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Doc#: 2108407281 Fee: \$98.00

Karen A. Yarbrough

Cook County Clerk

Date: 03/25/2021 11:02 AM Pg: 1 of 21

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 20-03-311-006-0000**

Address:

Street: 4411 S CALUMET AVE

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60653

Lender: FINANCE OF AMERICA COMMERCIAL LLC

Borrower: ONYX HOMES, LLC

Loan / Mortgage Amount: \$286,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/70 et seq. because it is not owner-occupied.

111

FIDELITY NATIONAL TITLE

0020051332

Certificate number: 72960E57-7466-43EF-983F-332C3C6DE616

Execution date: 1/8/2021

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**This instrument was prepared by
and after recording should be
returned to:**

**Finance of America Commercial LLC
6230 Fairview Road, Suite 300
Charlotte, NC 28210**

Cook County, Illinois

**COMMERCIAL MORTGAGE, ASSIGNMENT OF
LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND
FIXTURE FILING**

BY

ONYX HOMES, LLC

as Mortgagor,

TO

FINANCE OF AMERICA COMMERCIAL LLC,

as Mortgagee

Dated: As of 01/08/2021

Effective: As of 01/08/2021

Location of Property: 4411 S Calumet Ave Chicago, IL 60653, Cook County, Illinois

**PORTIONS OF THE PROPERTY ARE GOODS WHICH ARE OR ARE TO BECOME
AFFIXED TO OR FIXTURES ON THE PREMISES DESCRIBED IN OR REFERRED TO IN
EXHIBIT A. THIS MORTGAGE IS TO BE FILED FOR RECORD OR RECORDED IN THE
REAL ESTATE RECORDS OF EACH COUNTY (OR, TO THE EXTENT SIMILAR
RECORDS ARE MAINTAINED AT THE CITY OR TOWN LEVEL INSTEAD OF THE
COUNTY LEVEL, EACH SUCH CITY OR TOWN) IN WHICH SAID PREMISES OR ANY
PORTION THEREOF IS LOCATED.**

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THIS COMMERCIAL MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING (hereinafter referred to as this "**Mortgage**") is dated as of **01/08/2021**, the date set forth on the notary acknowledgment hereto, and effective as of **01/08/2021** (the "**Effective Date**"), from **ONYX HOMES, LLC, a/an Nevada limited liability company**, with a principal place of business at **2 Roberta Ct, Buffalo Grove, IL 60089** ("**Mortgagor**"), to Finance of America Commercial LLC, a Delaware limited liability company, with a principal place of business located at **6230 Fairview Road, Suite 300, Charlotte, NC 28210**, in its capacity as mortgagee (in such capacity, together with its successors and assigns, hereinafter referred to as "**Mortgagee**"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Loan Agreement.

I.

RECITALS

WHEREAS, Mortgagor is the owner of fee simple title in and to the real property located in Cook County, IL (the "**State**"), described in **Exhibit A** attached hereto and made a part hereof (the "**Premises**"), which Premises forms a portion of the Property defined below.

WHEREAS, reference is made to that certain Commercial Loan Agreement dated as of the Effective Date (as amended, supplemented, restated or otherwise modified from time to time, the "**Loan Agreement**"), by and among Mortgagor and Mortgagee, pursuant to which Mortgagee made to Mortgagor the Loan (as defined in the Loan Agreement), which Loan is evidenced by the Promissory Note, dated on or about the date hereof in the original principal amount of **Two Hundred Eighty-Six Thousand Dollars and Zero Cents (\$286,000.00)**, with a maturity date of **08/01/2022** (unless renewed or otherwise extended) (the "**Note**"). Mortgagor has agreed to execute and deliver this Mortgage as a condition to the execution and delivery of the Loan Agreement.

II.

GRANT

NOW, THEREFORE, in order to secure the Secured Obligations (as defined below), and in consideration of Ten and NO/100 Dollars (\$10.00) in hand paid by Mortgagee to Mortgagor, the Recitals above stated, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby **GRANTS, BARGAINS, SELLS, ASSIGNS, RELEASES, ALIENS, TRANSFERS, WARRANTS, DEMISES, CONVEYS and MORTGAGES** unto Mortgagee and Mortgagee's heirs, successors and assigns, forever, and grants unto Mortgagee and Mortgagee's successors and assigns, forever, a continuing security interest in and to, all of Mortgagor's estate, right, title, claim and interest in and to the Premises, together with all of Mortgagor's estate, right, title, claim and interest in and to the Property (as defined in **Exhibit B**), all of which other property is pledged primarily on a parity with the Premises and not secondarily.

"**Secured Obligations**" shall mean the Obligations (as defined in the Loan Agreement), and shall include, and be deemed to include, (i) all unpaid principal of and accrued and unpaid interest on the Loan (including any future advances made after the Effective Date), (ii) all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency,

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administration, examinership, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), and (iii) the performance of obligations and satisfaction of liabilities of Mortgagor and any guarantor to Mortgagee (whether existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise) arising or incurred under this Mortgage, the Loan Agreement or any of the other Loan Documents or otherwise in respect of the Loans.

TO HAVE AND TO HOLD the Property and all parts thereof hereby granted or mentioned and intended so to be, with the appurtenances, unto Mortgagee, its successors and assigns, upon the terms hereof.

Mortgagor represents and warrants that (i) Mortgagor has good and marketable fee simple title to the Premises and good and valid title to the other Property, (ii) this Mortgage constitutes a valid, enforceable, first priority mortgage on the Premises, and security interest in, the Property, (iii) Mortgagor has the right to mortgage, convey and assign the Property and perform its obligations hereunder, and (iv) its interest in and to the Property is unencumbered by any liens, security interests, or other encumbrances or similar matters that would or may reasonably be expected to adversely affect the value of the Property (collectively, "Liens") and Mortgagor will warrant and defend generally the title to the Property against all lawful claims and demands.

III.

GENERAL AGREEMENTS

3.1 Payment of Indebtedness. Mortgagor shall pay promptly and when due all amounts owing by Mortgagor in respect of the Secured Obligations at the times and in the manner provided in the Loan Documents. The Loan bear interest at a rate of 9.875% as provided in the Loan Agreement and the latest scheduled final maturity of the Loan is 08/01/2022.

3.2 Performance of Covenants. Mortgagor shall perform each and every covenant and other obligation set forth in the Loan Agreement, as and when due, including without limitation, to: (a) comply with all applicable laws pursuant to Section 4.1 of the Loan Agreement, (b) pay all Taxes and Other Charges on the Property prior to delinquency pursuant to Section 4.2 of the Loan Agreement, (c) maintain Required Insurance and surrender any insurance proceeds in respect of the Property to Lender pursuant to Sections 4.3 and 4.4 of the Loan Agreement, (d) ensure no Liens are incurred with respect to the Property, and (e) not permit any Transfer of the Property or a change of control of the Mortgagor as provided in Section 4.5 of the Loan Agreement. Unless Lender shall have provided its prior written consent, Mortgagor shall additionally: (i) not subdivide the Premises into additional parcels, and (ii) not initiate or acquiesce in any change in zoning or other land use classification.

3.3 Assignment of Leases and Rents.

(a) All right, title, and interest of Mortgagor in and to all Leases and Rents are hereby transferred and assigned simultaneously herewith to Mortgagee. Such assignment shall be a

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present and absolute assignment, but Mortgagee shall not exercise any of the rights with respect thereto until an Event of Default shall exist.

(b) Following the occurrence of an Event of Default, (i) this Mortgage shall constitute a direction to each lessee under the Leases and each guarantor thereof to pay all Rents directly to Mortgagee without proof of the Event of Default, and (ii) Mortgagee shall have the authority, as Mortgagor's attorney-in-fact (such authority being coupled with an interest and irrevocable), to sign the name of Mortgagor and to bind Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Property.

(c) If Mortgagor shall fail to perform as required under any Lease, Mortgagee shall be permitted but not required to perform in place of Mortgagor, and all costs and expenses incurred in connection therewith shall constitute Secured Obligations payable as of the date incurred with interest thereon at the highest rate set forth in the Loan Agreement. Mortgagee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Mortgagor under any of the Leases.

(d) Mortgagor shall indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which Mortgagee may incur under any Lease and of and from any and all claims and demands whatsoever, which may be asserted against it by reason of alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in such Lease. Should Mortgagee incur any such liability, loss or damage under any Lease or under or by reason of its assignment to Mortgagee, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall constitute Secured Obligations, payable upon incurrence with interest at the highest rate set forth in the Loan Agreement.

3.4 Uniform Commercial Code.

(a) This Mortgage constitutes a security agreement as that term is used in the Uniform Commercial Code (the "Code") in the State, with respect to any part of the Property which, under applicable law, may be subject to a security interest pursuant to the Code, including without limitation, any part of the Property deemed to be personal property, fixtures or property other than real estate (including all replacements thereof, additions thereto and substitutions therefor) (collectively, the "Personal Property Collateral"). Mortgagor hereby grants to, and creates in favor of, Mortgagee a security interest in and to the Personal Property Collateral, whether now owned or hereafter acquired, and including all products and proceeds of said items as security for the payment of the Secured Obligations. Any reproduction of this instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. Without limiting the foregoing, in exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Code or of the remedies otherwise provided in this instrument.

(b) At any time after an Event of Default has occurred, Mortgagee shall have all rights and remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Personal Property Collateral or any part thereof. The remedies of Mortgagee hereunder are cumulative and the exercise of any one or more of the

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remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Personal Property Collateral deemed part of the realty upon any foreclosure so long as any part of the Secured Obligations remains unsatisfied.

(c) This Mortgage shall be effective as a financing statement and is intended to be a "fixture filing" for purposes of Section 5/9-102 of the Code with respect to the items of Property which are or may become fixtures relating to the Premises upon recording of this Mortgage in the real estate records of the proper office, where any of the Property is situated. The names and addresses and the states of incorporation, organization or formation of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in the preamble hereof. Mortgagor is the record owner of the Premises.

(d) Mortgagor hereby authorizes Mortgagee to record in the County in which the Premises is located, as well as with the filing office in the applicable state, such financing statements and fixture filings, and any amendments or modifications thereto, as Mortgagee shall deem necessary or appropriate to perfect the security interest granted by this Mortgage (which may describe the property covered thereby as "all assets" of the debtor).

3.5 Subrogation. Mortgagee shall be subrogated to all right, title, and claims of all persons to whom Mortgagee has paid any sum for any claims, charges or otherwise.

3.6 Non-Residential Loan. The Loan secured by this Mortgage is made, and all proceeds thereof will be used solely for, commercial, investment or business purposes. The Loan is not for personal, household or family use of any direct or indirect owner of Mortgagor or any of their affiliates (together with the Mortgagor, collectively, the "Relevant Parties"). The Property is not the principal residence or second home of any Relevant Party and Mortgagor covenants and agrees that no Relevant Party shall occupy the Property as a principal residence or second home in the future.

IV.

EVENT OF DEFAULT AND REMEDIES

4.1 Event of Default. The occurrence of an "Event of Default," as such term is defined in the Loan Agreement, shall constitute an "Event of Default" under this Mortgage.

4.2 Foreclosure and Sale. If an Event of Default has occurred, Mortgagee may, at its election and through any nominee, assignee or otherwise, institute proceedings for the complete foreclosure of this Mortgage in accordance with the Illinois Mortgage Foreclosure Act (735 ILCS 5/15-1101 *et seq.*), in which case the Property may be sold for cash or credit in one or more parcels. For any notices required under the Code, Mortgagor agrees that five (5) business days' prior written notice shall be deemed commercially reasonable.

4.3 Remedies; Remedies Cumulative and Non-Waiver. Mortgagee shall be entitled to each and every right and remedy available at law or in equity upon the occurrence of an Event of Default. No remedy or right of Mortgagee hereunder or under the Loan Documents shall be exclusive of any other right or remedy. No delay or omission to exercise any remedy or right shall impair any such remedy or be construed a waiver of any Event of Default, nor shall it affect any

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subsequent Event of Default of the same or a different nature, nor shall it extend or affect any grace period. Every remedy or right may be exercised concurrently or independently, when and as often as Mortgagee may determine.

4.4 Expenses. In any proceeding to foreclose or partially foreclose the lien of this Mortgage, there shall be included as additional indebtedness, all expenses paid or incurred by or on behalf of Mortgagee in the protection of the Property and the exercise of Mortgagee's rights and remedies hereunder or under the Loan Documents, which expenses may be estimated as to items to be expended after any non-judicial foreclosure sale or entry of any judgment or decree of foreclosure. All such expenses shall be due and payable by Mortgagor upon incurrence with interest at the highest rate set forth in the Loan Agreement.

4.5 Mortgagee's Performance of Mortgagor's Obligations. Following the occurrence of an Event of Default, Mortgagee, either before or after acceleration of the Secured Obligations or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to (a) make any payment or perform any act herein or in any other Loan Document which is required of Mortgagor in any form and manner determined by Mortgagee; (b) make full or partial payments of principal or interest on any permitted prior deed of trust, mortgage, lien or encumbrance and purchase, discharge, compromise or settle any tax lien or other prior lien on title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any Taxes or Other Charges; and (c) complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements, so that the Premises and Improvements shall be operational and usable for their intended purposes. Any amounts so expended shall constitute Secured Obligations and shall be due and payable upon incurrence with interest thereon at the highest rate set forth in the Loan Agreement. Mortgagee shall not be required to inquire as to the accuracy of any bill, statement, or prior lien in making any protective advance hereunder or under the other Loan Documents.

4.6 Right of Possession. Following the occurrence of an Event of Default, Mortgagor shall, immediately upon demand surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of the Property or any part thereof, personally or by its agent or attorneys. To the extent not prohibited by applicable law, Mortgagee may enter upon and take and maintain possession or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Property relating thereto. Mortgagee may exclude Mortgagor, such owner and any agents and servants from the Property. As attorney-in-fact or agent of Mortgagor or such owner, or in its own name, Mortgagee may hold, operate, manage, and control all or any part of the Property, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as it may deem proper or necessary to enforce the payment or security of the Rents, issues, deposits, profits, and avails of the Property, including actions for recovery of Rent, actions in forcible detainer, and actions in distress for Rent, all without notice to Mortgagor.

4.7 Application of Income Received by Mortgagee. Any Rents, issues and profits of the Property shall be applied in the manner determined by Mortgagee, in Mortgagee's sole discretion.

4.8 Appointment of Receiver. Upon, or at any time after, the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed shall, upon petition

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by Mortgagee, appoint a receiver for the Property. Such appointment may be made either before or after foreclosure sale, without notice, without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Secured Obligations, without regard to the value of the Property at such time and whether or not the same is occupied as a homestead, and without bond being required of the applicant. Mortgagee or any employee of Mortgagee thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by applicable law, including the power to take possession, control, and care of the Property and to collect all Rents thereof during the pendency of such foreclosure suit or proceeding and, in the event of a sale and deficiency, where Mortgagor has not waived its statutory rights of redemption, if any, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, heirs, executors, administrators, legal representatives, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such Rents. The court from time to time, either before or after any non-judicial foreclosure sale or entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any non-judicial foreclosure sale or any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) the deficiency in case of a sale and deficiency.

4.9 Foreclosure Sale. In the event of any foreclosure sale, the Property may be sold in one or more parcels or lots. Mortgagee may bid for and acquire the Property or any part thereof at any sale made under or by virtue of this Mortgage and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the purchase price the unpaid amounts due and owing in respect of any Secured Obligations after deducting from the sales price the expenses of the sale and the costs of the action or proceedings and any other sums that Mortgagee is authorized to deduct under this Mortgage or applicable law.

4.10 Adjournment of Foreclosure Sale. Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, except as otherwise provided by any applicable provisions of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

4.11 Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale shall be applied in the manner determined by Mortgagee, in Mortgagee's sole discretion.

4.12 Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, stay, extension, or exemption laws, or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the exercise by Mortgagee of any right or remedy hereunder, and Mortgagor hereby knowingly, voluntarily, and intentionally waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all rights to have the Property and estates comprising the Property marshaled upon any foreclosure of the lien of this Mortgage, and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may order the Property sold in its entirety. Mortgagor further waives any and all rights (if any) of redemption from foreclosure and from sale under any order or decree of foreclosure of the lien created by this Mortgage, for itself and on behalf of (i) any trust estate of which the

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Premises are a part; (ii) all beneficially interested Persons; (iii) each and every Person acquiring any interest in the Property or title to the Premises subsequent to the date of this Mortgage; and (iv) all other Persons to the extent permitted by the provisions of laws of the State in which the Premises is located.

4.13 Effect of Judgment. The obtaining of any judgment by Mortgagee and any levy of any execution under any judgment upon the Property shall not affect in any manner or to any extent the lien of this Mortgage upon the Property or any part thereof, or any Liens, powers, rights and remedies of Mortgagee hereunder, but such Liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied.

V.

MISCELLANEOUS

5.1 Notices. Any notice shall be provided in the manner required in the Loan Agreement.

5.2 Time of Essence. Time is of the essence of this Mortgage.

5.3 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Premises.

5.4 Governing Law. This Mortgage is made by Mortgagor and accepted by Mortgagee in the State of New York and shall be governed by and construed in accordance with the laws of the State of New York, except that at all times the provisions for the creation, perfection, priority, enforcement and foreclosure of the liens and security interests created in the mortgaged property under the loan documents shall be governed by and construed according to the law of the state where the mortgaged property is located. To the fullest extent permitted by the law of the state where the mortgaged property is located, the law of the State of New York shall govern the validity and enforceability of all loan documents, and the debt or obligations arising hereunder (but the foregoing shall not be construed to limit lender's rights with respect to such security interest created in the state where the mortgaged property is located).

5.5 Severability. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase, or word, or their application, in any circumstance, is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included.

5.6 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by any party, to or of any breach or default by any other party shall be deemed a consent to or waiver of the performance by such defaulting party of any other obligations or the performance by any other party of the same, or of any other, obligations.

5.7 Headings. The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions.

5.8 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

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5.9 Deed in Trust. If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

5.10 Successors and Assigns. This Mortgage shall be binding upon Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor.

5.11 Counterparts. This Mortgage may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one mortgage.

5.12 Mortgagee-in-Possession. Nothing contained in this Mortgage shall be construed as constituting Mortgagee a mortgagee-in-possession in the absence of the actual taking of possession of the Property.

5.13 Incorporation of Loan Agreement; No Conflicts. The terms of the Loan Agreement are incorporated by reference herein as though set forth in full detail. To the extent a conflict exists between the terms of the Loan Agreement and this Mortgage, the terms of the Loan Agreement shall control.

5.14 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Mortgage. In the event an ambiguity or question of intent or interpretation arises, this Mortgage shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of this Mortgage.

5.15 Waiver of Jury Trial. **TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS OR THE RELATIONSHIP THAT IS BEING ESTABLISHED HEREUNDER.**

5.16 Exhibit C. The terms of Exhibit C are hereby incorporated by reference, with the full force and effect as if set forth herein. In the event of any inconsistency between the provisions set forth in Exhibit C hereto and the remainder of this Mortgage, the terms and provisions of Exhibit C shall govern and control.

(SIGNATURE PAGE FOLLOWS)

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IN WITNESS WHEREOF, Mortgagor has duly signed and delivered this Mortgage as of the Effective Date.

ONYX HOMES, LLC,
a Nevada limited liability company

By: 

Name: Jean Richard Menuau

Its: Member and Manager

By: 

Name: Kim Caton Menuau

Its: Member and Manager

Property of Cook County Clerk's Office

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ACKNOWLEDGEMENT

STATE OF IL)
COUNTY OF COOK)

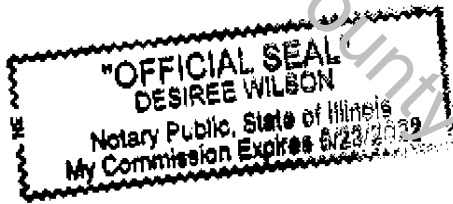
BEFORE ME, a Notary Public, in and for said county and state personally appeared Jean Richard Menuau & Kim Caton Menuau, the Member and Manager of ONYX HOMES, LLC, a Nevada limited liability company, who acknowledged that he/she executed the foregoing commercial mortgage, assignment of leases and rents, security agreement, financing statement and fixture filing and that the same is the free act and deed of said Entity and of him/her personally and as such officer or authorized signatory on behalf of said Entity.

At SCHAUMBURG, ILLINOIS this 8th day of January, 2021



NOTARY PUBLIC

[Seal]



PROPERTY OF COOK COUNTY CLERK'S OFFICE

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EXHIBIT A

Legal Description of Premises

Legal Description:

LOT 9 IN M. A. HALLEY'S SUBDIVISION OF THE WEST 128 FEET OF LOT 1 IN J. D. DORE'S SUBDIVISION OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTH WEST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Address of Premises:

4411 S Calumet Ave
Chicago, IL 60653

Tax or PIN Number:

20-03-311-006-0000

Property of Cook County Clerk's Office

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EXHIBIT B

The term "Property" as used herein shall mean and include:

A. The Premises;

B. The buildings, structures and improvements now or hereafter located on the Premises (the "Improvements"), all of which are declared to be a part of the Premises encumbered hereby and which shall not be removed from the Premises other than as expressly permitted in the Loan Agreement, and all rights and interest of Mortgagor in and to: (i) the streets and roads abutting the Premises to the center lines thereof, the strips and gores within or adjoining the Premises; (ii) the air space and right to use said air space above the Premises; (iii) all rights of ingress and egress by pedestrians and motor vehicles to parking facilities on or within the Premises; (iv) all easements now or hereafter affecting the Premises; (v) royalties and all rights appertaining to the use and enjoyment of the Premises, including, without limitation, alley, drainage, sewer, mineral, water, oil and gas rights, rights-of-way, vaults, ways, passages, water courses, water rights and powers; (vi) any and all rights, but not obligations, arising under or with respect to any recorded development declarations, CC&Rs (covenants, conditions, and restrictions), REAs (reciprocal easement agreements), and similar documents, and (vii) all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant hereto and the reversion and reversions, remainder and remainders thereof;

C. All fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements thereof, now or hereafter attached to, contained in, used or intended to be incorporated in or used in connection with the Premises or the Improvements or placed on any part thereof, though not attached thereto, including, but not limited to, all building materials, screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator plants, stoves, ovens (microwave, convection and others), refrigerators, freezers, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures and articles of personal property, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Premises and a part of the Premises, and which shall be deemed to be a portion of the security for the Secured Obligations secured by this Mortgage, and all trade names, trademarks, tradestyles, service marks, copyright, service contracts, computers and computer software, telephone equipment and systems, warranties, guarantees, business and building licenses and permits, architects and engineers plans, blueprints and drawings relating to the Premises (all of the items described in this paragraph C, the "Personal Property");

D. All leases, lettings and licenses of the Premises or the Improvements or any part thereof now or hereafter entered into by the Mortgagor as landlord (the "Leases"), and the rents, receipts, issues, profits, accounts receivable and revenues of the Property from time to time accruing under the Leases (including without limitation all rental payments, tenant security deposits and escrow funds) including, without limitation, the right to receive and collect the rents, issues and profits payable thereunder (the "Rents");

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E. All extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to, the foregoing, hereafter acquired by, or released to, Mortgagor, or constructed, assembled or placed by Mortgagor or by others for Mortgagor's benefit thereon, and all conversions of the security constituted thereby, which immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, to the extent of Mortgagor's interest therein, and with the same effect, as though now owned by Mortgagor and specifically described herein;

F. All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Mortgagor in respect of any of the foregoing Property under paragraphs A-F above and all proceeds of the conversion, voluntary or involuntary, of the foregoing Property under paragraphs A-E above or any part thereof into cash or liquidated claims, including, without limitation, proceeds of claims under hazard and title insurance policies and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the foregoing Property under paragraphs A-E above by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Improvements, Premises or any easement therein, including awards for any change of grade of streets;

G. All rights of Mortgagor under any contracts executed by Mortgagor with any provider of goods or services for or in connection with any construction undertaken on or services performed or to be performed in connection with the Premises or the Improvements; and

H. All accessions to any of the foregoing Property under paragraphs A-G above and all substitutions, renewals, improvements and replacements of and additions thereto; all after-acquired property of the nature described above; all products and proceeds of any of the foregoing Property under paragraphs A-G above including all such proceeds acquired with cash proceeds in whatever form, whether real or personal property and, if personal, whether such property shall constitute "goods," "accounts," "inventory," "equipment," "instruments," "chattel paper," "documents" or "general intangibles," all as defined under Article 9 of the Code in effect in the State.

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EXHIBIT C

ILLINOIS LOCAL LAW PROVISIONS

1.1 Compliance with Applicable Law. Anything elsewhere herein contained to the contrary notwithstanding,

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of Illinois law regarding foreclosure (the "Illinois Foreclosure Law"), the provisions of the Illinois Foreclosure Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with Illinois Foreclosure Law; and

(b) If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage, any rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee or such receiver under the Illinois Foreclosure Law in the absence of said provision, Mortgagee and such receiver shall be vested with the rights granted under the Illinois Foreclosure Law to the full extent permitted by law.

(c) Secured Obligations to Include Judgments; Other Collateral. The term "Secured Obligations" as defined in this Mortgage shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligations of Mortgagor to Mortgagee, the Lenders, and/or other Secured Parties and/or to enforce the performance or collection of all rights, remedies, obligations, covenants, agreements, conditions, indemnities, representations, warranties, and other liabilities of the Mortgagor under this Mortgage or any or all of the other Loan Documents. Furthermore, Mortgagor acknowledges and agrees that the Secured Obligations is secured by the Property and various other collateral at the time of execution of this Mortgage. Mortgagor specifically acknowledges and agrees that the Property, in and of itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Secured Obligations. Accordingly, Mortgagor acknowledges that it is in Mortgagor's contemplation that the other collateral pledged to secure the Secured Obligations may be pursued by Mortgagee in separate proceedings in the various states and counties where such collateral may be located and additionally that Mortgagor will remain liable for any deficiency judgments in addition to any amounts Mortgagee and/or the other Secured Parties may realize on sales of other property or any other collateral given as security for the Secured Obligations. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Mortgage, that the Secured Obligations shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding to the fullest extent permitted by applicable law.

Survival. Even though the lien of this Mortgage may be released from the Property by Mortgagee, any of the terms and provisions of this Mortgage that are intended to survive shall nevertheless survive the release or satisfaction of this Mortgage whether voluntarily granted by Mortgagee or the Lenders, as a result of a judgment upon judicial foreclosure

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of this Mortgage or in the event a deed in lieu of foreclosure is granted by Mortgagor to Mortgagee and/or the Lenders.

(d) **Future Advances.** This Mortgage is given, among other things, to secure the payment of loans made on the Effective Date and future advances. This Mortgage secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of the Secured Parties, or otherwise, such advances shall be deemed to be obligatory, and the lien securing such future advances shall relate to the date of this Mortgage and have the same priority as the lien securing loans made on the Effective Date. The amount of indebtedness secured hereby may increase or decrease from time to time, and the rate or rates payable may vary from time to time.

(e) **Modifications to Mortgage and Obligations.** If Mortgagor and Mortgagee modify this Mortgage and the Obligations, then this Mortgage as affected by such modification shall remain superior to the rights of the holder of any intervening lien or encumbrance. All intervening lienors and encumbrancers are placed on notice that their claims will be subordinate to any and all such agreements, whether entered into before or after they record their intervening lien or encumbrance.

(f) **Conflicts.** In the event of any inconsistency between the terms and conditions set forth in Section 5.16 and the other terms and conditions of this Mortgage, the terms and conditions set forth in Section 5.16 shall control and be binding.

1.2 **State-Specific Provisions.**

(a) Where any provision of this Mortgage is inconsistent with any provision of Illinois law regulating the creation or enforcement of a lien or security interest in real or personal property including, but not by way of limitation, the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.), as amended, modified and/or replaced from time to time, the provisions of Illinois law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with Illinois law.

(b) The term "Secured Obligations" as defined in this Mortgage shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligations of Mortgagor to Mortgagee and/or the Secured Parties and/or to enforce the performance or collection of all rights, remedies, obligations, covenants, agreements, conditions, indemnities, representations, warranties, and other liabilities of the Mortgagor under this Mortgage or any or all of the other Loan Documents. The obtaining of any judgment by Mortgagee and/or the Secured Parties (other than a judgment foreclosing this Mortgage) and any levy of any execution under any such judgment upon the Property shall not affect in any manner or to any extent the lien of this Mortgage upon the Property or any part thereof, or any liens, powers, rights and remedies of Mortgagee and/or the Secured Parties hereunder, but such liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied. Furthermore, Mortgagor acknowledges and agrees that the Secured Obligations is secured by the Property and various other collateral at the time of execution of this Mortgage. Mortgagor specifically acknowledges and agrees

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that the Property, in and of itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Secured Obligations. Accordingly, Mortgagor acknowledges that it is in Mortgagor's contemplation that the other collateral pledged to secure the Secured Obligations may be pursued by Mortgagee in separate proceedings in the various states and counties where such collateral may be located and additionally that Mortgagor will remain liable for any deficiency judgments in addition to any amounts Mortgagee and/or the Secured Parties may realize on sales of other property or any other collateral given as security for the Secured Obligations. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Mortgage, that the Secured Obligations shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding to the fullest extent permitted by applicable law.

(c) To the extent the laws of the State of Illinois limit (i) the availability of the exercise of any of the remedies set forth in this Mortgage, including without limitation the right of Mortgagee and the Secured Parties to exercise self-help in connection with the enforcement of the terms of this Mortgage, or (ii) the enforcement of waivers and indemnities made by Mortgagor, such remedies, waivers, or indemnities shall be exercisable or enforceable, any provisions in this Mortgage to the contrary notwithstanding, if, and to the extent, permitted by the laws in force at the time of the exercise of such remedies or the enforcement of such waivers or indemnities, without regard to the enforceability of such remedies, waivers or indemnities at the time of the execution and delivery of this Mortgage.

(d) This Mortgage secures the payment of the entire indebtedness secured hereby; provided, however, the maximum aggregate amount secured by this Mortgage at any one time shall not exceed Two Hundred Eighty-Six Thousand Dollars and Zero Cents (\$286,000.00) (to equal two times the total loan amount that may ever be advanced).

(e) Even though the lien of this Mortgage may be released from the Property by Mortgagee, any of the terms and provisions of this Mortgage that are intended to survive shall nevertheless survive the release or satisfaction of this Mortgage whether voluntarily granted by Mortgagee or the Secured Parties, as a result of a judgment upon judicial foreclosure of this Mortgage or in the event a deed in lieu of foreclosure is granted by Mortgagor to Mortgagee and/or the Secured Parties.

(f) The proceeds of the indebtedness secured hereby referred to herein shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured by this Mortgage constitutes (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4 (1) (c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(1).

(g) Pursuant to the terms of the Collateral Protection Act (815 ILCS 180/1 et seq.), Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagee's expense to protect Mortgagor's interests in the Property, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased

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by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance, the Mortgagor will be responsible for the documented costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total obligation secured hereby. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

(h) Illinois Mortgage Foreclosure Law. It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:

(1) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(2) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale;

(3) In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions set forth in Sections 15-1701 and 15-1703 of the Act;

(4) Mortgagor acknowledges that the Property does not constitute "agricultural real estate", as said term is defined in Section 15-1201 of the Act or "residential real estate" as defined in Section 15-1219 of the Act;

(5) Mortgagor hereby voluntarily and knowingly waives its statutory rights to reinstatement and redemption pursuant to 735 ILCS Section 5/15-1601(b);

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

(A) all advances by Mortgagee in accordance with the terms of the Mortgage or the Loan Agreement to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Subsection (b) (5) of Section 5/15-1302 of the Act;

(B) payments by Mortgagee of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrances; (ii) real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (iii) other obligations authorized by the Mortgage, or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(C) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(D) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Property;

(E) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 5/15-1508 (b) (1) of the Act;

(F) expenses deductible from proceeds of sale as referred to in Sections 5/15-1512 (a) and (b) of the Act; and

(G) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease;

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(iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Section 5/15-1704 (c) (1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Property; and (ix) if the Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force;

(7) All Protective Advances shall be additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate; and

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b) (5) of Section 5/15-1302 of the Act.