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Doc# 2327233010 Fee \$73.00

RHSP FEE:\$18.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 09/29/2023 10:51 AM PG: 1 OF 1

**THIS INSTRUMENT
PREPARED BY
AND WHEN RECORDED,
RETURN
TO:**

Kevin A. Sullivan, Esq.
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

RECORDED WITH THE
COOK COUNTY, ILLINOIS
RECORDER OF DEEDS

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") executed on the date(s) indicated on each acknowledgment, but effective as of September 22, 2023, among **BANK OZK** ("Lender"), **GRG FULTON MARKET LLC**, an Illinois limited liability company ("Tenant"), and **919 W FULTON OFFICE OWNER LLC**, a Delaware limited liability company ("Landlord").

STATEMENT OF BACKGROUND

Landlord and Tenant (or the predecessor in interest to either) entered into that certain Restaurant Lease, dated September 22, 2023 (as the same may be amended, supplemented or otherwise modified from time to time, the "Lease"), relating to the premises described therein (the "Premises") and being part of the Property (as defined below). Lender has made or has committed to make a loan (the "Loan") to Landlord (or Landlord's successor in interest) pursuant to that certain Construction Loan Agreement by and between Landlord and Lender (the "Loan Agreement") secured by a deed of trust, mortgage or security deed (the "Mortgage") and an assignment of leases and rents (the "Assignment of Leases") from Landlord to Lender covering certain property described in Exhibit A attached hereto and by this reference made a part hereof (the "Property"), and including the Premises. Tenant has agreed that the Lease shall be subject and subordinate to the Mortgage, provided that, subject to the terms of this Agreement, Tenant is assured of continued occupancy of the Premises under the terms of the Lease.

STATEMENT OF AGREEMENT

For and in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are

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hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. Lease Subordinate to Lien of Mortgage. Subject to the terms of this Agreement, Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, liens and charges created thereby and all of Tenant's right, title and interest in and to the Premises and any lease hereafter executed by Tenant covering any part of the Property, is and shall continue to be subject and subordinate in all respects to (i) the lien of the Mortgage and to any renewals, modifications, consolidations, replacements and extensions thereof and to all advancements made thereunder, and to (ii) all right, title and interest of Lender in the Property created by the Mortgage in the same manner and to the same extent as if the Lease had been executed subsequent to the execution, delivery and recordation of such Mortgage. Landlord and Tenant hereby expressly subordinate to the Mortgage any and all options to purchase the Property contained in the Lease or in any modification or amendment to the Lease, if any, and further acknowledge that any such option or right of first refusal pursuant to the Lease to acquire all or any portion of the Property shall not be applicable to or effective after Lender's acquisition of the Property by foreclosure or otherwise. This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust, or other security document other than the Mortgage and any modifications, extensions, and amendments thereto and any and all existing and future advances under such Mortgage.

2. Non-Disturbance; Lender's Liability Limited. Lender does hereby covenant and agree with Tenant that, in the event Lender or a Successor Landlord (as hereinafter defined) acquires title to the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, so long as Tenant is not in default under the Lease beyond any applicable notice and cure periods, (a) the Lease shall continue in full force and effect as a direct Lease between Lender (or any Successor Landlord) and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term of the Lease (including any extensions thereof), and Lender or such Successor Landlord will not disturb or otherwise interfere with Tenant's possession of the Premises, and (b) the Premises shall be subject to the Lease and Lender or such Successor Landlord shall recognize Tenant as the tenant of the Premises for the remainder of the term of the Lease (including any extensions thereof) in accordance with the provisions thereof, provided, however, that neither Lender nor any Successor Landlord shall be (i) subject to any claims, offsets or defenses which Tenant might have against any prior landlord (including Landlord), unless (x) Tenant has an express right to any such claim, offset or defense under the terms of the Lease and (y) the basis of such claim, offset or defense is a default under the Lease which is continuing after Lender (or its designee) acquires title to the Premises and Lender had written notice thereof and an opportunity to cure such default in accordance with Section 5 hereof, (ii) liable for any act or omission of any prior landlord (including Landlord), but shall be responsible for the cure of any such act or omission if same is a default under the Lease which is continuing after Lender or a Successor Landlord acquires title to the Premises and Lender had notice thereof and an opportunity to cure such default in accordance with Section 5 hereof, (iii) bound by any rent or additional rent which Tenant might have paid more than one (1) month in advance (it being recognized that Additional Rent (as such term is defined in the Lease) may include monthly estimated payments of taxes and annual operating expenses that are pro-rated) or any security deposit or other prepaid charge paid to any prior landlord (including Landlord), except to the extent such sums are actually received by Lender (or its designee), or (iv) bound by any amendment or modification of the Lease

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made after the date hereof without its written consent, except for any amendment or modification, which, pursuant to the express terms of the Lease, does not require the consent of Landlord (in which event Lender's consent shall not be required). Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Mortgage to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy; provided, however, so long as Tenant is not in default in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease beyond any applicable notice and cure periods, (i) no judgment terminating or foreclosing the Lease will be sought in such foreclosure or other action or proceeding, and (ii) subject to the terms and provisions of this Agreement, such foreclosure or other action or proceeding shall not otherwise adversely affect Tenant's rights under the Lease or this Agreement. "Successor Landlord" as used herein shall mean Lender, its nominee or designee or any third party that becomes the owner of the Property (and the Premises) through foreclosure sale pursuant to the Mortgage or deed in lieu thereof.

3. Tenant to Attorn to Lender. Tenant does hereby covenant and agree with Lender that, in the event Lender (or its designee) acquires title to the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant shall attorn to and recognize Lender (or its designee) as the landlord under the Lease for the remainder of the term thereof (including any extensions thereof). Tenant further covenants and agrees to execute and deliver upon request of Lender a commercially reasonable form of agreement of attornment to Lender and any subsequent titleholder of the Premises.

4. Assignment of Leases; Rent Payable to Lender upon Landlord Default. Tenant acknowledges that Landlord will execute and deliver to Lender the Assignment of Leases as security for the Loan, and Tenant hereby expressly consents to such assignment. Tenant has been advised that the Assignment of Leases gives Lender the right to collect rent and other sums payable under the Lease directly from Tenant upon the occurrence of a default thereunder pursuant to the terms and conditions of such Assignment of Leases, and Tenant agrees that upon the receipt from Lender of written notice of any such default (a "Rent Payment Notice") Tenant will thereafter pay all rent and other sums payable by Tenant under the Lease directly to Lender (or as Lender shall direct) as they become due and payable. Tenant shall be entitled to rely on any Rent Payment Notice and each of Lender and Landlord acknowledge and agree that Tenant shall have no obligation to inquire as to the validity of any such Rent Payment Notice on its face purporting to come from Lender, nor whether Lender is entitled to receive from Tenant all such rents, revenues, and other payments. Notwithstanding anything to the contrary contained in the Mortgage or the Assignment of Leases, Landlord authorizes and directs Tenant to immediately and continuously make all such payments by wire transfer to or at the direction of Lender, releases Tenant of any and all liability to Landlord for any and all payments so made, and defends, indemnifies and holds Tenant harmless from and against any and all claims, demands, losses or liabilities asserted by, through or under Landlord for any and all payments so made. Subject to any and all rights of Tenant under the Lease or at law or in equity, Tenant hereafter agrees to pay all monies due and becoming due from Tenant under the Lease to or at the direction of Lender following the receipt of a Rent Payment Notice. Tenant agrees that neither Lender's demanding or receiving any such payments, nor Lender's exercising any other right, remedy, privilege, power of immunity granted by the Mortgage or the Assignment of Leases, will operate to impose any liability upon Lender for performance of any obligation of Landlord under the Lease unless and until Lender elects

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otherwise in writing or acquires the Property through foreclosure of the Mortgage or by deed from Landlord in lieu of foreclosure. Such payments shall continue until Lender directs Tenant otherwise in writing.

5. Notice of Default or Termination Event. Tenant hereby agrees to give prompt written notice to Lender of any default of Landlord under the Lease, and Lender shall have the same right to cure such default(s) as is provided to Landlord under the Lease. It is further agreed that such notice will be given to any successor in interest of Lender under the Mortgage, provided that prior to any such default of Landlord such successor in interest shall have given written notice to Tenant of its acquisition of Lender's interest therein, and shall have designated the address to which such notice is to be directed. Notwithstanding any provisions of the Lease to the contrary, Tenant may not terminate the Lease without affording to Lender or its successors a period of time to remedy any such default by Landlord equal to an additional fifteen (15) days beyond the time available to Landlord under the Lease to cure a monetary default by Landlord and an additional thirty (30) days beyond the time available to Landlord under the Lease to cure a non-monetary default by Landlord, or if such default cannot be cured within that time, then such additional time as may be necessary (up to a maximum of sixty (60) days) if, within, such initial thirty (30) days, Lender has commenced and is reasonably and diligently pursuing the remedies Lender deems necessary or appropriate to cure such default, such additional cure periods of Lender to commence upon the receipt by Lender or its successors of written notice of such default. If Lender or such successor commences or institutes foreclosure proceedings or advertises its intention to exercise the power of sale under the Mortgage within sixty (60) days after receipt of written notice of such default and then proceeds diligently to cure Landlord's default, the Lease shall not terminate and any purported termination by Tenant shall be ineffective.

6. Construction of Premises.

(a) Intentionally omitted.

(b) Any provision of this Agreement to the contrary notwithstanding, Successor Landlord shall have no obligation or incur any liability with respect to the construction or completion of the improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy; provided, however, that in the event that any former Landlord under the Lease shall not have completed the initial construction of the improvements in which the Tenant's Premises are located in accordance with the terms and provisions of the Lease (the "Construction Obligations"), and Successor Landlord shall not agree to assume such Construction Obligations within ninety (90) days after a written request therefor by Tenant, then Tenant may, at its election and as its sole remedy, terminate the Lease by giving written notice thereof to Successor Landlord (and for the avoidance of doubt, Successor Landlord shall have no obligation to pay any reimbursement or termination fees to Tenant in connection with such termination, it being acknowledged that nothing in this clause shall limit the right of Tenant to seek such reimbursement or termination fees from such former Landlord). Successor Landlord shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, including any warranties respecting use, compliance with zoning, hazardous wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession. In the event that Successor Landlord acquires title to the Premises, Successor Landlord shall have no obligation, nor incur any liability, beyond Successor Landlord's

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then interest, if any, in the Property, together with all proceeds therefrom, and Tenant shall look exclusively to such interest of Successor Landlord, if any, in the Property for the payment and discharge of any obligations or liability imposed upon Lender or such Successor Landlord hereunder, under the Lease or under any new lease of the Premises.

Notwithstanding the foregoing, if Lender or any Successor Landlord shall acquire title to the Premises, Lender or such Successor Landlord shall make tenant improvement allowance funds available to Tenant for improvements of the Premises as set forth in the Lease (the "T.I. Work") to the extent all of the following conditions apply: (i) Lender shall have not already made an advance or disbursement to Landlord or any other party in respect of such amounts for the T.I. Work (it being acknowledged that no more than \$256.66 per square foot is to be subject to advances or disbursements by Lender), and (ii) the T.I. Work has been completed to the reasonable satisfaction of Lender in accordance with the Lease. However, if Lender (or a Successor Landlord) does not make sufficient funds available to Tenant for the T.I. Work, then Tenant shall be entitled, as its sole remedy, to (i) terminate the Lease upon fifteen (15) days' written notice to Landlord and Lender (or Successor Landlord) (and for the avoidance of doubt, neither Lender nor any Successor Landlord shall have any obligation to pay any reimbursement or termination fees to Tenant in connection with such termination, it being acknowledged that nothing in this clause shall limit the right of Tenant to seek such reimbursement or termination fees from Landlord); or (ii) complete the T.I. Work at its own expense and recover the cost thereof by offsetting against the rent or other payments due by Tenant under the Lease, provided such offset shall not exceed fifty percent (50%) of Base Rent (as such term is defined in the Lease) due in any given month.

7. Casualty and Condemnation Proceeds. Landlord, Tenant and Lender hereby acknowledge and agree that, notwithstanding anything to the contrary contained in the Lease, the application of casualty and condemnation proceeds with respect to the Premises shall be governed by the terms and conditions contained in the Loan Agreement.

8. Lease Status. Landlord and Tenant represent and warrant to Lender that the Lease is in full force and effect and there are no amendments, supplements or modifications of any kind (except as referenced above) and together herewith constitutes the entire agreement between Tenant and Landlord with respect to the Premises. There are no other promises, agreements, understandings, or commitments of any kind between Landlord and Tenant with respect to the Premises or any other space at the Property.

9. Amendment, Rent Prepayment or Surrender. Without Lender's prior written consent, Landlord and Tenant will not (i) enter into any agreement amending the rental, lease term or Landlord's obligations provided for in the Lease or terminating the Lease, (ii) prepay any of the rents, additional rents, or other sums due under the Lease for more than one (1) month in advance of its accrual (it being recognized that Additional Rent (as such term is defined in the Lease) may include monthly estimated payments of taxes and annual operating expenses that are pro-rated) or (iii) voluntarily surrender any portion of the Premises or terminate the Lease without cause or shorten the Lease term, except pursuant to any rights to terminate the Lease expressly set forth in the Lease (and subject to Section 5 hereof), and no such purported amendment, modification, termination, prepayment or voluntary surrender made without Lender's prior written consent shall be binding on Lender. The foregoing notwithstanding, Lender's consent shall not be required for Tenant's exercise of rights or options expressly granted to Tenant in the Lease (including, without

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limitation, termination rights granted to Tenant pursuant to Articles 3.1.2, 3.3.1 and 6.4 of the Lease), and, subject to terms and provisions hereof, the exercise of such rights or option in accordance with the Lease terms shall be binding on Lender and any Successor Landlord.

10. Invalid or Inoperative Provisions. If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

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

12. No Mortgagee in Possession. Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become a mortgagee in possession or be or become subject to any liability or obligation under the Lease or otherwise until Lender acquires title to the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, and then such liability or obligation of Lender under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement.

13. Notices. Any and all notices, elections, approvals, consents, demands, requests and responses thereto ("Communications") permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; or (iii) by delivery to a reputable independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. All notices hereunder shall be deemed to have been properly given when personally served or if sent by United States mail or any reputable independent third party commercial delivery service as required above when received or when delivery is refused. For purposes of Communications, the addresses of the parties shall be as set forth below:

Lender: Bank OZK
8300 Douglas Avenue
Suite 900
Dallas, Texas 75225
Attn: Cliffton Hill

with a copy to: Bank OZK
6th and Commercial
P.O. Box 196
Ozark, Arkansas 72949
Attn: Regina Barker

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Landlord: 919 W Fulton Office Owner LLC
1035 N. Dearborn, Unit 10E
Chicago, Illinois 60604
Attn: Rostislav Babel

with a copy to: Akerman LLP
71 South Wacker Drive, 47th Floor
Chicago, Illinois 60606
Attn: Paul J. Russo

Tenant: Gibsons Restaurant Group
750 N. Orleans St., Suite 210
Chicago, Illinois 60654
Attn: Stephen J. Lombardo III

with a copy to: Nixon Peabody LLP
70 W. Madison St., Suite 5200
Chicago, Illinois 60602
Attn: Kristopher J. Stark

Any of the foregoing parties shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns. When used herein, the term "landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease.

15. Multiple Counterparts; Modification or Termination. This Agreement may not be discharged or modified orally or in any manner other than by an agreement in writing specifically referring to this Agreement and signed by the party or parties to be charged thereby. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

16. Further Assurances. Whenever reasonably requested in writing by Lender, Landlord and Tenant from time to time shall severally execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications of all of the matters set forth above, and as to Tenant's occupancy of the Premises, whether Tenant has exercised any renewal or expansion options and any other information that Lender may reasonably require to confirm the current status of the Lease, including, without limitation, a confirmation that the Lease is and remains subordinated as provided in this Agreement. Landlord and Tenant from time to

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time shall execute and deliver at Lender's request all reasonable instruments that may be necessary or appropriate to evidence their agreements hereunder.

17. Intentionally omitted.

18. Status of Lease. Landlord and Tenant certify to Lender that as of the date hereof:

(a) The Lease is in full force and effect; there are no amendments or modifications of any kind to the Lease except as referenced above (if any); there are no other promises, agreements, understandings, or commitments between Landlord and Tenant relating to the Premises; and Tenant has not given Landlord any notice of termination thereunder.

(b) A security deposit in the amount of \$0 has been given by Tenant under the terms of, or with respect to, the Lease. Tenant is obligated to pay Rent (as defined in the Lease) to Landlord at the rate set forth in the Lease commencing on the Rent Commencement Date (as defined in the Lease). To Tenant's knowledge, there are no defenses, deductions, counterclaims or setoffs against rent or charges due or which may become due under the Lease. There are no unpaid or unreimbursed construction allowances or other offsets due Tenant under the Lease, and, except as expressly set forth in the Lease, Tenant is not entitled to any concession or rebate of rent or other charges from time to time due and payable under the Lease.

(c) To Tenant's knowledge, no uncured default, event of default, or breach by Landlord exists under the Lease, no facts or circumstances exist that, with the passage of time, will or could constitute a default, event of default, or breach under the Lease. Tenant has made no claim against Landlord alleging Landlord's default under the Lease.

[SIGNATURE PAGE FOLLOWS]

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EXECUTED to be effective as of the date first written above.

LENDER:

BANK OZK

By: 7-778

Name: Juan Gonzalez
Title: Managing Director, Asset Management
Real Estate Specialties Group

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was ACKNOWLEDGED before me, on the 20th day of September, 2023, by **JUAN GONZALEZ**, Managing Director, Asset Management - Real Estate Specialties Group of **BANK OZK**.

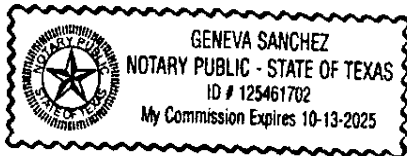
[SEAL]

My Commission Expires:

10-13-2025

Geneva Sanchez
Notary Public, State of Texas

Geneva Sanchez
Printed Name of Notary Public



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EXECUTED to be effective as of the date first written above.

TENANT:

GRG FULTON MARKET LLC,
an Illinois limited liability company

By: *Stephen J. Lombardo III*
Name: STEPHEN J. LOMBARDO III
Title: CEO

(CORPORATE SEAL)

STATE OF Illinois §
COUNTY OF Cook §

BEFORE ME, a Notary Public in and for said County and State, personally appeared Stephen J. Lombardo III, CEO of GRG Fulton Market LLC, an Illinois limited liability company, TENANT in the foregoing, and (s)he acknowledged that (s)he did sign said instrument for and on behalf of said CEO, as the voluntary act and deed of said CEO, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this 22 day of September, 2023.

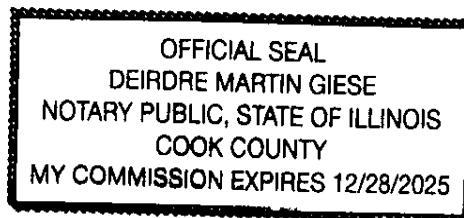
[S E A L]

My Commission Expires:

12/28/2025

Deirdre Martin Giese
Notary Public, State of Illinois

Deirdre Martin Giese
Printed Name of Notary Public




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EXECUTED to be effective as of the date first written above.

LANDLORD:

919 W FULTON OFFICE OWNER LLC,
a Delaware limited liability company

By: 
 Name: ALEX NAJEM
 Title: AUTHORIZED SIGNATORY


STATE OF Illinois §
 COUNTY OF COOK §

BEFORE ME, a Notary Public in and for said County and State, personally appeared ALEX NAJEM, AUTHORIZED SIGNATORY of 919 W FULTON OFFICE OWNER LLC, a Delaware limited liability company, LANDLORD in the foregoing, and (s)he acknowledged that (s)he did sign said instrument for and on behalf of said limited liability company, as the voluntary act and deed of said limited liability company, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this 22 day of September, 2023.

[SEAL]

My Commission Expires:
2/9/2027


 Notary Public, State of Illinois
Kesha L. Carthen
 Printed Name of Notary Public



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EXHIBIT A Legal Description

Parcel 1:

Lots 3, 4, 5, 6, 9, 10, 15 and 16 in Block 21 in Carpenter's Addition to Chicago, being a Subdivision of the Southeast ¼ of Section 8, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

and,

Part of Lot 14 in Block 21 in Carpenter's Addition to Chicago in the Southeast 1/4 of Section 8, Township 39 North, Range 14 East of the Third Principal Meridian, lying West of the Southerly extension of the East line of Lot 10 in Block 21 in said Carpenter's Addition to Chicago, in Cook County, Illinois.

Parcel 2:

Non-exclusive easements for the benefit of Parcel 1 as contained in the Declaration of Covenants, Conditions, Easements and Restrictions dated 9/20/2023 and recorded 9/29/2023 as document number 2327233001, made by 919 W Fulton Partners LLC, a Delaware limited liability company, Declarant.

Permanent Index Nos.:

17-08-424-017-0000 - (Lot 3 & part of Lot 4)
 17-08-424-016-0000 - (part of Lot 4)
 17-08-424-001-0000 - (Lot 5)
 17-08-424-018-0000 - (Lot 6 & part of Lot 4)
 17-08-424-006-0000 - (Lot 9)
 17-08-424-007-0000 - (Lot 10)
 17-08-424-013-0000 - (Affects Lot 15, part of Lot 14 and other property)
 17-08-424-012-0000 - (Lot 16)