or any part of the Indebtedness however evidenced, with interest at such lawful rate as may be agreed upon, and any such renewals or extensions or any change in the terms of rate of interest shall not impair in any manner the validity or priority of this Mortgage, nor release the Mortgagor from personal liability for the Indebtedness.

TOGETHER with all improvements thereon situate and which may hereafter be erected or placed thereon, and all and singular tenements, hereditaments and appurtenances and easements thereunto belonging and the rents, issues and profits thereof, which are hereby expressly conveyed and

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assigned to the Mortgagee as additional security and as an equal and primary fund with the property herein conveyed for the repayment of the Indebtedness secured by this Mortgage, and any and all appurtenances, fixtures and equipment in or that may at any time be placed in any building now or hereafter standing on said Premises.

It is mutually covenanted and agreed, by and between the parties hereto that, in addition to all other things which at law or by convention are regarded as fixtures, and specifically but not by way of limitation, all shades and awnings, screens and carpets, shrubbery, gas and electric fixtures, radiators, heaters, engines and machines, boilers, ranges, elevators and motors, bathtubs, sinks, water-closets, basins, pipes, faucets and other plumbing and heating fixtures, mirrors, mantels, refrigerating plants, iceboxes, electric refrigerators, air conditioning apparatus, cooking apparatus and appurtenances, and such other goods and chattels as may ever be furnished by a landlord in letting and operating an unfurnished building, similar to any building now or hereafter standing on said Premises, whether or not the same are or shall be attached to said building by nails, screws, bolts, pipe connections, masonry, or in any other manner whatsoever, which are now or hereafter to be used upon said described Premises shall be conclusively deemed to be the "fixtures" and an accession to the freehold and a part of the realty, whether affixed or annexed or not, and conveyed by this Mortgage; and all the estate, right, title or interest of the said Mortgagor in and to said Premises, property, improvements, furniture, apparatus, furnishings and fixtures are hereby expressly conveyed, assigned and pledged; and as to any of the property aforesaid, which does not so form a part and parcel of the real estate or does not constitute a "fixture" as such term is defined in the Uniform Commercial Code. This Mortgage is hereby deemed to be as well a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code).

TO HAVE AND TO HOLD the above described Premises with the appurtenances and fixtures thereto appertaining or belonging unto Mortgagee, its successors and assigns, forever, for the purposes herein set forth and for the security of the Indebtedness, and interest thereon and free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the said Mortgagor does hereby expressly release and waive.

In addition, Mortgagor covenants with Mortgagee as follows:

1. **Care and Condition of Premises.** Mortgagor shall (1) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or destroyed, so long as insurance proceeds are sufficient therefor; (2) keep said Premises in good condition and repair, without waste, and free from mechanics' or other liens or claims for liens; (3) pay when due any indebtedness which may be secured by a lien or charge on the Premises, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (4) complete within a reasonable time any building or buildings now or at anytime in process of erection upon said Premises; (5) comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof; and (6) perform all obligations of "Borrower" under the terms of the Loan Agreement and not cause or permit a default to occur or exist under the terms of the Loan Agreement.

2. **Payment of Indebtedness, Taxes and Other Charges.** Mortgagor shall pay: (i) the principal and interest on the Indebtedness and (ii) before any penalty attaches all general taxes, all special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises when due, and shall, upon written request furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

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3. **Insurance.** Mortgagor shall obtain and maintain insurance as provided in the Loan Agreement.

Pursuant to the provisions of 815 ILCS 180/10, Mortgagor is hereby notified that, unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by Article V of the Loan Agreement, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Premises. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Agreement. If Mortgagee purchases insurance for the Premises, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges Mortgagee may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of the insurance. The costs of such insurance may be added to Mortgagor's total outstanding balance or obligation. The costs of such insurance may be more than the cost of insurance Mortgagor may be able to obtain on Mortgagor's own.

4. **Protection of Security by Mortgagee.** In case of Default herein, Mortgagee may, but need not, make any reasonable payment or perform any reasonable act hereinbefore required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim therefor, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies by Mortgagee to protect the Premises and the lien hereof, shall be so much additional Indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the Default Rate (as defined in the Loan Agreement). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee on account of any default hereunder on the part of Mortgagor. Mortgagee making any payment hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

5. **Default and Acceleration.** Mortgagor shall pay each item of Indebtedness, both principal and interest, when due according to the terms of the Note. Additionally, Mortgagor shall perform each and every covenant and provision of this Mortgage and in the other Loan Documents. At the option of Mortgagee, upon such notice as required under the terms of the Loan Agreement, all unpaid Indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable (a) immediately in the case of any uncured Default under the terms of the Loan Agreement, the Note or this Mortgage; (b) immediately in the event Mortgagor shall, without the prior consent of Mortgagee, sell, transfer, convey, encumber, or assign the title to all or any portion of the Premises, or the rents, issues, or profits therefrom in violation of the provisions of the Loan Agreement, whether by operation of law, voluntarily or otherwise, or shall contract to do any of the foregoing unless the Note will be repaid as part of that transaction; or (c) immediately upon the occurrence of any uncured Default in the performance of any covenant or agreement of Mortgagor contained in the Loan Documents. Upon the occurrence of any such event, Mortgagee, at its option, shall then have the unqualified right to accelerate the maturity of the Note,

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causing the full principal balance, accrued interest, and other charges, if any, to be immediately due and payable upon written notice to Mortgagor.

6. **Foreclosure.** When the Indebtedness shall become due whether by acceleration or otherwise, and upon the non-payment of the Indebtedness by Mortgagor, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the judgment for sale all expenditures and expenses which may be reasonably paid or incurred by or on behalf of Mortgagee for attorneys' fees, special process server fees, Mortgagee's fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the judgment) of procuring all such abstracts of title, title searches and examination, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such judgment the true condition of the title to or the value of the Premises. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15), as amended from time to time (the "**Illinois Mortgage Foreclosure Law**"), whether or not enumerated herein, shall be added to the Indebtedness secured by this Mortgage, and included in such judgment of foreclosure. All expenditures and expenses in this paragraph mentioned shall become so much additional Indebtedness secured hereby and immediately due and payable, with interest thereon at the rate stated above, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which Mortgagor or Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any Indebtedness; (b) preparation for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced. In addition to the foregoing, in any such foreclosure proceeding, Mortgagee shall be entitled to exercise any and all rights and remedies provided in the Illinois Mortgage Foreclosure Law, as amended from time to time, in such order as Mortgagee may lawfully elect.

7. **Application of Proceeds.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (a) first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; (b) second, on account of all other items which under the terms hereof, constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; (c) third, on account of all principal and interest remaining unpaid on the Note; and (d) fourth, any excess proceeds to Mortgagor, its successors or assigns, as their rights may appear.

8. **Receiver.** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of said Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not during the pendency of such foreclosure suit. Such receiver shall have all powers under Illinois law which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole or any part of the pendency of such foreclosure suit and any period of redemption. Any amounts received by such receiver from such management and operation of the Premises shall be applied as follows: (a) first, to the Indebtedness, or any decree foreclosing this Mortgage, or any tax special assessment or other lien which may be or become superior

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to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) second, to the deficiency in case of a sale and deficiency.

9. **Waiver of Redemption.** In the event of a judicial proceeding to foreclose this Mortgage, Mortgagor does hereby expressly waive any and all rights of redemption from any judgment of foreclosure of this Mortgage on its own behalf, and on behalf of its successors and assigns and each and every person acquiring any interest in or title to the Premises subordinate or subsequent hereto, and on behalf of all other persons to the extent permitted by the applicable provisions of the statutes and laws of the State of Illinois.

10. **Inspection.** No more than one time a calendar year (except after the occurrence of a Default), Mortgagee shall have the right to inspect the Premises at all reasonable times upon no less than 48 hours' prior notice (except in the case of an emergency) and access shall be permitted for that purpose, subject in any case to the rights of any tenants of the Premises.

11. **Examination of Title, Location, etc.** Mortgagee has no duty to examine the title, location, existence, or condition of the Premises, nor shall Mortgagee be obligated to record this Mortgage or to exercise any right herein given unless expressly obligated by the terms hereof, nor be liable for any acts or omissions hereunder, except in case of its own gross negligence or misconduct or that of the agents or employees of Mortgagee.

12. **Condemnation.** If all or any part of the Premises is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award of compensation payable in respect of the part so taken or damaged are hereby assigned to and shall be paid directly to Mortgagee. The proceeds of any award or compensation actually received by Mortgagee after deduction therefrom of all reasonable costs and expenses including reasonable attorney's fees incurred by Mortgagee in connection with the taking, at Mortgagee's option, shall be applied, without premium, in part or entirely to payment of the Indebtedness secured hereby or to restoration of the Premises, as provided in the Loan Agreement.

13. **Release.** Upon full payment of the Indebtedness, Mortgagee shall release this Mortgage and the lien thereof by proper instrument in accordance with the terms of the Loan Agreement.

14. **No Exclusive Remedy.** Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any Default or any acquiescence therein. If any provisions of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Illinois Mortgage Foreclosure Law, as amended, in the absence of said provision, Mortgagee shall be vested with the rights granted in the Illinois Mortgage Foreclosure Law, as amended, to the full extent permitted thereby.

15. **Provisions Severable.** In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Mortgage. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, as amended, the provisions of the Illinois Mortgage

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Foreclosure Law, as amended, shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Illinois Mortgage Foreclosure Law, as amended.

16. **Incorporation of Provisions of Loan Agreement.** This Mortgage is executed by Mortgagor pursuant to the terms and provisions of the Loan Agreement. The terms and provisions of the Loan Agreement, including the definitions contained therein, are hereby incorporated herein by reference.

17. **Notices.** All notices pursuant to this Mortgage shall be in writing and shall be deemed to be sufficiently given for all purposes when given in accordance with the terms of the Loan Agreement.

18. **Successors and Assigns.** This Mortgage shall (a) run with the land; (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's subsidiaries, affiliates, successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons; and (c) shall apply and extend to, be binding upon and inure to the benefit of Mortgagee and Mortgagee's successors and assigns. The word "Mortgagee" shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Note and any other Indebtedness instruments.

19. **Governing Law.** This Mortgage has been negotiated, executed and delivered at Chicago, Illinois, and shall be construed and enforced in accordance with the laws of the State of Illinois, without reference to the choice of law or conflicts of law principles of that State.

20. **Jurisdiction; Jury Trial.** MORTGAGOR HEREBY CONSENTS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE STATE OF ILLINOIS. MORTGAGOR WAIVES, AT THE OPTION OF MORTGAGEE, TRIAL BY JURY AND WAIVES ANY OBJECTION BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS IN ANY ACTION OR PROCEEDING TO WHICH MORTGAGOR AND MORTGAGEE MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO THIS AGREEMENT AND/OR ANY OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR, AND MORTGAGOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO, IN ANY WAY, MODIFY OR NULLIFY ITS EFFECT. MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

21. **Definition of Indebtedness.** "Indebtedness" means all obligations of Mortgagor to Mortgagee for payment of any and all amounts and performance of all obligations due under the Note and the Loan Agreement, together with any and all other indebtedness now or at any time due and owing from Mortgagor to Mortgagee, howsoever and whensoever arising or created. "Indebtedness" also includes all amounts so described herein and all costs of collection, legal expenses and in-house

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or reasonable outside attorneys' fees incurred or paid by Mortgagee in attempting the collection or enforcement of the Note or this Mortgage, or any extension or modification of this Mortgage or the Note, and guaranty of the Note, or in any legal proceeding occurring by reason of Mortgagee's being the mortgagee under this Mortgage or any extension or modification thereof or the Payee under the Note or any extension or modification thereof, including but not limited to any declaratory judgment action, or in the repossession, custody, sale, lease, assembly or other disposition of any collateral for the Note.

22. **Default.** The following shall be considered a "Default" hereunder: (i) Mortgagor's failure to comply with the terms of the Mortgage after written notice from Mortgagee (given in the manner provided in the Loan Agreement) and the passage of ten (10) days; (ii) Mortgagor's failure to pay the Indebtedness when due; or (iii) Mortgagor's default (after the passage of any cure period, if applicable) pursuant to any agreement between Mortgagor and Mortgagee (including, but not limited to, the Note and the Loan Agreement).

23. **Miscellaneous.** The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. All changes to this Mortgage must be in writing signed by Mortgagee and, if this Mortgage is recorded, shall not be effective until being recorded. Wherever used, the singular number shall include the plural, the plural, the singular, and use of any gender shall be applicable to all genders.

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EXHIBIT A

THE PREMISES -- LEGAL DESCRIPTION

LOTS 43 TO 49, BOTH INCLUSIVE, IN BLOCK 44 IN ANDREW AND PIPER'S THIRD ADDITION TO BERWYN, A SUBDIVISION IN SECTION 31, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

CKA: 3229-37 Harlem Avenue, Berwyn, Illinois 60402

PINs:

16-31-108-014-0000
16-31-108-015-0000
16-31-108-016-0000
16-31-108-017-0000
16-31-108-018-0000
16-31-108-019-0000
16-31-108-020-0000

Property of Cook County Clerk's Office