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Edward M. Moody
Cook County Recorder of Deeds
Date: 09/17/2020 10:02 AM Pg: 1 of 17

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ST/CO Stamp 0-545-145-312

Trustee's Deed

This document was prepared by:

Micah R. Krohn
FrankGecker LLP
1327 W. Washington Blvd., Suite 5G
Chicago, IL 60607


(The Above Space for Recordors Use Only)

THIS TRUSTEE'S DEED, made this 18th day of June, 2020 between **FRANCES GECKER**, solely as Chapter 7 trustee ("Grantor") of the bankruptcy estate of Poplar Creek, LLC; Case No. 18-14161 (Bankr. N.D. Ill.) (the "Case"), pursuant to powers granted by the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division under the *Order Authorizing Sale Of Property Free And Clear Of Liens, Claims And Encumbrances And Granting Related Relief*, entered on the docket in the Case on June 17, 2020 as Docket No. 187, a copy of which is attached hereto as **Exhibit B**. The Grantor having an address: c/o FrankGecker LLP, 1327 West Washington Boulevard, Suite 5G, Chicago, Illinois.

WITNESSETH, that Grantor, in consideration of the sum of Ten and No/100 (\$10.00) Dollars, receipt whereof is hereby acknowledged, does hereby transfer, grant, sell and convey unto American Real Estate Investments No. 2, LLC, an Illinois limited liability company ("Grantee") in fee simple, all right, title and interest in the real estate described in the attached **Exhibit A** (the "Real Estate"), situated in the County of Cook and State of Illinois, together with the tenements and appurtenances thereunto belonging, to wit:

Permanent Real Estate Index Numbers: 07-07-100-036-0000; 07-07-100-037-0000
Commonly known as: 2401 West Higgins Road, Hoffman Estates, Illinois

IN WITNESS WHEREOF, the Grantor, as Chapter 7 trustee of the bankruptcy estate of POPLAR CREEK, LLC and as authorized by the Order, does hereunto set hand and seal the day and year first above written.

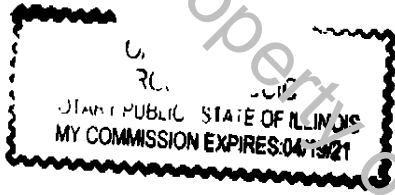

FRANCES GECKER, as Chapter 7 trustee of the
Bankruptcy Estate of POPLAR CREEK, LLC

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that FRANCES GECKER, as Chapter 7 Trustee as aforesaid, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered said instrument as her free and voluntary act as such Trustee for the uses and purposes set forth herein.

GIVEN under my hand and Notarial Seal, this 18 day of June, 2020.



Carolyn A. Susic

Notary Public
OFFICIAL SEAL
CAROLYN A SUSIC
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 04/19/21

My commission expires on 4/19/21

After Recording Mail to:

Jenner & Block LLP
353 N. Clark Street
Chicago, Illinois 60654
Attn: Ronald R. Peterson

Send Subsequent Tax Bills to:

c/o First American Bank
1650 Louis Avenue
Elk Grove Village, Illinois 60007
Attn: Maureen Prochenski

Property of Cook County Clerk's Office

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EXHIBIT A

Property Address: 2401 West Higgins Road, Hoffman Estates, Illinois 60195

Legal Description:

LOT 6 IN RESTAURANT MALL BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL $\frac{1}{4}$ OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 04016244, IN COOK COUNTY, ILLINOIS.

PIN #: 07-07-100-036-0000 and
07-07-100-037-0000

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EXHIBIT B

Property of Cook County Clerk's Office

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: Chapter 7
POPLAR CREEK, LLC, Case No. 18-14161
Debtor. Honorable David D. Cleary

**ORDER AUTHORIZING SALE OF PROPERTY FREE AND
CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES
AND GRANTING RELATED RELIEF**

This matter was heard on the motion (the "Sale Motion") of Frances Gecker, as Chapter 7 trustee (the "Trustee") of the bankruptcy estate of Poplar Creek, LLC (the "Debtor"), seeking the entry of an order, pursuant to 11 U.S.C. §§ 105(a) and 363(b) and (f) and Fed. R. Bankr. P. 2002 and 6004: (a) approving the sale (the "Sale") of the Debtor's real property located at and commonly known as 2401 West Higgins Road, Hoffman Estates, Illinois, 60195 with a legal description as follows:

Lot 6 in Restaurant Mall being a subdivision of part of the Northwest fractional ¼ of Section 7, Township 41 North, Range 10, East of the Third Principal Meridian according to the plat thereof recorded as Document Number 04016244, in Cook County, Illinois, PIN#: 07-07-100-036-0000 and 07-07-100-037-0000

and, together with the improvements and fixtures thereon (collectively, the "Stonegate Center") and the personal property, goods, chattels and equipment located thereon and used in connection therewith as more fully described in the Sale Motion (collectively, the "Personal Property" and together with the Stonegate Center, the "Property") to the successful bidder, which is First American Bank ("First American"), free and clear of all liens (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305), claims, encumbrances and interests, including any existing tenancies and other occupancy rights, as set forth herein; (b) approving the payment of the Trustee's commission on the sale; and (c) granting

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related relief in furtherance of the Sale Motion; due written notice of the hearing on the Sale Motion (the "Sale Notice") having been served on all parties entitled thereto; the Court having conducted two telephonic hearings on the Sale Motion (the "Sale Hearing"), no party having requested an evidentiary hearing, having heard the statements of counsel and the Trustee, being well advised in the premises, and having jurisdiction over the core proceeding;

THE COURT FINDS THAT:

A. The Court has subject matter jurisdiction over the Sale Motion pursuant to 28 U.S.C. § 1334 and this matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (E) and (N). Venue of the Case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Sale Motion are 11 U.S.C. §§ 105(a), 363(b), (f) and (m) and Fed. R. Bankr. P. 2002, 6004 and 9014.

C. The Trustee has given proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing and the Sale in compliance with 11 U.S.C. §363 and Fed. R. Bankr. P. 2002, 6004 and 9014; and specifically the Trustee has provided proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing and the Sale to George M. Moser, George A. Moser, John P. Moser, and Douglas C. Altenberger, and Conference & Banquet Services, LLC ("CBS"). Such notice was good, sufficient and appropriate under the circumstances. For good cause shown, no other or further notice of the Sale Motion, the Sale Hearing, or the Sale is or shall be required.

D. The Trustee and her professionals, agents and other representatives have adequately and appropriately marketed the Property. After soliciting proposal and conducting interviews of several commercial real estate brokerage firms with expertise in marketing commercial properties

similar to the Property, the Trustee selected Daniel Reynolds and Jones Lang LaSalle Americas, LP (“JLL”) as her agent to market the Property. On August 14, 2019, the Court entered an order authorizing JLL’s retention (Dkt. No. 173). JLL launched official marketing efforts on August 28, 2019 with an email blast to 13,323 investors and developers around the globe. Nearly 5,000 individuals viewed the email, and more than 400 individuals viewed the executive summary attached to the email. JLL followed the mass marketing email outreach with direct calls and emails to investors that JLL believed may have been interested in the Property. JLL aggressively marketed the Property and entered into more than 36 confidentiality agreements from local and national investors. JLL subsequently coordinated a “Call for Offers” on October 31, 2019. The first names “Call for Offers” yielded 5 total responses. A “Best & Final” round of bidding on November 11, 2019 yielded two additional offers.

E. The Sale was duly noticed and conducted in a diligent, non-collusive, fair and good faith manner, and all interested parties were afforded a full, fair and reasonable opportunity to participate in the bidding process and to make a higher or otherwise better offer to purchase the Property. The Trustee provided all interested parties with notice of the Sale Motion, Sale Hearing, and Sale. The Trustee provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Property and faithfully executed her duties in considering all bids throughout the bidding process.

F. First American is the successful bidder for the Property with a credit bid for \$2.1 million. The best cash offer the Trustee received was a \$2 million gross offer and \$1.4 million net offer, so it was unsuccessful.

G. The Trustee is effectuating the transfer of the Property to First American or its nominee, American Real Estate Investments No. 2, LLC, through the execution of a trustee’s deed

and bill of sale in exchange for a \$2.1 million credit bid from First American and First American's agreement to: (1) pay the Trustee her commission in cash pursuant to 11 U.S.C. § 506(c); (2) pay the outstanding balance owed to the Village of Hoffman Estates, in the reduced agreed upon amount of \$9,500, in connection with unpaid Village Code Violations and unpaid water bills; and (3) assume the following debt owed, *if valid*, a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305.

Highest and Best Offer. Business Judgment

H. The Trustee has demonstrated a sufficient basis to sell the Property on the terms outlined in 11 U.S.C. § 363 and Article 9 of the Illinois Uniform Commercial Code, 810 ILCS 5/9-101 *et seq.* ("Article 9"), and all such actions are appropriate exercises of the Trustee's business judgment and in the best interests of the estate and its creditors.

I. The credit bid from First American, including the consideration to be realized by the Trustee: (i) is the highest and best offer received by the Trustee after extensive marketing; (ii) is fair and reasonable; (iii) is in the best interest of the estate and its creditors; and (iv) constitutes full and adequate consideration and reasonably equivalent value for the Property.

J. The Trustee has full power and authority to close the sale and execute, deliver and file all other documents necessary to complete the sale. No consents or approvals are required for the Trustee to consummate such transactions other than set forth herein.

K. Approval of the consummation of the Sale is in the best interests of the Debtor, its creditors, its estate and other parties in interest.

Good Faith, Arm's Length Sale

L. First American and/or its nominee, American Real Estate Investments No. 2, LLC, are purchasers in good faith, as that term is used in 11 U.S.C. § 363(m) and are entitled to the

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protections thereof. Neither the Trustee nor First American (nor its nominee, American Real Estate Investments No. 2, LLC) have engaged in any conduct that is forbidden by law or would cause or permit the sale to be avoided under 11 U.S.C. § 363(n).

M. On January 21, 2019, First American filed a proof of claim against the Debtor asserting a secured claim in the amount of \$6,797,816.22, plus interest, costs and attorney's fees. (Claim No. 2). There have been no objections to the claim, and accordingly, it is an allowed claim.

N. First American has credit bid for the Property pursuant to Section 363(k) of the Bankruptcy Code. And, First American's claim will be reduced by \$2.1 million.

O. Neither First American nor any of its nominees, affiliates, officers, directors, or shareholders is an "insider" of the Debtor, as that term is defined in 11 U.S.C. § 101(31). No common identity of directors or controlling shareholders exists between the Debtor, and First American or its nominee, American Real Estate Investments No. 2, LLC.

P. A reasonable opportunity to object or to be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee; (ii) the Debtor and its members, including George M. Moser, George A. Moser, John P. Moser, and Douglas C. Altenberger; (iii) CBS and its owners, including George M. Moser, George A. Moser, John P. Moser, and Douglas C. Altenberger; (iv) all entities known to have expressed an interest in a transaction with respect to the Property during the past six months; (v) all entities known to have asserted any lien, claim or interest in or to any of the Property; and (vi) all parties which have requested notice in the Case.

Sale Free and Clear of Liens, Claims, Encumbrances and Interests

Q. The consideration provided by First American for the Property pursuant to the credit bid (i) is fair and reasonable; (ii) is the highest or otherwise best offer for the Property; (iii)

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will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative; and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

R. The Sale of the Property to First American or its nominee, American Real Estate Investments No. 2, LLC, will be a legal, valid, and effective transfer of the Property, authorized pursuant to the Bankruptcy Code, and will vest First American or its nominee, American Real Estate Investments No. 2, LLC, with all right, title, and interest to the Property free and clear of all liens (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305), claims, encumbrances and interests, including, but not by way of limitation, any tenancies and rights of occupancy, including without limitation any taxes arising under or out of, in connection with or in any way relating to the operation of the business of the Debtor or CBS prior to the date (the "Closing Date") of the consummation of sale to First American or its nominee, American Real Estate Investments No. 2, LLC ("Closing").

S. The Trustee may sell the Property free and clear of all interests, liens (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305), claims and encumbrances of any kind or nature whatsoever, including any existing tenancies and rights of occupancy because, in each case, one or more of the standards set forth in 11 U.S.C. § 363(f) have been satisfied.

T. All parties with liens (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305), claims, encumbrances and interests in and against the Property who did not object, or who withdrew their objections, to the Sale Motion are deemed to have consented to the Sale free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. § 363(f)(2).

Valid Enforcement of Lien Under the Lease

U. As of the filing of the Sale Motion, CBS occupied the Stonegate Center pursuant to a lease agreement with the Debtor dated March 1, 2001 (the "Lease").

V. Since approximately three months before the Petition Date, and continuously thereafter, CBS has been in default of the Lease by, among other things, failure to pay rent. As of the Petition Date, CBS was delinquent in rent payments to the Debtor in the amount of approximately \$159,000. In the two years since the Petition Date, CBS has failed to pay rent to either the Debtor during the Chapter 11 period or to the Trustee after conversion of the Case to Chapter 7, resulting in unpaid rent owed to the estate totaling not less than \$1.43 million (exclusive of late penalties and other additional amounts due under the Lease).

W. In addition to its rent defaults, CBS is in default of the Lease on account of its:

- Failure to procure and pay for insurance required under the Lease in violation of Lease § 4.5 and Art. XI;
- Failure to comply with and cure recurring violations of local Village ordinances in violation of Lease Art. V; and
- Allowance of a mechanic's lien to be recorded and remain against the Real Property in violation of Lease Art. VI.

X. Pursuant to Lease § 14.2, upon the occurrence of an Event of Default as specified in Lease § 14.1, the Trustee is entitled to terminate the Lease and CBS' right to possession.

Y. Pursuant to Lease § 14.3, the Trustee has a valid lien on the Personal Property, which may be enforced in accordance with Article 9 of the Illinois Uniform Commercial Code.

Z. The Trustee provided at least 21-days' notice of the Sale Hearing to CBS pursuant to the notice provisions of the Lease; and such notice to CBS of the Trustee's

intention to terminate the Lease on account of the Unpaid Rent and enforce her lien on the Personal Property by including the Personal Property in the Sale, is fair and adequate notice pursuant to Article 9.

Time is of the Essence

AA. Time is of the essence in consummating the Sale. To maximize the value of the Property and minimize the costs incurred by the estate, it is essential that the Sale occur promptly. Accordingly, there is cause to lift the stay contemplated by Fed. R. Bankr. P. 6004.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Sale Motion is granted as stated herein.
2. All objections to the relief granted herein, whether filed, stated on the record at the Sale Hearing or otherwise, are overruled on the merits and with prejudice to the extent they have not been withdrawn, waived, or resolved.
3. Subject to the terms of this Sale Order, the terms of the Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Trustee, the estate and its creditors, First American, and its respective nominees, affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting liens, claims, encumbrances or interests in the Property.
4. Because neither First American nor its nominee, American Real Estate Investments No. 2, LLC, have engaged in collusive bidding or otherwise violated the provisions of 11 U.S.C. § 363(m), the transactions contemplated by the Sale are undertaken by First American or its nominee, American Real Estate Investments No. 2, LLC, in good faith, as that term is used in 11 U.S.C. § 363(m) and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to First American

or its nominee, American Real Estate Investments No. 2, LLC, unless such authorization is duly stayed pending such appeal.

5. The Sale of the Property to First American or its nominee, American Real Estate Investments No. 2, LLC, as set forth herein is approved pursuant to 11 U.S.C. § 363, and the Trustee and First American and their respective nominees, professionals, agents and other representatives are authorized to execute, deliver, or file all necessary documents and immediately take any and all such actions, without further order of Court, as are necessary or appropriate to consummate and implement the Sale.

Approval of the Transfer of the Sale Assets

6. Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and (f), the Trustee is authorized to perform her obligations to consummate the Sale pursuant to and in accordance with the terms and conditions as stated herein. The Trustee is authorized to execute and deliver, and empowered to perform under, consummate and implement the Sale, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Sale and to take all further actions as may be requested by First American or its nominee, American Real Estate Investments No. 2, LLC, for the purpose of assigning, transferring, granting, conveying and conferring to First American or its nominee, American Real Estate Investments No. 2, LLC, or reducing to possession, the Property, or as may be necessary or appropriate to the performance of the obligations as stated herein.

7. The Trustee is authorized to transfer the Property at Closing. Such Property shall be transferred to First American or its nominee, American Real Estate Investments No. 2, LLC, “as is, where is” to the extent provided herein and as of the Closing. The purchase and sale of the Property and the related transfer constitutes a legal, valid, binding and effective transfer of the

Property and shall vest First American or its nominee, American Real Estate Investments No. 2, LLC, with all right, title and interest in and to the Property free and clear of all liens (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305), claims, encumbrances and interests of any kind or nature whatsoever, including all existing tenancies and rights of occupancy.

8. The consideration provided by First American for the Property at Closing as stated herein shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under any other applicable law.

9. The consideration provided by First American for the Property at Closing as stated herein is fair and reasonable and may not be avoided under 11 U.S.C. § 363(n).

10. This Sale Order shall be effective as a determination that, as of the Closing, all liens (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305), claims, encumbrances and interests of any kind or nature whatsoever existing as to the Debtor or the Property have been unconditionally released, discharged and terminated as to First American and its nominee, American Real Estate Investments No. 2, LLC, and the Property, and the conveyances described herein have been effected. As of the Closing, each person asserting a lien (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305), claim, encumbrance or interest is authorized and directed to execute, deliver and file such documents and take all other actions as may be necessary to release such lien (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305), claim, encumbrance or interest, if any, to the extent that such lien (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305), claim, encumbrance or interest may have been recorded or may

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otherwise exist.

11. To effectuate consummation of the Sale, the Trustee, and First American and its nominee, American Real Estate Investments No. 2, LLC, are authorized to file and record termination statements, lien terminations or any other applicable documents in any required jurisdiction to remove any record, notice filing, or financing statement filed or recorded to attach, perfect or otherwise notice any lien, claim, encumbrance or interest that is extinguished or otherwise released pursuant to this Sale Order. Notwithstanding the foregoing, the provisions of this Sale Order authorizing the transfer of the Property free and clear of all liens (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817333305), claims, encumbrances and interests shall be self-executing, and the Trustee, First American and its nominee, American Real Estate Investments No. 2, LLC, and creditors shall not be required to execute, record or file releases, termination statements, assignments, consents or other instruments in order for the provisions of this Sale Order to be effectuated, consummated and/or implemented.

12. At Closing, First American shall pay: (1) pursuant to 11 U.S.C. § 506(c), the Trustee her Trustee's commission in the amount of \$86,250; and (2) the outstanding balance owed to the Village of Hoffman Estates, in the reduced agreed upon amount of \$9,500, in connection with unpaid Village Code Violations and unpaid water bills.

13. CBS and any and all of its members, officers, directors, employees, agents and other representatives and affiliates, and all other persons and entities that are in possession of some or all of the Property on the Closing Date are directed to surrender possession of the Property to First American or its nominee, American Real Estate Investments No. 2, LLC, immediately upon the closing of the Sale, at no cost to First American.

14. After Closing, First American and/or its nominee, American Real Estate Investments No. 2, LLC, are authorized to immediately take possession of the Property, including all Personal Property sold hereunder.

15. A certified copy of this Sale Order may be filed with the appropriate clerk and/or recorded with the recorder of deeds to evidence the cancellation and release of any of the liens (excluding a Mechanic's Lien filed by Althoff Industries, Inc. on June 22, 2018, Document Number 1817323305), claims, encumbrances and interests of record.

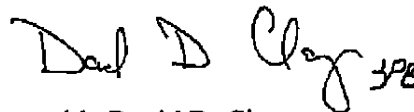
16. The automatic stay under 11 U.S.C. § 362 is modified to the extent necessary to implement the terms and provisions of this Sale Order.

17. Pursuant to Fed. R. Bankr. P. 6004(h), this Sale Order shall be effective immediately upon entry and the Trustee, and First American and or nominee, American Real Estate Investments No. 2, LLC, are authorized to close the Sale as soon as reasonably practicable upon entry of this Sale Order.

18. This Court shall retain jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Sale Order, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

Dated: June 17, 2020

ENTERED:



Honorable David D. Cleary
United States Bankruptcy Judge

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Prepared by:

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