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Doc#: 2000306123 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 01/03/2020 12:39 PM Pg: 1 of 9

THIS DOCUMENT PREPARED BY:
Gotzmer Law Firm, Ltd.
101 Pine St.
Sheboygan Falls, WI 53085

AFTER RECORDING RETURN TO:
Byline Bank
Attn: PCE Team
10 N. Martingale Rd., Suite 160
Schaumburg, IL 60173

PTLH 19-02-2027

Property of Cook County Clerk's Office

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of December 23, 2019, by ITASCA BANK & TRUST CO., TRUSTEE UNDER TRUST AGREEMENT #12720 DATED 10/31/2014 AND NOT PERSONALLY ("Assignor"), with a mailing address of 308 West Irving Park Road, Itasca, IL 60143, to BYLINE BANK, an Illinois banking corporation ("Assignee") whose address is 13925 West North Avenue, Brookfield, Wisconsin 53005.

1. DEFINITIONS.

"Leases" shall mean all of the leases, subleases, tenancies, and guaranties, present and future, and all amendments, extensions and renewals thereof for all or any part of the Property.

"Loan" shall mean the Loan evidenced by the Note.

"Loan Agreement" shall mean the Loan Agreement of even date herewith between Krystyna's Deli Inc., an Illinois corporation ("Borrower") and Assignee pursuant to which the Loan was made, as the same may be amended, modified, restated or replaced from time to time.

"Loan Documents" shall mean the Loan Agreement, the Note, the Mortgage and any other agreements, instruments or documents relating to or securing the Loan.

"Mortgage" shall mean the Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith executed by Assignor in favor of Assignee, which encumbers the Property.

"Note" shall mean the SBA Note (Form 147) of even date herewith in the original principal amount of Two Million Eight Hundred Fifty-Thousand Dollars (\$2,850,000.00), delivered by Borrower to Assignee.

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“Property” shall mean the land described on Exhibit A attached hereto, together with all buildings and improvements thereon.

“Rents” shall mean all of the rents, income, receipts, revenues, issues and profits, and prepayments of the same including, without limitation, lease termination, cancellation or similar fees now due or which may become due or to which Assignor may now or shall hereafter become entitled or which it may demand or claim and arising directly or indirectly from the Leases or the Property.

“Tenant(s)” shall mean any present or future tenant, subtenant or occupant of the Property.

All other capitalized terms used herein, unless otherwise specified, shall have the same meaning ascribed to them in the Loan Documents.

2. ASSIGNMENT. Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby assign, convey, and deliver unto Assignee:

- (a) All of Assignor’s right, title and interest in all of the Leases;
- (b) The immediate and continuing right to collect and receive all of the Rents; and
- (c) Any and all rights and claims of any kind that Assignor may have now or in the future against any Tenant.

To have and to hold the same unto Assignee, its successors and assigns, until termination of this Assignment as hereinafter provided.

3. ABSOLUTE ASSIGNMENT. The parties intend that this Assignment shall be a present, absolute, and unconditional assignment and shall, immediately upon execution, give Assignee the right to collect the Rents and to apply them in payment of the principal, interest and all other sums payable under the Loan Documents. Such assignment and grant shall continue in effect until all principal, interest and all other sums payable under the Loan Documents are paid in full. Subject to the provisions set forth herein and in the Mortgage and provided there is no Default, Assignee grants to Assignor a license to enforce the Leases and collect the Rents as they become due (excluding however, any lease termination, cancellation or similar payments which Assignor agrees shall be held in trust and turned over to Assignee for credit to principal under the Loan). Assignor shall deliver such other Rents to Assignee as are necessary for the payment of principal, interest and other sums payable under the Loan Documents as such sums become due.

Assignor further agrees that Assignee may enforce this Assignment without first resorting to or exhausting any security or collateral for the Loan; however, nothing herein contained shall prevent Assignee from exercising any other right under any of the Loan Documents.

4. POWER OF ATTORNEY. Assignor hereby irrevocably appoints Assignee its true and lawful attorney-in-fact, with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor to demand and collect any and all Rents and to file any claim or take any other action or proceeding and make any settlement regarding the Leases. All Tenants are hereby expressly authorized and directed to pay to Assignee, or to such nominee as Assignee may designate in a writing delivered to such Tenants, all amounts due Assignor pursuant to the Leases. All Tenants are expressly relieved of all duty, liability or obligation to Assignor in respect of all payments so made to Assignee or such nominee.

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5. CONSIDERATION. This Assignment is made for and in consideration of the loan made by Assignee to Borrower as set forth in the Loan Documents and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

6. INDEMNITY. Assignor hereby agrees to indemnify Assignee and to hold Assignee harmless from any liability, loss or damage including, without limitation, reasonable attorneys' fees, costs and expenses which may or might be incurred by Assignee under the Leases or by reason of this Assignment, and from any and all claims and demands which may be asserted against Assignee by reason of any term, covenant or agreement contained in any of the Leases, except for any such liability, loss or damage resulting solely from Assignee's gross negligence or willful misconduct.

7. PERFORMANCE OF LEASE COVENANTS. Assignee may, at its option, upon prior notice to Assignor (except in the event of an emergency) perform any Lease covenant for and on behalf of Assignor, and all monies expended in so doing shall be chargeable to Assignor and added to the outstanding principal balance and shall be immediately due and payable.

8. REPRESENTATIONS AND WARRANTIES. ASSIGNOR REPRESENTS AND WARRANTS:

- (a) The Leases are in full force and effect and have not been modified;
- (b) There are no defaults, defenses or setoffs of either landlord or, to the best of Assignor's knowledge, tenant under the Leases nor, to the best of Assignor's knowledge, is there any fact which, with the giving of notice or lapse of time or both, would constitute a default under the Leases;
- (c) The sole ownership of the entire landlord's interest in the Leases is vested in Assignor and the Leases have not been otherwise assigned or pledged; and
- (d) All Rents due to date have been collected, no Rent has been collected more than one (1) month in advance, and no Tenant has been granted any Rent concession or inducement whatsoever.

9. COVENANTS AND AGREEMENTS. Assignor hereby covenants and agrees as follows:

- (a) Assignor shall not permit any Rent under any Lease of the Property to be collected more than one (1) month in advance of the due date thereof;
- (b) Assignor shall act in a commercially reasonable manner to enforce all available remedies against any delinquent Tenant to protect the interest of the landlord under the Leases and to preserve the value of the Property;
- (c) Assignor shall comply with and perform in a complete and timely manner all of its obligations as landlord under all Leases. Assignor shall give notice to Assignee of any default by Assignor under any Lease or by any Tenant under any non-residential Lease in such time to afford Assignee an opportunity to cure any such default prior to the Tenant having any right to terminate the Lease. Assignor shall also provide Assignee with notice of the commencement of an action of ejectment or any summary proceedings for dispossession of the Tenant under any of the Leases;
- (d) Assignor shall furnish promptly to Assignee the original or certified copies of all Leases now existing or hereafter created. Assignee shall have the right to notify any Tenant at any time and from time to time of any provision of the Loan Documents;

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(e) Assignor shall not permit any Leases to be made of the Property or existing Leases to be modified, terminated, extended or renewed without the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed. At Assignee's request, Assignor shall cause the Tenant under any Lease to execute a subordination, non-disturbance and attornment agreement in form and substance reasonably satisfactory to Assignee;

(f) Assignor shall not without the prior written consent of Assignee: (i) perform any act or execute any other instrument which might interfere with the exercise of Assignee's rights hereunder; (ii) execute any assignment, pledge or hypothecation of Rents or any of the Leases; (iii) suffer or permit any of the Leases to become subordinate to any lien other than the lien of the Mortgage;

(g) This Assignment transfers to Assignee all of Assignor's right, title, and interest in any security deposits, provided that Assignor shall have the right to retain the security deposit so long as there is no Default under this Assignment or the Loan Documents. Assignee shall have no obligation to any Tenant with respect to its security deposit unless and until Assignee comes into possession and control of the deposit;

(h) Assignor shall use reasonable to efforts to deliver to Assignee, promptly upon request, a duly executed escheat certificate from any Tenant in form and content satisfactory to Assignee; and

(i) Assignee may assign its right, title and interest in the Leases and any subsequent assignee shall have all of the rights and powers provided to Assignee by this Assignment.

10. **NO OBLIGATION.** This Assignment shall not be deemed to impose upon Assignee any of the obligations or duties of the landlord or Assignor provided in any Lease. Assignor hereby acknowledges and agrees: (i) Assignor is and will remain liable under the Leases to the same extent as though this Assignment had not been made; and (ii) Assignee has not by this Assignment assumed any of the obligations of Assignor under the Leases, except as to such obligations which arise after such time as Assignee shall have assumed full ownership or control of the Property. This Assignment shall not make Assignee responsible for the control, care, management, or repair of the Property or any personal property or for the carrying out of any of the terms of the Leases. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm, or corporation in or about the Property.

11. **TENANT BANKRUPTCY.** In the event any Tenant should be the subject of any proceeding under the Federal Bankruptcy Code or any other federal, state, or local statute which provides for the possible termination or rejection of any Lease, Assignor covenants and agrees no settlement for damages shall be made without the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed, and any check in payment of damages for rejection of any Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that it will duly endorse to the order of Assignee any such check.

12. **EVENTS OF DEFAULT.** The occurrence of any one or more of the following events shall constitute a "Default" under this Assignment:

(a) failure of Borrower to pay when due any of the Indebtedness, including any payment due under the Note; or

(b) failure of Assignor to strictly comply with Sections 9(a) and (f) of this Assignment;

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(c) breach of any covenant (other than those covenants set forth in subsection (b) above), representation or warranty set forth in this Assignment which is not cured within ten (10) days after notice; provided, however, if such breach cannot by its nature be cured within ten (10) days, and Assignor immediately initiates steps which Assignee deems in Assignee's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical; or

(d) the occurrence of any Event of Default (as defined in the Loan Agreement).

13. **REMEDIES.** Upon the occurrence of a Default, then, without notice to, or the consent of, Assignor, Assignee shall be entitled to exercise all of the rights and remedies contained in this Assignment or in any other Loan Document or otherwise available at law or in equity including, without limitation, the right to do any one or more of the following:

(a) To enter upon, take possession of and manage the Property for the purpose of collecting the Rents;

(b) Dispossess by the usual summary proceedings any Tenant defaulting in the payment thereof to Assignor;

(c) Lease the Property or any part thereof;

(d) Repair, restore and improve the Property;

(e) Apply the Rent after payment of Property expenses as determined by Assignee to Borrower's indebtedness under the Loan Documents; and

(f) Apply to any court of competent jurisdiction for specific performance of this Assignment, an injunction against the violation hereof and/or the appointment of a receiver.

14. **NO WAIVER.** Neither the exercise of any rights under this Assignment by Assignee nor the application of any Rents to payment of Borrower's indebtedness under the Loan Documents shall cure or waive any Default thereunder. Failure of Assignee to avail itself of any of the terms of this Assignment for any period of time or for any reason shall not constitute a waiver of the Assignment.

15. **OTHER DOCUMENTS.** This Assignment is intended to be supplementary to, not in substitution for, or in derogation of, any assignment of rents contained in the Mortgage or in any of the Loan Documents.

16. **NOTICES.** All communications or notices required or permitted by this Assignment shall be in writing and shall be deemed to have been given (a) upon delivery if hand delivered, or (b) upon deposit in the United States mail, postage prepaid, or with a nationally recognized overnight commercial carrier, airbill prepaid, or (c) upon transmission if by facsimile, provided that such transmission is promptly confirmed by hand delivery, mail or courier as provided above, and each such communication or notice shall be addressed as follows, unless and until any party notifies the other in accordance with this Section 16 of a change of address:

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If to Assignor:

Itasca Bank & Trust Co.
308 West Irving Park Road
Itasca, IL 60143

If to Assignee:

Byline Bank
Attn: Loan Operations Department
13925 W. North Ave.
Brookfield, WI 53005.

17. APPLICABLE LAW. Subject to Section 18 below, this Assignment shall be governed by and shall be construed and enforced in accordance with the internal laws of the State of Illinois without regard to conflicts of law principles. This Assignment shall be binding upon the parties hereto and their respective heirs, successors and assigns, and may not be modified, amended or altered except by writing signed by each of the parties hereto.

18. SBA MANDATORY PROVISION. *The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:*

(a) *When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.*

(b) *Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No borrower or guarantor may claim or assert against SBA any local or state law to deny any obligation of any borrower or debtor, or defeat any claim of SBA with respect to the Loan.*

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

[Signature Page Follows]

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IN WITNESS WHEREOF, Assignor has executed this Assignment or has caused the same to be executed by its duly authorized representatives as of the date first set forth above.

ITASCA BANK & TRUST CO., TRUSTEE
UNDER TRUST AGREEMENT #12720 DATED
10/31/2014 AND NOT PERSONALLY

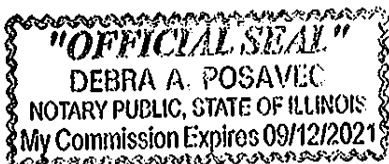
See Exculpatory
Clause Stamped Hereon
& Made an Express
Part Of This Instrument

By: Constance M Zak
Name: Constance M Zak
Title: VP

STATE OF ILLINOIS)
) ss
COUNTY OF DUPAGE)

I, Debra A. Posavec, a Notary Public in and for said county, in the State aforesaid, do hereby certify that Constance M. Zak, the VP & Trust Officer of ITASCA BANK & TRUST CO., TRUSTEE UNDER TRUST AGREEMENT #12720 DATED 10/31/2014 AND NOT PERSONALLY, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such member, 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 trust company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 24th day of December, 2019.



Debra A. Posavec
NOTARY PUBLIC
My Commission Expires 9/12/2021

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EXHIBIT A

LEGAL DESCRIPTION

Lot 66 in Volk Brothers Fourth Addition to Schiller Park, being a Subdivision of part of Lot 6 in the Subdivision of Southwest Fractional Section 15, Township 40 North, Range 12, East of the Third Principal Meridian, lying East of Wisconsin Central Railroad right of way, in Cook County, Illinois.

Property Address: 9460 Irving Park Rd., Schiller Park, IL 60176

Permanent Index Number: 12-15-311-008-0000

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EXCULPATORY RIDER

This instrument is executed by *Itasca Bank & Trust Co.*, as Trustee under the provisions of a **Trust Agreement** dated, 10/31/2014 and known as **Trust Number 12720**, and not personally but solely as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. This instrument is executed and delivered by the Trust solely in the exercise of the powers expressly conferred upon the Trustee under the Trust and upon the written direction of the beneficiaries and/or holders of the power of direction of said Trust, and Itasca Bank & Trust Co., warrants that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the trustee while in form purporting to be the said representations, warranties, covenants, undertakings and agreements of said Trustee are each and every one of them not made with the intention of binding Itasca Bank & Trust Co., in its individual capacity, but are made and intended solely for the purpose of binding only that portion of the Trust property specifically described herein. No personal liability or personal responsibility is assumed by or nor shall at any time be asserted or enforceable against Itasca Bank & Trust Co., on account of any representations, warranties (including, but not limited to any representations and/or warranties regarding potential and/or existing hazardous waste) covenants, undertakings and agreements contained in the instrument (including but not limited to any indebtedness accruing plus interest hereunder) either express or implied or arising in any way out of the transaction in connection with which this instrument is executed, and such personal liability or responsibility, if any, being expressly waived and released, and any liability (including any and all liability for any violation under the Federal and/or State Environmental or Hazardous Waste law) hereunder being specifically limited to the trust assets, if any, securing this instrument. Any provision of this instrument referring to a right of any person to be indemnified or held harmless, or reimbursed by the Trustee for any cost, claims, losses, fines, penalties, damages, costs of any nature including attorney's fees and expenses, arising in any way out of the execution of this instrument or in connection thereto are expressly waived and released by all parties to and parties claiming under this instrument. Any person claiming or any provision of this instrument referring to a right to be held harmless, indemnified or reimbursed for any and all costs, losses and expenses of any nature, in connection with the execution of this instrument, shall be construed as only a right of redemption out of the assets of the trust. Notwithstanding anything in this instrument contained, in the event of any conflict between the body of this exoneration and the body of this instrument, the provisions of this paragraph shall control. Trustee being fully exempt; nothing herein contained shall limit the right of any party to enforce the personal liability of any other party to this instrument.