

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Doc#: 2417020174 Fee: \$107.00
CEDRIC GILES
COOK COUNTY CLERK'S OFFICE
Date 6/18/2024 11:04 AM Pg: 1 of 28

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 11-30-314-012-0000**

Address:

Street: 7340 North Hoyne Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60645

Lender: RRA Real Estate Debt Fund III Subsidiary 4, LLC

Borrower: Hoyne Mazel LLC

Loan / Mortgage Amount: \$6,472,000.00

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

Certificate number: 60F67CE4-0295-4819-841A-6A3AB59CDB28

Execution date: 6/6/2024

UNOFFICIAL COPY**PREPARED BY
AND WHEN RECORDED MAIL TO:**

Dorsey & Whitney LLP
2325 E. Camelback Rd., Ste. 300
Phoenix, Arizona 85016
Attn: Hannah Torres, Esq.

(Space Above For Recorder's Use)

**MORTGAGE AND FIXTURE FILING (WITH ASSIGNMENT OF RENTS AND
SECURITY AGREEMENT)**

NAME AND MAILING ADDRESS OF MORTGAGOR:	HOYNE MAZEL LLC, a Delaware limited liability company 77 Chestnut Ridge Road, Suite 301 Chestnut Ridge, New York 10977
NAME AND MAILING ADDRESS OF LENDER:	RRA REAL ESTATE DEBT FUND III SUBSIDIARY 4, LLC, a Delaware limited liability company 5050 North 40 th Street, Suite 340 Phoenix, Arizona 85018 Attn: Marc Grayson
PROPERTY ADDRESS / ABBREVIATED LEGAL DESCRIPTION:	7340 N. Hoyne Avenue, Chicago, Illinois 60645 Additional legal description on <u>Exhibit A</u> of this document.

THIS MORTGAGE COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES AND DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS MORTGAGE SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY. THIS MORTGAGE IS INTENDED TO AND SHALL BE VALID AND

UNOFFICIAL COPY

HAVE PRIORITY OVER ALL SUBSEQUENT LIENS AND ENCUMBRANCES, INCLUDING STATUTORY LIENS, TO THE EXTENT OF THE MAXIMUM AMOUNT SECURED HEREBY.

THIS MORTGAGE SECURES FUTURE ADVANCES.

THIS MORTGAGE ALSO SECURES A NOTE THAT PROVIDES FOR A VARIABLE INTEREST RATE.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

MORTGAGE AND FIXTURE FILING (WITH ASSIGNMENT OF RENTS AND SECURITY AGREEMENT)

THIS MORTGAGE AND FIXTURE FILING (WITH ASSIGNMENT OF RENTS AND SECURITY AGREEMENT) (hereinafter referred to as "Mortgage"), made as of June 6, 2024, is granted by **HOYNE MAZEL LLC**, a Delaware limited liability company ("Mortgagor"), for the benefit of **RRA REAL ESTATE DEBT FUND III SUBSDIARY 4, LLC**, a Delaware limited liability company (collectively with its successors or assigns, "Mortgagee" or "Lender"). Lender is the mortgagee hereunder for indexing purposes.

ARTICLE 1. GRANT

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Mortgage, Mortgagor irrevocably bargains, conveys, warrants, mortgages, encumbers, transfers, hypothecates, pledges, sells, sets over, assigns and grants a security interest and assigns to Lender, its successors and assigns, with right of entry and possession, all of the real property commonly known as 7340 N. Hoyne Avenue, Chicago, Cook County, Illinois 60645 and legally described on Exhibit A attached hereto and made a part hereof, together with the Collateral (as defined herein), all buildings and other improvements, fixtures and equipment now or hereafter located on the real property and all right, title, interest, and privileges of Mortgagor now owned or hereafter acquired in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, licenses and permits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, estates, tenements, hereditaments, privileges, rights and rights of way appurtenant or related thereto; all buildings and other improvements and fixtures now or hereafter located on the real property, all apparatus, equipment and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property ("Improvements"); all interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms. For the avoidance of any doubt, Lender shall have no security interest in and to the personal property owned by any tenant under a Lease except to the extent that Borrower shall have any vested interest therein.
- 1.2 **WARRANTY OF TITLE; USE OF PROPERTY.** Mortgagor represents and warrants that Mortgagor lawfully holds and possesses fee simple title absolute to the Property without limitation on the right to convey and encumber, and that this Mortgage is a first and prior lien on the Property subject only to those exceptions approved by Lender in writing. Mortgagor further warrants that the Property is not used principally for agricultural or farming purposes, and that the Property is not homestead property and that all of the Property are separate tax parcels, and there are no properties included in such tax parcels other than the Property. Mortgagor further covenants and agrees that it shall not cause all or any portion of the Property to be replatted or for any lots or boundary lines to

UNOFFICIAL COPY

be adjusted, changed or altered for either ad valorem tax purposes or otherwise, and shall not consent to the assessment of the Property in conjunction with any property other than the Property.

- 1.3 **USE OF PROCEEDS.** Mortgagor represents and warrants to Lender that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Mortgage constitute a business loan.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Mortgage for the purpose of securing the payment and performance of the following obligations (collectively "**Secured Obligations**"):
- (a) Payment to Lender of all sums at any time owing with interest thereon, according to the terms of that certain Promissory Note of even date herewith in the principal amount of \$24,750,000.00 executed by Mortgagor, Sheridan Mazel LLC, a Delaware limited liability company, North Shore Mazel LLC, a Delaware limited liability company, and Southside Mazel LLC, a Delaware limited liability company (collectively, "**Borrower**") and payable to the order of Lender (as the same may be amended, modified, supplemented or replaced from time to time, the "**Note**"); and
 - (b) Payment and performance of all covenants and obligations of Mortgagor under this Mortgage; and
 - (c) Payment and performance of all covenants and obligations on the part of Borrower under that certain Loan Agreement (as the same may be amended, modified, supplemented or replaced from time to time, the "**Loan Agreement**") of even date herewith by and between Borrower and Lender; and
 - (d) Payment and performance of all obligations secured by the instruments identified on Exhibit B to this Security Agreement; and
 - (e) Payment and performance of all covenants and obligations, if any, of any other rider attached as an Exhibit to this Mortgage; and
 - (f) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when such future advance or obligation is evidenced by an instrument in writing, which recites that it is secured by this Mortgage including any and all advances or disbursements of Lender with respect to the Property for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Property; and
 - (g) All modifications, extensions, novations and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the

UNOFFICIAL COPY

case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

- 2.2 **OBLIGATIONS.** The term “obligations” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations together with all costs of collecting the Secured Obligations.
- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the Loan Documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.
- 2.4 **FUTURE ADVANCES.** This Mortgage shall secure not only presently existing indebtedness under the Note, the Loan Agreement or any other Loan Documents (as defined in the Loan Agreement), but also future advances, whether such advances are obligatory or to be made at the option of Lender, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all indebtedness including future advances, from the time of its filing for record in the recorder’s or registrar’s office of the county in which the real estate is located. The total amount of indebtedness may increase or decrease from time to time, as provided in the Note, and any disbursements which Lender may make under this Mortgage, the Note, the Loan Agreement or any other document with respect hereto (e.g., for payment of taxes, insurance premiums or other advances to protect Lender’s liens and security interests, as permitted hereby) shall be additional indebtedness secured hereby. At no time shall the principal amount of the Secured Obligations secured by this Mortgage, not including sums advanced to protect the security of this Mortgage, exceed the amount of \$50,000,000.00 (the “**Maximum Amount Secured**”). This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Mortgagor hereby absolutely and irrevocably assigns and transfers to Lender all of Mortgagor’s right, title and interest in, to and under: (a) all present and future leases, subleases, licenses or occupancy agreements of the Property or any portion thereof, and all other agreements of any kind relating to the management, leasing, operation, use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof (“**Leases**”); and (b) the rents, revenue, income, receipts, reserves,

UNOFFICIAL COPY

issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases (“Payments”). The term “Leases,” as referred to herein, shall also include all subleases and other agreements for the use or occupancy of the Property, options, rights of first refusal or guarantees of and security for the tenant’s performance thereunder, the right to exercise any landlord’s liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This assignment is intended to be and constitutes a present, unconditional and absolute assignment, not an assignment for security purposes only, and Lender’s right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

- 3.2 **GRANT OF LICENSE.** Lender confers upon Mortgagor a revocable license (“License”) to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Lender may collect and apply the Payments pursuant to that certain Section hereof entitled Application of Other Sums without notice and without taking possession of the Property. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Lender. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants’ undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Lender. Lender may apply, in its sole discretion, any Payments so collected by Lender against any Secured Obligation under the Loan Documents (as defined in the Loan Agreement), whether existing on the date hereof or hereafter arising. Collection of any Payments by Lender shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice. In the event that Borrower cures any Default that caused such license to be revoked, such license shall be automatically reinstated without any further action whatsoever by either of Borrower or Lender or any Servicer.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or under any duty to produce rents or profits. Lender shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise by Lender or any of its employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Lender

UNOFFICIAL COPY

hereunder; or (ii) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

- 3.4 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that Mortgagor has delivered to Lender a true, accurate and complete list of all Leases, and that, except as disclosed to Lender in writing prior to the date hereof, (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (b) no rent or other payment under any existing Lease has been paid by any tenant for more than one (1) month in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised; and (c) none of the landlord's interests under any of the Leases has been transferred or assigned.
- 3.5 **COVENANTS.** Mortgagor covenants and agrees, at Mortgagor's sole cost and expense, to: (a) perform all of the obligations of landlord contained in the Leases and enforce by all available remedies performance by the tenants of the obligations of the tenants contained in the Leases; (b) give Lender prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the tenant or of the landlord; (c) exercise Mortgagor's best efforts to keep all portions of the Property that are currently subject to Leases leased at all times at rentals not less than the fair market rental value; (d) deliver to Lender fully executed, counterpart original(s) of each and every Lease and any modifications or amendments thereto if requested to do so; and (e) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the landlord and tenant) of any Lease to the Mortgage, in form and substance acceptable to Lender, as Lender may request. Mortgagor shall not, without Lender's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) enter into any Leases after the date hereof; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when it becomes due under any of the Leases; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the tenants from any obligations thereunder; (v) consent to any assignment or subletting by any tenant under any Lease; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust, mortgage, deed to secure debt or encumbrance. Any such attempted amendment, cancellation, modification or other action in violation of the provisions of this Section without the prior written consent of Lender shall be null and void. Without in any way limiting the requirement of Lender's consent hereunder, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any tenant), modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose.
- 3.6 **ESTOPPEL CERTIFICATES.** Within 30 days after written request by Lender, Mortgagor shall obtain and shall deliver to Lender and to any party designated by Lender estoppel certificates executed by Mortgagor and by each of the tenants, in recordable form, certifying (if such be the case) to certain matters relating to the Leases, including, without

UNOFFICIAL COPY

limitation: (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date and amount of each tenant's most recent payment of rent and other charges; (c) that there are no uncured defaults, defenses or offsets outstanding, or stating those claimed by Mortgagor or tenants under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Lender.

- 3.7 **LENDER RIGHT TO CURE.** Without regard to whether there exists a Default, if there exists a default under a Lease or any other contract collaterally assigned by Borrower to Lender in connection with the Loan, Borrower acknowledges and agrees (a) that Lender may, at its option, with no obligation to do so, take any actions necessary to cure such default including, without limitation, any actions that require Lender or its designee to enter onto the Property, (b) to indemnify, defend and hold Indemnitees (defined below) harmless in connection with any such action, and (c) any money advanced for any such purpose shall be secured hereby and payable by Mortgagor to Lender on demand, with interest thereon at the Default Rate from the date such amounts are advanced.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Lender as of the Effective Date (as defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "**Collateral**");

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts (including impound accounts, if any), accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary,

UNOFFICIAL COPY

non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, it is intended by Mortgagor and Lender that this Mortgage constitutes a fixture filing filed with the real estate records of Cook County, Illinois, under the Uniform Commercial Code, as amended or recodified from time to time, from the state wherein the Property is located ("**UCC**"). For purposes of this fixture filing, the "Debtor" is the Mortgagor and the "Secured Party" is the Lender. A description of the land which relates to the fixtures is set forth in Exhibit A attached hereto. Mortgagor is the record owner of such land. The filing of a financing statement covering the Collateral shall not be construed to derogate from or impair the lien or provisions of this Mortgage with respect to any property described herein which is real property or which the parties have agreed to treat as real property. Similarly, nothing in any financing statement shall be construed to alter any of the rights of Lender under this Mortgage or the priority of Lender's lien created hereby, and such financing statement is declared to be for the protection of Lender in the event any court shall at any time hold that notice of Lender's priority interest in any property or interests described in this Mortgage must, in order to be effective against a particular class of persons, including but not limited to the Federal government and any subdivision, agency or entity of the Federal government, be filed in the UCC records.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, or will have, good title to the Collateral; (b) Mortgagor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Mortgagor's principal place of business is located at the address set forth on the cover page of this Mortgage.
- 4.3 **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents as Lender deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Lender prior written notice thereof; (c) to cooperate with Lender in perfecting all security interests granted herein and in obtaining such agreements from third parties as Lender deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Lender is authorized to file

UNOFFICIAL COPY

financing statements in the name of Mortgagor to perfect Lender's security interest in the Collateral.

- 4.4 **RIGHTS OF LENDER.** In addition to Lender's rights as a "Secured Party" under the UCC, Lender may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Lender's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Lender therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral.

Upon the occurrence of a Default (hereinafter defined) under this Mortgage, then in addition to all of Lender's rights as a "Secured Party" under the UCC or otherwise at law and in addition to Lender's rights under the Loan Documents:

- (a) Lender may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Lender at a place designated by Lender; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license or otherwise dispose of any or all of the Collateral, and store the same at locations acceptable to Lender at Mortgagor's expense; and (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
- (b) Lender may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Lender deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Lender may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral; and
- (c) Any proceeds of any disposition of any Collateral may be applied by Lender to the payment of expenses incurred by Lender in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Lender toward the payment of the Secured Obligations in such order of application as Lender may from time to time elect.

Notwithstanding any other provision hereof, Lender shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Lender unless Mortgagor shall make an express written election of said remedy under the UCC or other applicable law. Mortgagor agrees that Lender shall have no obligation to process or prepare any Collateral for sale or other disposition. Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Lender's rights and remedies as

UNOFFICIAL COPY

heretofore provided is a disposition thereof in a commercially reasonable manner and that 10 days prior notice of such disposition is commercially reasonable notice.

- 4.5 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Lender as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Lender may, without the obligation to do so, in Lender's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Mortgagor; provided, however, that Lender as such attorney-in-fact shall be accountable only for such funds as are actually received by Lender and that such power of attorney shall only be effective during the continuance of a Default.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation for which it is responsible hereunder or under the Loan Agreement when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may adversely affect Lender's rights in the Property, then Lender may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to protect the value of the Property and Lender's rights in the Property, including the retaining of counsel, and any amount so expended by Lender will be added to the Secured Obligations and will be payable by Mortgagor to Lender on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Mortgagor's rights to contest payment of taxes or assessments as may be provided in the Loan Agreement, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Lender by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Lender pursuant to any Secured Obligation, provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Lender and which are measured by and imposed upon Lender's net income. Mortgagor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes, assessments, levies and charges, and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes, assessments, levies and charges against the Property.
- 5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall immediately discharge all liens, claims and encumbrances not approved by Lender in writing that has or may attain priority over this Mortgage. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Mortgagor shall pay when due all obligations secured by, or which may

UNOFFICIAL COPY

become, liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or Collateral, or any interest therein, whether senior or subordinate hereto.

5.4 DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.

- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Lender and, at the request of Lender, shall be paid directly to Lender: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Lender to be maintained by Mortgagor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Mortgage, Lender may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in such order and amounts as Lender in its sole discretion may choose, and/or Lender may release all or any part of the proceeds to Mortgagor upon any conditions Lender may impose. Lender may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Lender; provided, however, in no event shall Lender be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Lender or its employees or agents.
- (b) If the cost of repair and restoration is less than \$250,000 and provided there is no continuing Default, insurance or condemnation proceeds shall be paid directly to Mortgagor for repair and restoration of the Property. If the cost of repair and restoration is greater than \$250,000, but less than \$1,000,000, the proceeds of all insurance policies maintained by Mortgagor shall be deposited with Lender to be used for repair or restoration, but may condition such application upon reasonable conditions, including, without limitation, (i) the deposit with Lender of such additional funds which Lender determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Lender (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Lender of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Lender, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Lender; and (iv) the delivery to Lender of evidence

UNOFFICIAL COPY

acceptable to Lender (A) that after completion of the work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (B) of the continuation of Leases acceptable to and required by Lender; (C) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (D) that there has been no material adverse change in the financial condition or credit of Mortgagor and Borrower and any guarantors since the date of this Mortgage; and (E) of the satisfaction of any additional conditions that Lender may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within 30 days of receipt by Lender of such insurance or condemnation proceeds, then Lender may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Lender in its sole discretion may choose. If the cost of repair or restoration is greater than \$1,000,000, the proceeds of all insurance policies maintained by Mortgagor shall be deposited with Lender to be used, in Lender's sole discretion (i) for repair or restoration, in accordance with the terms and conditions set forth above, or (ii) to pay the Secured Obligations in such order and amounts as Lender in its sole discretion may choose.

- 5.5 **MAINTENANCE AND PRESERVATION OF THE PROPERTY AND COLLATERAL.** Subject to the provisions of the Loan Agreement, Mortgagor covenants: (a) to insure the Property and Collateral against such risks as Lender may require as set forth in the Loan Agreement and any supplemental insurance provisions or requirements provided to Mortgagor by Lender, and, at Lender's request, to provide evidence of such insurance to Lender, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Property and Collateral in good condition and repair; (c) not to remove or demolish the Property or Collateral or any part thereof, except to repair or replace improvements, fixtures, furnishings and equipment with items of like kind and quality; (d) to complete or restore promptly and in good and workmanlike manner the Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Lender elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in that certain Section hereof entitled Damages; Insurance and Condemnation Proceeds; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Property or Collateral; and (g) to do all other acts which from the character or use of the Property or Collateral may be reasonably necessary to maintain and preserve its value.
- 5.6 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Lender hereunder against all adverse claims. Mortgagor shall give

UNOFFICIAL COPY

Lender prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any material damage to the Property or Collateral and of any condemnation offer or action with respect to the Property or Collateral.

- 5.6 **REQUIRED INSURANCE.** Mortgagor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force with respect to the Property, at no expense to Lender, policies of insurance in forms and amounts required by the Loan Agreement.
- 5.7 **DUE ON SALE; ENCUMBRANCE.** If the Property or any interest therein or if any direct or indirect ownership interest in Mortgagor shall be sold, under contract to sell, transferred, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, or if there shall be any change in the management of the Property or Mortgagor, in each case without the prior written consent of Lender or as expressly permitted by or in accordance with the Loan Agreement, THEN Lender, in its sole discretion, may at any time thereafter declare all Secured Obligations immediately due and payable.
- 5.8 **ACTIONS BY LENDER.** From time to time, without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Lender, without liability therefor and without notice, may: (a) release all or any part of the Property from this Mortgage; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Mortgage.
- 5.9 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property and Collateral or in any manner obligated under the Secured Obligations ("**Interested Parties**"), Lender may, from time to time and without notice to Mortgagor or Borrower (a) release any person or entity from liability for the payment or performance of any Secured Obligation; (b) take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation; or (c) accept additional security or release all or a portion of the Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Mortgage upon the Property, the Collateral or any other security provided herein or in the other Loan Documents.
- 5.10 **SUBROGATION.** Lender shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Lender pursuant to the Loan Documents or by the proceeds of any loan secured by this Mortgage.
- 5.11 **RIGHT OF INSPECTION.** Lender, Servicer (as defined in the Loan Agreement), and their respective agents, representatives and employees, may enter any part of the Property at any reasonable time (but in no event less than five (5) Business Days' notice) for the

UNOFFICIAL COPY

purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof and the other Loan Documents (subject in all respects to the rights of tenants, as tenants only, under the Leases and provided such entry is conducted in a manner so as to not interfere with the operation of the Property).

- 5.12 **COMMUNITY FACILITIES DISTRICT.** Without obtaining the prior written consent of Lender, Mortgagor shall not consent to, or vote in favor of, the inclusion of all or any part of the Property in any assessment district, improvement district, community facilities district, special district, special improvement district, governmental district or other similar district (any such district, a "**Special Assessment District**"). Mortgagor shall immediately give notice to Lender of any notification or advice that Mortgagor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Property in a Special Assessment District. Lender shall have the right to file a written objection to the inclusion of all or any part of the Property in a Special Assessment District, either in its own name or in the name of Mortgagor, and to appear at, and participate in, any hearing with respect to the formation of any such district.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "**Default**" shall mean the occurrence of any Default as defined in any one or more of the Loan Agreement, any other Loan Document or any Other Related Document (as defined in the Loan Agreement) between Borrower and Lender, including, without limitation, the Other Security Instrument(s) described on Exhibit B attached hereto and made a part hereof.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Lender shall have each and every one of the following rights and remedies in addition to Lender's rights under the other Loan Documents:
- (a) With or without notice, to declare all Secured Obligations immediately due and payable.
 - (b) With or without notice, and without releasing Mortgagor or Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor or Borrower and, in connection therewith, to enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Lender under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Lender, is or may be senior in priority to this Mortgage, the judgment of Lender being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (iv) to employ counsel, accountants, contractors and other appropriate persons.

UNOFFICIAL COPY

- (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Mortgage as a mortgage or to obtain specific enforcement of the covenants of Mortgage hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations.
- (d) To the extent this Mortgage may encumber more than one property, the Lender at its sole option shall have the right to foreclose any one property or to foreclose en masse. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness to the decree for sale all costs, fees and expenses described in that certain Section hereof entitled Payment of Costs, Expenses and Attorney's Fees which may be paid or incurred by or on behalf of Lender to prosecute such suit, and such other costs and fees including, but not limited to, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, accounting fees, brokerage commissions, costs of whatever nature or kind to protect and avoid impairment of the Property, and other related costs and fees as shall be necessary.
- (e) To apply to a court of competent jurisdiction for and obtain the ex parte appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to the ex parte appointment of a receiver and waives notice of any hearing or proceeding for such appointment.
- (f) To enter upon, possess, control, lease, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Lender deems proper, to make repairs, alterations and improvements to the Property as necessary, in Lender's sole judgment, to protect or enhance the security hereof.
- (g) [Reserved]
- (h) To resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Lender may determine in its sole discretion.
- (i) Upon sale of the Property at any foreclosure sale, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, to the extent permitted by law, Lender may, but is not obligated to, take into account all or any of the following:

UNOFFICIAL COPY

(i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Lender; and (z) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

- (j) Upon the completion of any foreclosure of all or a portion of the Property, commence an action to recover any of the Secured Obligations that remains unpaid or unsatisfied.
- (k) Exercise any and all remedies at law, equity, or under the Note, Mortgage or other Loan Documents for such Default.

6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Lender, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Lender under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

6.4 **APPLICATION OF OTHER SUMS.** All sums received by Lender under this Mortgage other than those described in that certain Section hereof entitled Rights and Remedies or that certain Section hereof entitled Grant of License, less all costs and expenses incurred by Lender or any receiver, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Lender shall determine in its sole

UNOFFICIAL COPY

discretion; provided, however, Lender shall have no liability for funds not actually received by Lender.

- 6.5 **NO CURE OR WAIVER.** Neither Lender's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Lender or any receiver shall cure or waive any breach, Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or limit or impair the status of the security, or prejudice Lender in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of or security interests created by this Mortgage.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Lender immediately upon demand of Lender all actual costs and expenses of any kind incurred by Lender pursuant to this Article (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation or not, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein or as allowed by applicable law. In addition, Mortgagor will pay the actual costs and fees for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit, including, without limitation, any attorneys' fees. All of the foregoing amounts must be paid to Lender as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Lender.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect or preserve Lender's security interests and rights in or to any of the Property and Collateral, and upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Lender may perform any obligation of Mortgagor hereunder. Furthermore, Mortgagor hereby authorizes Lender and its agents or counsel to file financing statements that indicate the collateral (a) as all assets of Mortgagor or words of similar effect or (b) as being of an equal, greater or lesser scope, or with greater or lesser detail, than as set forth in this Mortgage, on behalf of the Mortgagor.
- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Lender provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this Mortgage as though it were a mortgage) or in any other agreements between Mortgagor and Lender. No failure on the part of

UNOFFICIAL COPY

Lender to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Lender in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Lender may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Lender shall not waive the agreement contained herein that time is of the essence, nor shall Lender waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **NOTICES.** All notices, demands, or other communications under this Mortgage and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Mortgage). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three Business Days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	Hoyne Mazel LLC 777 Chestnut Ridge Road, Suite 301 Chestnut Ridge, New York 10977 With a copy to: Levitin & Associates, P.C. 777 Chestnut Ridge Road, Suite 300 Chestnut Ridge, New York 10977 Attn: Jeffrey Levitin, Esq. Email Address: Jeff@levitinlaw.com
Lender:	c/o RRA Capital Management, LLC 5050 North 40 th Street, Suite 340 Phoenix, AZ 85018 Attn: Marc Grayson With a copy to: Dorsey & Whitney LLP 2325 E. Camelback Road, Suite 300 Phoenix, Arizona 85016

UNOFFICIAL COPY

	Attn: Hannah Torres, Esq.
--	---------------------------

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

- 7.2 **ATTORNEYS' FEES AND EXPENSES; ENFORCEMENT.** If the Note is placed with an attorney for collection or if an attorney is engaged by Lender to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, reinforcement of rights and remedies, then in all events, Mortgagor agrees to pay to Lender all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 7.3 **NO WAIVER.** No previous waiver and no failure or delay by Lender in acting with respect to the terms of the Note or this Mortgage shall constitute a waiver of any breach, default, or failure of condition under the Note, this Mortgage or the obligations secured thereby. A waiver of any term of the Note, this Mortgage or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.
- 7.4 **SEVERABILITY.** If any provision or obligation under this Mortgage shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Mortgage and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of this Mortgage.
- 7.5 **HEIRS, SUCCESSORS AND ASSIGNS.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Mortgage shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto, including, without limitation, subsequent owners of the Property or any part thereof; provided, however, that this Section does not waive or modify the provisions of that certain Section entitled Due on Sale or Encumbrance.
- 7.6 **ATTORNEY-IN-FACT.** Mortgagor hereby irrevocably appoints and authorizes Lender as Mortgagor's attorney-in-fact, which agency is coupled with an interest, and as such attorney-in-fact Lender may, without the obligation to do so, execute and/or record in Lender's or Mortgagor's name any notices, instruments or documents that Lender deems appropriate to protect Lender's interest under any of the Loan Documents.
- 7.7 **TIME.** Time is of the essence of each and every term herein.
- 7.8 **GOVERNING LAW AND CONSENT TO JURISDICTION.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Mortgage, this Mortgage shall be governed by, and construed in accordance with, the laws of Illinois, it being understood that, except as expressly set forth

UNOFFICIAL COPY

above in this paragraph and to the fullest extent permitted by the laws of Illinois, the laws of Arizona shall govern any and all matters, claims, controversies or disputes arising under or related to this Mortgage, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties relating to this Mortgage, the Loan Agreement and the other Loan Documents and all of the indebtedness or obligations arising thereunder or hereunder. Mortgagor hereby consents to the jurisdiction of any federal or state court within Arizona or Illinois having proper venue and also consent to service of process by any means authorized by Arizona, Illinois or federal law.

- 7.9 **JOINT AND SEVERAL LIABILITY.** The liability of all persons and entities obligated in any manner hereunder and under any of the Loan Documents shall be joint and several.
- 7.10 **HEADINGS.** All article, section or other headings appearing in this Mortgage are for convenience of reference only and shall be disregarded in construing this Mortgage.
- 7.11 **COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 7.12 **POWERS OF ATTORNEY.** The powers of attorney granted by Mortgagor to Lender in this Mortgage shall be unaffected by the disability of the principal so long as any portion of the Loan remains unpaid or unperformed. Lender shall have no obligation to exercise any of the foregoing rights and powers in any event. Lender hereby discloses that it may exercise the foregoing powers of attorney for Lender's benefit, and such authority need not be exercised for Borrower's best interest.
- 7.13 **DEFINED TERMS.** Unless otherwise defined herein, capitalized terms used in this Mortgage shall have the meanings attributed to such terms in the Loan Agreement.
- 7.14 **RULES OF CONSTRUCTION.** The word "**Borrower**" as used herein shall include both the named Borrower and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Note and the other Loan Documents. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Mortgage is executed by more than one person, the term "**Mortgagor**" shall include all such persons. The word "**Lender**" as used herein shall include Lender, its successors, assigns and affiliates. The term "**Property**" and "**Collateral**" means all and any part of the Property and Collateral, respectively, and any interest in the Property and Collateral, respectively.

UNOFFICIAL COPY

- 7.15 **USE OF SINGULAR AND PLURAL; GENDER.** When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural, and the masculine gender includes the feminine and/or neuter.
- 7.16 **EXHIBITS, SCHEDULES AND RIDERS.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Mortgage by such attachment for all purposes.
- 7.17 **INCONSISTENCIES.** In the event of any inconsistencies between the terms of this Mortgage and the terms of the Loan Agreement or Note, including without limitation, provisions regarding collection and application of Property revenue, required insurance, tax impounds, and transfers of the Property, the terms of the Loan Agreement or Note, as applicable shall prevail.
- 7.18 **MERGER.** No merger shall occur as a result of Lender's acquiring any other estate in, or any other lien on, the Property unless Lender consents to a merger in writing and in accordance with the terms of the Loan Agreement.
- 7.19 **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property and Collateral, hereby waives all rights to have the Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation marshalled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Lender shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or other property as a whole or in separate parcels, in any order that Lender may designate.
- 7.20 **SUBORDINATION OF PROPERTY MANAGER'S LIEN.** Any property management agreement for the Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Property shall be subject and subordinate to the lien of this Mortgage and shall provide that Lender may terminate such agreement at any time after the occurrence of a Default hereunder. Such property management agreement or a short form thereof, at Lender's request, shall be recorded with the County Recorder of the county where the Property is located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Lender, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.
- 7.21 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all

UNOFFICIAL COPY

parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing. The Loan Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference. Where Mortgagor and Borrower are not the same, "**Mortgagor**" means the owner of the Property in any provision dealing with the Property, "**Borrower**" means the obligor in any provision dealing with the Secured Obligations.

- 7.22 **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS MORTGAGE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.
- 7.23 **WAIVER OF HOMESTEAD; AND WAIVER OF RIGHT OF REDEMPTION.** Mortgagor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all Secured Obligations secured by this Mortgage. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS MORTGAGE, MORTGAGOR HEREBY WAIVES, TO THE EXTENT PERMITTED UNDER 735 ILCS 5/15 1601(6) OR ANY SIMILAR LAW EXISTING AFTER THE DATE OF THIS MORTGAGE, ANY AND ALL RIGHTS OF REDEMPTION ON BEHALF OF MORTGAGOR AND ON BEHALF OF ANY OTHER PERSONS PERMITTED TO REDEEM THE PROPERTY.

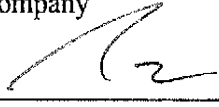
[SIGNATURE PAGE FOLLOWS]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage as of the date set forth above.

MORTGAGOR:

HOYNE MAZEL LLC, a Delaware limited liability company

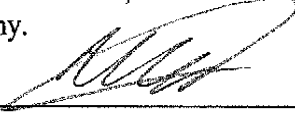
By: 

Name: Moshe Wechsler

Title: Authorized Signatory

STATE OF Florida)
COUNTY OF Deer Beach)^{SS}

The foregoing instrument was acknowledged before me this 4th day of June, 2019, by Moshe Wechsler, the Authorized Signatory of Hoyne Mazel LLC, a Delaware limited liability company, for and on behalf of the limited liability company.



Notary Public

NOTARY PUBLIC STATE OF FLORIDA
MOSHE GOLDBLATT
COMMISSION NO. HH 45775
EXPIRES 10/24/2027

UNOFFICIAL COPY

EXHIBIT A - DESCRIPTION OF PROPERTY

Exhibit A to that certain Mortgage and Fixture Filing (With Assignment of Rents and Security Agreement) dated as of June 6, 2024 (the "Mortgage"), by HOYNE MAZEL LLC, a Delaware limited liability company ("Mortgagor"), for the benefit of RRA REAL ESTATE DEBT FUND III SUBSIDIARY 4, LLC, a Delaware limited liability company (collectively with its successors or assigns, "Mortgagee" or "Lender").

Lots 6 and 7 in Marshall's Subdivision of Lot 4 in County Clerk's Division of Part of the Southwest Fractional 1/4 Section 30, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

For informational purposes only:

P.I.N. 11-30-314-012-0000

Commonly referred to as: 7340 North Hoyne Avenue, Chicago, Illinois 60645-2527

UNOFFICIAL COPY

EXHIBIT B - CROSS-DEFAULT/CROSS-COLLATERALIZATION RIDER

1. **ADDITIONAL SECURITY - OBLIGATIONS SECURED BY OTHER MORTGAGE.** In addition to the obligations secured by this Mortgage and described as “Secured Obligations” herein, this Mortgage shall also secure the payment and performance of all obligations secured by:
 - (a) that certain Mortgage and Fixture Filing (With Assignment of Rents and Security Agreement) (hereinafter referred to as “**Other Mortgage A**”) by Sheridan Mazel LLC, a Delaware limited liability company, for the benefit of Lender, as Mortgagee, dated as of even date herewith, to be recorded in the real property records of Cook County, Illinois, securing the real property and improvements located at 5036 N. Sheridan Road, Chicago, Illinois 60640;
 - (b) that certain Mortgage and Fixture Filing (With Assignment of Rents and Security Agreement) (hereinafter referred to as “**Other Mortgage B**”) by North Shore Mazel LLC, a Delaware limited liability company, for the benefit of Lender, as Mortgagee, dated as of even date herewith, to be recorded in the real property records of Cook County, Illinois, securing the real property and improvements located at 1716 W. North Shore Avenue, Chicago, Illinois 60626;
 - (c) that certain Mortgage and Fixture Filing (With Assignment of Rents and Security Agreement) (hereinafter referred to as “**Other Mortgage C**”) by Southside Mazel LLC, a Delaware limited liability company, for the benefit of Lender, as Mortgagee, dated as of even date herewith, to be recorded in the real property records of Cook County, Illinois, securing the real property and improvements located at 7451 S. Eberhart Avenue, Chicago, Illinois 60619; and
 - (d) that certain Mortgage and Fixture Filing (With Assignment of Rents and Security Agreement) (hereinafter referred to as “**Other Mortgage D**”) by Southside Mazel LLC, a Delaware limited liability company, for the benefit of Lender, as Mortgagee, dated as of even date herewith, to be recorded in the real property records of Cook County, Illinois, securing the real property and improvements located at 3601 W. 53rd Street, Chicago, Illinois 60632.

The Other Mortgage A, the Other Mortgage B, the Other Mortgage C, and the Other Mortgage D, are collectively referred to herein as the “**Other Mortgage**”. Any default under the Other Mortgage shall, at Lender’s option, constitute a default under this Mortgage.

1. **ADDITIONAL SECURITY - OBLIGATIONS SECURED BY MORTGAGE.** In addition to the obligations secured by the Other Mortgage, the Other Mortgage shall also secure the payment and performance of all obligations secured by this Mortgage.
2. **DEFAULT - OTHER MORTGAGE.** A Default under the Other Mortgage, as defined therein, shall, at Lender’s option, constitute a Default under this Mortgage.

UNOFFICIAL COPY

3. **DEFAULT - MORTGAGE.** A Default under this Mortgage shall, at Lender's option, constitute a Default under the Other Mortgage.
4. **WAIVER OF MARSHALLING RIGHTS.** Mortgagor waives all rights to have all or part of the Property and Collateral described in this Mortgage and/or the Other Mortgage marshalled upon any foreclosure of this Mortgage or the Other Mortgage. Lender shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of the Property and Collateral described in either or both of said security instruments as a whole or in separate parcels, in any order that Lender may designate. Mortgagor makes this waiver for itself, for all persons and entities claiming through or under Mortgagor and for persons and entities who may acquire a lien or security interest on all or any part of the Property and Collateral described in either of said security instruments, or on any interest therein.
5. **WARRANTIES AND REPRESENTATIONS.** Mortgagor represents and warrants that the lien of the Other Mortgage is a first lien on the property described therein and covered thereby and that the provisions of this Mortgage will not cause intervening liens to become prior to the lien of the Other Mortgage. If any intervening lien exists or hereafter arises, Mortgagor shall cause the same to be released or subordinated to the lien of the Other Mortgage, without limiting any other right or remedy available to Lender.

Mortgagor further warrants that Mortgagor has no legal or equitable claim against any mortgagor named in the Other Mortgage which would be prior to the lien of the Other Mortgage, or which would entitle Mortgagor to a judgment entitling Mortgagor to an equitable lien on all or any portion of that property prior in lien to the Other Mortgage.
6. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Mortgage, all of the terms, covenants and conditions of the Other Mortgage and the other loan documents executed in connection therewith shall remain in full force and effect.
2. **LIEN OF MORTGAGE AND OTHER MORTGAGE.** Mortgagor and Lender acknowledge and agree that: this Mortgage shall constitute a lien or charge upon only that property described herein as the "Property;" and the Other Mortgage shall constitute a lien or charge upon only that property described therein as the "Property."