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## Illinois Anti-Predatory Lending Database Program

Doc#: 2408024012 Fee: \$107.00  
KAREN A. YARBROUGH  
COOK COUNTY CLERK'S OFFICE  
Date 3/20/2024 9:19 AM Pg: 1 of 25

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: **PIN: 17-06-228-029-0000**

**Address:**

**Street:** 1824-1830 W DIVISION

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60622

**Lender:** Byline Bank

**Borrower:** Duntell LLC

**Loan / Mortgage Amount:** \$1,875,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77170 et seq. because the application was taken by an exempt entity or person.

**Certificate number:** B8E45B04-E0EB-455B-9072-E4BABE1AB6CC

**Execution date:** 2/23/2024

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This instrument was prepared by and,  
after recording, return to:

Meltzer, Purtill & Stelle LLC  
125 South Wacker Drive, Suite 2900  
Chicago, Illinois 60606  
Attention: Evan D. Blewett

*Permanent Real Estate Tax Index No.:*  
*See Exhibit A attached hereto*

*Address:*  
*See Exhibit A attached hereto*

*This space reserved for Recorder's use only*

**MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT** ("**Mortgage**") is made as of February 23, 2024 by **NILES CROSBY'S LLC**, an Illinois limited liability company, mortgagor as to Parcels 1 and 2 described in Exhibit A hereto ("**NC**"), and **DUNTELL LLC**, an Illinois limited liability company, mortgagor as to Parcel 3 described in Exhibit A hereto, a/k/a and who took title as "Duntell, LLC, an Illinois Limited Liability Company" ("**Duntell**" and together with NC, are referred to individually and collectively, as the context may dictate, as "**Mortgagor**"), to and for the benefit of **BYLINE BANK**, an Illinois chartered bank, its successors and assigns ("**Mortgagee**"), having an address at 180 N. LaSalle Street, Suite 300, Chicago, Illinois 60601.

**RECITALS:**

A. Pursuant to the terms and conditions of that certain Loan Agreement of even date herewith (as amended, restated or replaced from time to time, "**Loan Agreement**") among NC, **CROSBY'S KITCHEN NILES LLC**, an Illinois limited liability company ("**CKN**" and together with NC, are referred to individually and collectively, as the context may dictate, as "**Borrower**"), Duntell, Guarantor (as defined therein) and Mortgagee, Mortgagee has extended to Borrower a loan in the principal amount of One Million Eight Hundred Seventy-Five Thousand and 00/100 Dollars (\$1,875,000.00) ("**Loan**"). All terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

B. The Loan is evidenced by that certain Promissory Note in the principal amount of the Loan, made as of even date herewith (as amended, restated or replaced from time to time, "**Note**") by Borrower, made payable to the order of and delivered to Mortgagee. The Note is governed and secured by this Mortgage and the other Loan Documents.

C. The unpaid principal amount and all accrued and unpaid interest due under the Loan, as evidenced by the Note, if not sooner paid, shall be due on February 23, 2029 ("**Maturity Date**"). All such payments on account of the Indebtedness evidenced by the Note shall be applied as set forth in the Note and being made payable at such place as the holder of the Note

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may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, at the address indicated in the Loan Agreement, or at such other address as Mortgagee may from time to time designate in writing.

D. As one of the conditions to make the Loan, Mortgagee is requiring the execution and delivery of this Mortgage by Mortgagor.

**NOW, THEREFORE**, in consideration of the making of the Loan by Mortgagee to Borrower and the covenants, representations and warranties set forth in the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

## AGREEMENTS:

1. **Grant.** Mortgagor, to secure: (i) the payment of the Indebtedness, (ii) the performance and observance of the covenants, terms, conditions and agreements contained in the Loan Agreement, the Note, this Mortgage and the other Loan Documents, and (iii) the payment and performance of all Bank Product Obligations and all Hedging Obligations (the foregoing (i) through (iii) are collectively referred to as the "**Obligations**"), does by these presents **MORTGAGE, GRANT, ASSIGN, REMISE, RELEASE, WARRANT, AND CONVEY** unto Mortgagee, its successors and assigns, and grants a security interest in, all of the following tangible and intangible property hereinafter described (collectively referred to herein as, "**Property**"):

(a) The real estate and all of Mortgagor's estate, right, title and interest therein situate, legally described on **Exhibit A** attached hereto and made a part hereof ("**Real Estate**");

(b) All of the rights title and interest of Mortgagor in all buildings improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing (collectively, the "**Improvements**");

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, all rights used as means of access to the Real Estate, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

(d) All Rents, revenues, issues, royalties, income, proceeds, profits, letter-of-credit rights (as defined in the UCC) and other benefits thereof, and escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Property and/or the businesses and operations conducted by Mortgagor thereon to be applied against the Obligations;

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provided, however, that Mortgagor may collect such rents in accordance with the terms of the Assignment of Leases (as hereinafter defined);

(e) All interest of Mortgagor in all Leases;

(f) All fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, blinds, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Property, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, light fixtures, machinery, mechanical devices, motors, ovens, partitions, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, screen doors, systems, security systems, shades, shelving, sinks, sprinklers, stokers, storm doors, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner;

(g) All of Mortgagor's interests in "general intangibles" including "payment intangibles" and "software," each as defined in the UCC, now owned or hereafter acquired and related to the Property, including, without limitation, all of Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Mortgagor is or may become a party and which relate to the Property; (ii) all obligations and indebtedness owed to Mortgagor thereunder; (iii) all intellectual property related to the Property; and (iv) all choses in action and causes of action relating to the Property;

(h) All of Mortgagor's accounts now owned or hereafter created or acquired with respect to the Property and/or the businesses and operations conducted thereon by Mortgagor, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) cash, securities, and certificates of deposits; (ii) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and the other obligations or indebtedness owing to Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (iii) Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iv) Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (v) monies due or to become due to Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Mortgagor); (vi) "securities", "investment property", "financial assets", and "securities entitlements" (each as defined in the UCC); (vii) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (viii) all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Property; and

(i) All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the

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taking of the Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Property or proceeds of any sale, option or contract to sell the Property or any portion thereof.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby; provided, however, 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" (within the meaning of Section 9-102(41) of the UCC), this Mortgage is hereby deemed to also be a Security Agreement under the UCC for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as Secured Party (as defined in the UCC), as more particularly provided in Section 12 of this Mortgage.

**TO HAVE AND TO HOLD**, the Property unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to possession of the Property after any Event of Default (as hereinafter defined); Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

2. **Payment of Indebtedness; Incorporation by Reference.** Mortgagor shall pay when due the Indebtedness and all other sums, charges, fees and other obligations due and/or payable under any Loan Document and duly perform and observe all of the covenants and conditions to be performed or observed by Mortgagor as provided in the Loan Agreement, this Mortgage and the other Loan Documents all as in accordance with the Loan Documents. All of the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

3. **Title.**

(a) NC represents and covenants that (a) NC is the holder of fee simple title to Parcels 1 and 2 of the Property, free and clear of all Liens and encumbrances, except Permitted Encumbrances as defined in the Loan Agreement, and (b) NC has legal power and authority to mortgage and convey Parcels 1 and 2 of the Property.

(b) Duntell represents and covenants that (a) Duntell is the holder of fee simple title to Parcel 3 of the Property, free and clear of all Liens and encumbrances, except Permitted Encumbrances as defined in the Loan Agreement, and (b) Duntell has legal power and authority to mortgage and convey Parcel 3 of the Property.

(c) If the Lien and security interest of Mortgagee in or to the Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, Mortgagor shall immediately notify Mortgagee and shall appear in and defend any action or proceeding purporting to affect the Property, or any part thereof, and shall file and prosecute such

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proceedings and take all actions necessary to preserve and protect such title, Lien and security interest in and to the Property.

4. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.** Mortgagor shall:

(a) Subject to the provisions of the Loan Agreement, promptly repair, restore or rebuild (or cause to be promptly repaired, restored or rebuilt) any buildings or Improvements now or hereafter on the Property which may become damaged or be destroyed;

(b) Keep the Property in good condition and repair, without waste, and free from mechanics' liens or other Liens or claims for Lien, except that Mortgagor shall have the right to contest by appropriate proceedings diligently prosecuted the validity or amount of any such Lien in the manner required under the Loan Agreement;

(c) Subject to the right to contest as set forth in (b) above, immediately pay when due any indebtedness which may be secured by a Lien or charge on the Property superior or inferior to or at parity with the Lien hereof (no such superior, inferior or parity Lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such Lien to Mortgagee;

(d) Comply with all requirements of Applicable Law, any Declarations, and all other restrictions of record with respect to the Property and the use and development thereof;

(e) Not suffer or permit a change in the general nature of the occupancy of the Property, without the prior written consent of Mortgagee;

(f) Not initiate or acquiesce in any zoning reclassification without the prior written consent of Mortgagee;

(g) Pay the Indebtedness secured by this Mortgage when due according to the terms of the Loan Agreement, the Note, this Mortgage, or any other Loan Document;

(h) Pay all Operating Expenses of the Property when due; and

(i) Duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Note, the Loan Agreement or in the other Loan Documents on the part of Mortgagor to be performed and observed.

5. **Payment of Taxes and Assessments.** Mortgagor shall pay or cause to be paid all Impositions, water charges, sewer service charges, and all other Liens or charges levied or assessed against the Property, or any interest therein, of any nature whatsoever before the same become delinquent, and will promptly furnish to Mortgagee paid receipts therefor. If any special assessment is permitted by Applicable Law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid on or prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall, provided no Event of Default has occurred, have the right to protest any Impositions levied or assessed against the Property, so long as such protest is conducted in good faith by appropriate

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legal proceedings diligently prosecuted and otherwise in accordance with the terms of the Loan Agreement.

6. **Insurance.** Mortgagor shall at all times keep all Improvements, buildings, fixtures and articles of personal property owned by Mortgagor now or hereafter situated on the Property insured against loss or damage by fire and such other hazards as required under the Loan Agreement. All insurance claims and/or the application of proceeds shall be governed by Section 9 of the Loan Agreement.

7. **Condemnation.** If all or any part of the Property is taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the prosecution of such claim and the application of any award or other payment for such taking made in consideration thereof, shall be governed by Section 9 of the Loan Agreement.

8. **Observance of Lease Assignment.** Mortgagor, as lessor, has absolutely and unconditionally assigned to Mortgagee the entire lessor's right, title and interest in and to all Leases, which now or hereafter affect all or any portion of the Property and in and to all rents, issues, income and profits of or from all or any portion of the Property pursuant to the Assignment of Leases and Rents ("Assignment of Leases"). All of the provisions of the Assignment of Leases are incorporated herein as if fully set forth at length in the text of this Mortgage.

9. **Compliance with Environmental Laws.** Mortgagor acknowledges that concurrently herewith, Mortgagor has executed and delivered to Mortgagee an Environmental Indemnity Agreement ("Indemnity Agreement") pursuant to which Mortgagee is fully indemnified for certain environmental matters concerning the Property, as more particularly described therein. The provisions of the Indemnity Agreement are herein incorporated and this Mortgage shall secure the obligations of Mortgagor thereunder. Mortgagor agrees to abide by all of the provisions of the Indemnity Agreement.

10. **Effect of Extensions of Time.** If the payment of the Indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the Indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Property or having an interest in Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the Lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

11. **Transfer of Property; Further Encumbrance.** For the purposes of protecting the Lien in favor of Mortgagee, and keeping the Property free of any other Lien other than Permitted Encumbrances, Mortgagor agrees that it shall comply with Section 8.29 of the Loan Agreement.

12. **Security Agreement and Financing Statement.**

(a) NC represents and warrants that: (i) NC is the record owner of Parcels 1 and 2 of the Property; (ii) NC's chief executive office is located in the State of Illinois; (iii) NC's



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state of organization as a limited liability company is the State of Illinois; (iv) NC's exact legal name is as set forth herein; (v) NC's organizational identification number in the State of Illinois is 13615152; and (vi) NC is qualified to conduct its business in the State of Illinois.

(b) Duntell represents and warrants that: (i) Duntell is the record owner of Parcel 3 of the Property; (ii) Duntell's chief executive office is located in the State of Illinois; (iii) Duntell's state of organization as a limited liability company is the State of Illinois; (iv) Duntell's exact legal name is as set forth herein; (v) Duntell's organizational identification number in the State of Illinois is 01379704; and (vi) Duntell is qualified to conduct its business in the State of Illinois.

(c) Mortgagor and Mortgagee agree that: (i) this Mortgage shall constitute a Security Agreement within the meaning of the UCC with respect to all sums on deposit with Mortgagee pursuant hereto ("Deposits") and with respect to any property included in the definition herein of the word "Property" which property may not be deemed to form a part of the Real Estate or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the UCC), and all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Property and operation thereof and the proceeds thereof and the "supporting obligations" (as defined in the UCC) (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as "Collateral"); (ii) a security interest in and to the Collateral and the Deposits is hereby granted to Mortgagee; and (iii) the Deposits and all of Mortgagor's right, title and interest therein are hereby collaterally assigned to Mortgagee to secure the Obligations.

(d) Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Property any of the Collateral except that so long as no Event of Default has occurred, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Property, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby.

(e) Mortgagor shall, from time to time, upon written request of Mortgagee and at Mortgagor's sole cost, deliver to Mortgagee: (i) such further security documents and assurances as Mortgagee may require, to the end that the Liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. Mortgagor represents and covenants that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereof, unless Mortgagee otherwise consents, will be free and clear of Liens, encumbrances, title retention devices and security interests of others, except as permitted hereunder and/or in the Loan Agreement. If the Collateral is sold in connection with a sale of the Property, Mortgagor shall notify Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagor's obligations as



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to the security interests herein granted and to execute whatever agreements and filings are deemed necessary by Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral and the Deposits.

(f) This Mortgage shall be effective as a financing statement within the purview of the UCC with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth herein. This Mortgage is to be filed for recording with the Recorder of Deeds of the County where the Property is located. Mortgagor is the record owner of the Property and has rights in and the power to transfer the Collateral. A photographic or other reproduction of this instrument or any financing statement relating to this instrument shall be sufficient as a financing statement.

(g) Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the UCC of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage.

(h) Mortgagor agrees that: (i) where Collateral is in possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee; (ii) Mortgagor will cooperate with Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and (iii) until the Indebtedness secured hereby is paid in full, Mortgagor will not change the state where it is located or change its limited liability company name without giving Mortgagee at least thirty (30) days prior written notice in each instance.

## 13. Advances.

(a) To the extent Mortgagee is obligated to make advances under the Loan, Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a Lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b)(1) of the Foreclosure Act (as defined in Section 31 hereof). Mortgagor covenants and agrees that this Mortgage shall secure the payment of all advances made by Mortgagee, whether such advances are made as of the date hereof, or at any time in the future.

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and whether such future advances are obligatory, or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than twenty (20) years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and, although there may be no other Indebtedness outstanding at the time any advance is made. The Lien of this Mortgage shall be valid as to the Indebtedness, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County where the Property is located. The total amount of the Indebtedness may increase or decrease from time to time, but the total unpaid principal balance of the Indebtedness (including disbursements which Mortgagee may make under this Mortgage, or any other document or instrument evidencing or securing the Indebtedness or the other Obligations), at any time outstanding, shall not exceed three hundred percent (300%) of the face amount of the Note.

(b) All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Foreclosure Act (collectively, "Protective Advances") shall have the benefit of all applicable provisions of the Foreclosure Act, including those provisions of the Foreclosure Act hereinbelow referred to:

(i) all advances by Mortgagee in accordance with the terms of this Mortgage to: (1) preserve or maintain, repair, restore or rebuild the Improvements upon the Real Estate; (2) preserve the Lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Foreclosure Act;

(ii) payments by Mortgagee of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any prior Lien or encumbrance; (2) when due installments of the Impositions and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any party thereof; (3) other obligations authorized by Mortgagee; or (4) with court approval, any other amounts in connection with other Liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Foreclosure Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under any prior Liens;

(iv) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Foreclosure Act; (2) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to this Mortgage or the Property;

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(v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Foreclosure Act;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Foreclosure Act; and

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Mortgagee's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (3) Premiums paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining or existing insurance in effect at the time any receiver or Mortgagee takes possession of the Property imposed by Subsection (c)(1) of Section 15-1704 of the Foreclosure Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Mortgagee acting reasonably to be for the benefit of the Property or required to be made by the owner of the mortgaged real estate under any Declaration; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (7) if the Loan is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the Loan Agreement or the other Loan Documents; and (8) pursuant to any Lease or other agreement for occupancy of the Property for amounts required to be paid by Mortgagor.

(c) All Protective Advances shall be so much additional Indebtedness secured by this Mortgage and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(d) This Mortgage shall be a Lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 15-1302 of the Foreclosure Act.

(e) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Foreclosure Act, apply to and be included in:

(i) the determination of the amount of Indebtedness secured by this Mortgage at any time;

(ii) the Indebtedness found due and owing pursuant to this Mortgage in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional Indebtedness becoming due after

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such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) if right of redemption has not been waived by Mortgagor in this Mortgage, computation of the amount required to redeem, pursuant to Subsections (d) and (e) of Section 15-1603 of the Foreclosure Act;

(iv) determination of the amount deductible from sale proceeds pursuant to Section 15-1512 of the Foreclosure Act; and

(v) application of income in the hands of any receiver or Mortgagee in possession.

14. **Mortgagee's Reliance on Tax Bills and Claims for Liens.** Mortgagee in making any payment is hereby authorized: (a) relating to Impositions, to 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; or (b) for the purchase, discharge, compromise or settlement of any other prior Lien, to do so without inquiry as to the validity or amount of any claim for Lien which may be asserted, provided that if no Event of Default then exists hereunder, Mortgagee shall give to Mortgagor ten (10) days prior written notice thereof.

15. **Event of Default and Acceleration of Indebtedness in Event of Default.**

(a) The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(i) The failure by Borrower to pay (1) the entire Indebtedness due under the Loan Documents by the Maturity Date, (2) any installment of principal or interest payable pursuant to the Note or any payment required to be made into a Tax Reserve Account within ten (10) days after the date when due, or (3) any other amount payable to Mortgagee under the Note, this Mortgage, or any of the other Loan Documents and which failure continues for more than ten (10) days after notice from Mortgagee to Mortgagor;

(ii) The failure by Borrower to comply with any of the covenants, agreements, representations, warranties or other provisions contained herein that is not cured within the applicable grace or cure period, if any, set forth in the Loan Agreement; or

(iii) Any Event of Default described in the Loan Agreement or any of the other Loan Documents.

(b) An Event of Default under this Mortgage shall constitute an Event of Default under the other Loan Documents.

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(c) If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the Indebtedness hereby secured to be immediately due and payable to Mortgagee, with interest thereon from the date of such Event of Default at the Default Rate.

## 16. Foreclosure; Expense of Litigation

(a) When the Indebtedness or the other Obligations hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the Lien hereof for such Indebtedness, Obligations, or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents.

(b) It is further agreed that if an Event of Default occurs as an alternative to the right of foreclosure for the full secured Obligations after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said Obligations so in default, as if under a full foreclosure, and without declaring the entire secured Obligations due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured Obligations, such sale may be made subject to the continuing Lien of this Mortgage for the unmatured part of the secured Obligations; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured Obligations, but as to such unmatured part of this Mortgage, the Lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this section. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured Obligations by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured Obligations, it being the purpose to provide for a partial foreclosure sale of the secured Obligations without exhausting the power to foreclose and to sell the Property pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

(c) In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

(d) In any suit to foreclose or partially foreclose the Lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' 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 decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem

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reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature in this section mentioned and such expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Property and the maintenance of the Lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon at the Default Rate and shall be secured by this Mortgage.

(e) Upon the occurrence of an Event of Default, Mortgagee shall have the remedies of a secured party under the UCC, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the UCC); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the UCC. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Mortgagee so elects, the Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness and the other Obligations in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

**17. Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure (or partial foreclosure) sale of the Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Sections 13 and 16 hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, satisfaction of claims in order of priority adjudicated in the judgment



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of foreclosure or order confirming the sale; and fifth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

18. **Appointment of Receiver.** Upon, or at any time after the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed may appoint a receiver of the Property. 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 Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of, and the right to sell, the Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his, her or its hands in payment in whole or in part of: (a) the Indebtedness and the other Obligations secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other Lien which may be or become superior to the Lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

19. **Mortgagee's Right of Possession After an Event of Default.** After an Event of Default, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of the Property or any part thereof personally, or by its agents or attorneys. Mortgagee's rights and remedies under this Section 19 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due and payable hereunder, or whether before or after the institution of legal proceedings to foreclose the Lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Property, Mortgagee in its discretion may, with applicable process of law, enter upon and take and maintain possession of all or any part of said Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor or its employees, agents or servants, wholly therefrom. In such case Mortgagee, under the powers herein granted, may hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, action, in forcible detainer and actions in distress for rent. Mortgagee shall have full power:

(a) To cancel or terminate any Lease for any cause or on any ground which would entitle Mortgagor to cancel the same;

(b) To elect to disaffirm any Lease which is then subordinate (and not otherwise subject to a subordination, non-disturbance and attornment agreement) to the Lien hereof;

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(c) To extend or modify any then existing Leases and to enter new Leases, which extensions, modifications and Leases may provide for terms to expire, or for options to Tenants to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the Lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) To make any repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as to it may seem judicious;

(e) To insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and

(f) To receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Lease or any obligation, duty or liability of Mortgagor. To the extent provided by law, Mortgagor shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said Leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease or in connection with any obligation, duty or liability of Mortgagor, except for such claims and demands as result directly from the grossly negligent or willful actions of Mortgagee. Should Mortgagee incur any such liability, loss or damage under said Leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable on demand.

20. **Application of Income Received by Mortgagee.** Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) To the payment of the Operating Expenses of the Property, including costs of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents), if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring Tenants and entering into Leases, established claims for damages, if any, and premiums on insurance hereinabove authorized;

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(b) To the payment of Impositions now due or which may hereafter become due on the Property;

(c) To the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Property, including the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing the Property in such condition as will, in the judgment of Mortgagee, make it readily rentable; and

(d) To the payment of the Indebtedness and the other Obligations secured hereby or any deficiency which may result from any foreclosure sale.

21. **Rights Cumulative.** Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

22. **Release Upon Payment and Discharge of Borrower's Obligations.** Mortgagee shall release this Mortgage and the Lien thereof by proper instrument upon payment and discharge of all Indebtedness secured hereby, including payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release. If applicable under the terms of the Loan Agreement, Mortgagee shall also issue partial releases of the Lien of this Mortgage in accordance with and subject to the terms and conditions contained in the Loan Agreement. Such partial release shall not impair in any manner the validity or priority of the Lien of this Mortgage on the portion of the Property or the security remaining, nor release the personal liability of any person, persons or entity obligated to pay any Indebtedness secured hereby, for the full amount of the Indebtedness remaining unpaid.

23. **Waiver of Defenses.** No action for the enforcement of the Lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

24. **Waiver of Rights.** Mortgagor hereby covenants and agrees that to the extent permitted by law, Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the Lien hereof and agrees that any court having jurisdiction to foreclose such Lien may order the Property sold as an entirety.

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25. **Business Purpose.** Mortgagor covenants that the proceeds of the Loan evidenced by the Note and secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4 (1994), as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph.

26. **Statement of Indebtedness.** Mortgagor, within seven (7) days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the Indebtedness, the date to which interest has been paid and stating either that no offsets or defenses exist against the Mortgage debt or, if such offsets or defenses are alleged to exist, the nature thereof. Mortgagor hereby declares and acknowledges that Mortgagor has received, without charge, a true copy of this Mortgage.

27. **Indemnity.** Mortgagor shall protect and indemnify Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), which may be imposed upon or incurred by or asserted against Mortgagee or the stockholders, directors, officers, agents or employees of Mortgagee by reason of (a) the making of the Loan, (b) the ownership, leasing, use, operation or maintenance of the Property or receipt of any rents or other sum therefrom, (c) any failure on the part of Mortgagor or any Guarantor to perform or comply with any of the terms, covenants, conditions and agreements set forth in this Mortgage, the Note, any of the other Loan Documents, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by Mortgagor, or any Guarantor, or any other persons directly or indirectly liable for the payment of the Indebtedness, (d) any failure on the part of Mortgagor to perform or comply with (i) any other agreement executed by Mortgagor or any other obligor, or (ii) any Applicable Laws, (e) payment of sums for the protection of the Lien and security interest of the Mortgagee in and to the Property, (f) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof for construction or maintenance or otherwise, or (g) any action brought against Mortgagee attacking the validity, priority or enforceability of this Mortgage, the Note, any other Loan Document, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by Mortgagor or any other persons directly or indirectly liable for the payment of the Indebtedness. Any amounts payable to Mortgagee under this section shall bear interest at the Default Rate and shall be secured by this Mortgage. In the event any action, suit or proceeding is brought against Mortgagee or the stockholders, directors, officers, agents or employees of Mortgagee by reason of any such occurrence, Mortgagor, upon the request of Mortgagee and at Mortgagor's sole expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Mortgagor and approved by Mortgagee. Such obligations under this Section 27 shall survive the termination, satisfaction or release of this Mortgage.

28. **Waiver of Right of Redemption.** Mortgagor hereby releases and waives any and all rights to retain possession of the Property after the occurrence of an Event of Default hereunder and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Mortgagor and each and every person acquiring any interest in, or title to, the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of 735 ILCS 5/15-1601 of the Illinois Compiled Statutes or other Applicable Laws or any replacement statutes.

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29. **Subordination of Commercial Broker's and Property Manager's Lien.** Any commercial broker or property management agreement for the Property entered into hereafter by Mortgagor with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have pursuant to 770 ILCS 60.01 (1994), as amended, of the Illinois Compiled Statutes. In addition, Mortgagor shall cause the property manager to enter into an Assignment and Subordination of Management Agreement with Mortgagee, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager, to the Lien of this Mortgage.

30. **Collateral Protection Act.** Pursuant to the terms of the Illinois Collateral Protection Act (815 ILCS 180/1 *et seq.*, as amended), Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by the Loan Agreement, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property, which insurance may, but need not, protect the interest of Mortgagor in the Property. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total Indebtedness secured by this Mortgage. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

31. **Construction Loan.** The Note evidences a debt created by one or more disbursements made by Mortgagee to Borrower to finance the cost of the construction of certain improvements upon the Property in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the UCC. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, Mortgagee may at its option declare the Indebtedness secured by this Mortgage immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness secured hereby and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage.

32. **Variable Interest.** The Note provides that prior to the Conversion Date, the Loan accrues interest at a variable rate of interest as set forth in the Note. All such payments on account of the Indebtedness evidenced by the Note shall be at the interest rates and in the amounts specified in the Note and applied in the manner set forth under the Note and payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence



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of such appointment, then at the office of Mortgagee, at the address indicated in the Note or at such other address as Mortgagee may from time to time designate in writing. In the event of a conflict between the Note and the terms of this Mortgage describing the Note, the Note shall govern.

33. **Reserved.**

34. **Compliance with Illinois Mortgage Foreclosure Law.**

(a) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15-1101 *et seq.* (1994), as amended (herein called "Foreclosure Act"), the provisions of the Foreclosure Act 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 Foreclosure Act.

(b) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under any paragraph of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 13 or 16 of this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

(c) If any provision 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 Foreclosure Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

35. **Further Instruments.** Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

36. **Notices.** All notices, demands, consents, requests or other communications that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in the Loan Agreement.

37. **Miscellaneous.**

(a) **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its successors and permitted assigns, any subsequent owner or owners of the Property who acquire the Property subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.



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(b) Enforceability. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(c) Governing Law. This Mortgage shall be governed by and construed in accordance with the substantive laws of the State of Illinois.

(d) Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any Tenant or Tenants of the Property having an interest in the Property prior to that of Mortgagee. The failure to join any such Tenant or Tenants of the Property as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Use of Proceeds. Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(f) Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property by Mortgagee pursuant to this Mortgage.

(g) Relationship of Mortgagee and Mortgagor. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any beneficiary, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

(h) Time of the Essence. Time is of the essence of the payment of all amounts due Mortgagee under the Note and this Mortgage and the performance and observance by Mortgagor of each covenant, agreement, provision and term of this Mortgage.

(i) No Merger. It being the desire and intention of the parties hereto that the Mortgage and the Lien thereof do not merge in fee simple title to the Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the Lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

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(j) Damage Waiver. Mortgagor agrees that it will not assert any claim against Mortgagee or any other person indemnified under this Mortgage on any theory of liability for special, indirect, consequential, incidental or punitive damages.

38. CONSENT TO JURISDICTION. TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN THE COUNTY WHERE THE PROPERTY IS LOCATED. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE COUNTY WHERE THE PROPERTY IS LOCATED, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY NOTICE TO MORTGAGOR IN ACCORDANCE WITH THE LOAN AGREEMENT AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

39. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[Signatures on the following page]

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**IN WITNESS WHEREOF**, Mortgagor has caused this Mortgage to be executed as of the day and year first above written.

**MORTGAGOR:**

**NILES CROSBY'S LLC**, an Illinois limited liability company

By:   
Name: Douglas J. Dunlay  
Its: Manager

**DUNTELL LLC**, an Illinois limited liability company

By:   
Name: Douglas J. Dunlay  
Its: Manager

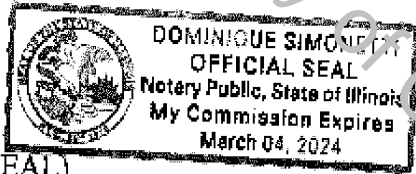
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STATE OF IL )  
 ) SS.  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Douglas J. Dunlay, a Manager of NILES CROSBY'S LLC, an Illinois limited liability company and DUNTELL LLC, an Illinois limited liability company (each of, and collectively, "Mortgagor"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as the free and voluntary act of each such Mortgagor, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 20 day of February, 2024.



(SEAL)

[Signature]  
Notary Public

My Commission Expires: March 04, 2024

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PARCEL 3:

LOTS 30, 31, 32 AND 33 IN THE COUNTY CLERK'S RESUBDIVISION OF LOTS 29 TO 34 BOTH INCLUSIVE, IN COUNTY CLERK'S DIVISION OF LOTS 25 TO 48, BOTH INCLUSIVE IN HAMILTON'S SUBDIVISION OF 5 ACRES IN THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 17-06-228-029-0000; 17-06-228-030-0000; & 17-06-228-031-0000

Commonly known as 1824-30 W. Division Street, Chicago, Illinois 60622

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