

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

Doc#: 2120318097 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 07/22/2021 06:31 AM Pg: 1 of 17

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: **PIN:** 16-11-215-031-0000

**Address:**

**Street:** 618 North Kedzie Avenue

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60612

**Lender:** Barrington Bank & Trust Company, N.A.

**Borrower:** McDonagh Construction, LLC

**Loan / Mortgage Amount:** \$6,000,000.00

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

**Certificate number:** 401C84B7-CB8F-4E9F-9CAB-8F6FDF518E19

**Execution date:** 9/30/2020

# UNOFFICIAL COPY

*THIS INSTRUMENT PREPARED  
BY AND RETURN TO:*

Katherine A. Attebery, Esq.  
Horwood Marcus & Berk Chartered  
500 West Madison Street  
Suite 3700  
Chicago, Illinois 60661

NS-1030210-2 1/2

## **MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

This **MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT AND FIXTURE FILING** ("**Mortgage**") is made as of September 30, 2020, by **MCDONAGH CONSTRUCTION, LLC**, an Illinois limited liability company ("**Mortgagor**"), to and for the benefit of **BARRINGTON BANK & TRUST COMPANY, N.A.**, its successors and assigns ("**Mortgagee**").

**WHEREAS**, Mortgagor owns certain real property located in Chicago, Illinois, as further described on **Exhibit A** attached hereto and made a part hereof (the "**Real Estate**").

**WHEREAS**, Mortgagor, McDonagh Demolition Inc., an Illinois corporation ("**Demolition**", and together with Assignor, "**Borrowers**") and Mortgagee are parties to that certain Business Loan Agreement (Asset Based) dated as of September 30, 2018 (as amended, restated, modified or supplemented and in effect from time to time, the "**Loan Agreement**"), pursuant to which Mortgagee extended to Borrowers loans in the aggregate principal amount not to exceed \$6,000,000.00 (collectively, the "**Loan**"), which are evidenced by (i) a Promissory Note dated September 30, 2018, executed by Borrowers and made payable to the order of Mortgagee in the original principal amount not to exceed \$3,000,000.00, and (ii) a Term Note dated as of even date herewith, executed by Borrowers and made payable to the order of Mortgagee in the original principal amount of \$3,000,000.00 (together, the "**Notes**", and each of the documents executed in connection therewith, the "**Loan Documents**").

**WHEREAS**, concurrently herewith, Borrowers and Mortgagee entered into that certain Third Modification to Loan Documents dated as of even date hereof (the "**Modification Agreement**"), pursuant to which, among other things, Mortgagee requires that Mortgagor provide the Real Estate as additional collateral for the Loan.

**WHEREAS**, Mortgagor shall derive substantial economic benefit from the Modification Agreement and agrees to provide the Real Estate as additional Collateral.

**TO SECURE** to Mortgagee the amounts due under the Notes and Borrowers' performance thereunder, the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements contained herein and in the Notes, all future advances and all other

# UNOFFICIAL COPY

indebtedness or obligations of Borrowers to Mortgagee whether now or hereafter existing, along with all obligations, debts and liabilities, plus interest thereon, of Killeaney, LLC (“Killeaney”) to Mortgagee, including, without limitation, (i) the loan from Mortgagee to Killeaney evidenced by that certain Promissory Note dated January 31, 2014 executed by Killeaney and made payable to the order of Mortgagee in the original principal amount of \$760,000.00, and (ii) the loan from Mortgagee to Killeaney evidenced by that certain Promissory Note dated April 29, 2015 executed by Killeaney and made payable to the order of Mortgagee in the original principal amount of \$230,000.00 (collectively, the “Secured Obligations” or “Obligations”) and also in consideration of \$10.00, the receipt and sufficiency whereof are acknowledged, Mortgagor does hereby convey, grant, mortgage and warrant to Mortgagee the Real Estate, subject only to covenants, conditions, easements and restrictions set forth on Exhibit “B”, if any (“Permitted Encumbrances”),

**TOGETHER WITH** all buildings, structures, improvements, tenements, fixtures, easements, mineral, oil and gas rights, water rights, appurtenances thereunto belonging, title or reversion in any parcels, strips, streets and alleys adjoining the Real Estate, any land or vaults lying within any street, thoroughfare, or alley adjoining the Real Estate, and any privileges, licenses, and franchises pertaining thereunto, all of the foregoing now or hereafter acquired, all leasehold estates and all rents, issues, and profits thereof, for so long and during all such times as Mortgagor, its successors and assigns may be entitled thereto, all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to: (i) proceeds of insurance in effect with respect to the Real Estate or any improvements thereon and (ii) any and all awards, claims for damages, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Real Estate or any improvements thereon, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively “Awards”) (which are pledged primarily and on a parity with the Real Estate and not secondarily), and all apparatus, equipment or articles now or hereafter located thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, and any other apparatus, equipment or articles used or useful in the operation of the property including all additions, substitutions and replacements thereof. All of the foregoing are declared to be a part of the Real Estate whether physically attached or not, and it is agreed that all improvements, apparatus, equipment, articles and fixtures hereafter placed on the Real Estate by or at the direction of Mortgagor or its successors or assigns shall be considered as constituting part of the Real Estate, and, together with the Real Estate are hereinafter collectively referred to as the “Property”. To have and to hold the Property unto the Mortgagee, its successors and assigns forever, for the purposes and uses set forth herein, free from all rights and benefits under any Homestead Exemption laws of the state in which the Property is located, which rights and benefits Mortgagor does hereby expressly release and waive.

Mortgagor and Mortgagee covenant and agree as follows:

1. Payment of Principal and Interest. Mortgagor shall promptly pay or perform or cause to be paid or performed when due all of the Secured Obligations.

# UNOFFICIAL COPY

2. Liens. Mortgagor shall keep the Property free from mechanics' and all other liens and encumbrances, except Permitted Encumbrances and statutory liens for real estate taxes and assessments not yet due and payable. However, notwithstanding the immediately previous sentence, Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any lien or claimed lien so long as Mortgagor continues to diligently pursue such contest. Upon the adverse conclusion of any contest, Mortgagor will immediately satisfy any judgment rendered or decree entered and will at its expense cause such lien to be released.

3. Taxes and Assessments; Rents. Mortgagor shall pay or cause to be paid when due all condominium assessments, water, sewer and other charges, fines, fees, taxes, claims, levies, expenses, liens (including mechanics' liens, materialmen's liens and similar liens) and assessments, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise (all of the foregoing being herein collectively referred to as "Impositions") attributable to the Property and household payments, if any. Upon written request from Mortgagee, Mortgagor shall provide evidence satisfactory to Mortgagee of compliance with these requirements promptly after the respective due dates for payment. Mortgagor shall pay, in full, but under protest in the manner provided by statute, any tax or assessment Mortgagor desires to contest.

4. Insurance.

A. Coverage. Mortgagor, at its sole cost and expense, shall insure and keep insured the Property against such perils and hazards, and in such amounts and with such limits, as Mortgagor may from time to time require, including insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, if the Property is now, or at any time while the Secured Obligations remain outstanding shall be, situated in any area which an appropriate governmental authority designates as a special flood hazard area, Zone A or Zone V, in amounts equal to the full replacement value of all above grade structures on the Property.

B. Policy Requirements. All insurance shall: (i) be carried in companies with a Best's rating of A/X or better, or otherwise acceptable to Mortgagor; (ii) in form and content acceptable to Mortgagee; (iii) provide ten days' advance written notice to Mortgagor before any cancellation, adverse material modification or notice of non-renewal; (iv) to the extent limits are not otherwise specified herein, contain deductibles which are in amounts acceptable to Mortgagor; and (v) provide that no claims shall be paid thereunder without ten days advance written notice to Mortgagee. All deductibles shall be in amounts acceptable to Mortgagee. In the event of the foreclosure of this Mortgage or any other transfer of title to the Property in full or partial satisfaction of the Secured Obligations, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

C. Delivery of Policies. Any notice pertaining to insurance and required pursuant to this Paragraph 4 shall be given in the manner provided in Paragraph 12 below at Mortgagee's address stated below. If Mortgagee has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Mortgagee shall have the right, but not the obligation, to purchase such insurance for Mortgagee's interest only. Any amounts so disbursed by Mortgagee pursuant to this Section shall be a part of the Secured Obligations and shall bear interest

# UNOFFICIAL COPY

at the Default Rate (as the term is defined in the Notes). Nothing contained in this Paragraph 4 shall require Mortgagee to incur any expense or take any action hereunder, and inaction by Mortgagee shall never be considered a waiver of any right accruing to Mortgagee on account of this Paragraph 4.

D. Notice of Casualty. Mortgagor shall give immediate notice of any loss to Mortgagee. In case of loss covered by any of such policies, Mortgagee is authorized to adjust, collect and compromise in its discretion, all claims thereunder and in such case, Mortgagor covenants to sign upon demand, or Mortgagee may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases and other papers required by the insurance companies to be signed by Mortgagor. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the sole and exclusive purpose set forth in the preceding sentence, but for no other purpose. Mortgagee may deduct from such insurance proceeds any expenses incurred by Mortgagee in the collection and settlement thereof, including, but not limited to, attorneys' and adjusters' fees and charges.

E. Application of Proceeds. If all or any part of the Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Paragraph 7, Mortgagor shall promptly and with all due diligence restore and repair the Property regardless of whether the net insurance proceeds, award or other compensation (collectively, the "Proceeds") are sufficient to pay the cost of such restoration or repair. Mortgagee may require that all plans and specifications for such restoration or repair be submitted to and approved by Mortgagee in writing prior to commencement of the work. The entire amount of the Proceeds shall be made available to Mortgagor on the terms and conditions set forth in this Paragraph 4 to finance the cost of restoration or repair with any excess to be applied to the Secured Obligations.

5. Use, Preservation and Maintenance of Property. Mortgagor shall keep the Property in good condition and repair and shall not commit waste or permit encroachment or deterioration of the Property. Mortgagor shall not allow store, treat or dispose of hazardous material as defined in Paragraph 22, nor permit the same to exist or be stored, treated or disposed of, from or upon the Property. Mortgagor shall promptly restore or rebuild any buildings or improvements now or hereafter on the Property which may become damaged or destroyed. Mortgagor shall comply with all requirements of any condominium or homeowners' association, laws or municipal ordinances with respect to the use, operation, and maintenance of the Property, including all environmental, health and safety laws and regulations, and shall make no material alterations in the Property, except as required by law, without the prior written consent of Mortgagee. Mortgagor shall not grant or permit any easements, licenses, covenants or declarations of use against the Property without Mortgagee's prior written consent, which shall not be unreasonably conditioned, withheld or delayed.

6. Protection of Mortgagee's Security. If Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, or the other Loan Documents, or if any action or proceeding is threatened or commenced which materially affects Mortgagee's interest in the Property, then Mortgagee, at Mortgagee's option, upon notice to Mortgagor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as it

# UNOFFICIAL COPY

deems expedient or necessary to protect Mortgagee's interest, including: (i) making repairs; (ii) paying, settling, or discharging tax liens, mechanics' or other liens, paying ground rents (if any); (iii) procuring insurance; and (iv) renting, operating and managing the Property and paying operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Property shall be operational and usable for its intended purposes. Mortgagee, in making such payments of Impositions and assessments, may do so in accordance with any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof. Any amounts disbursed by Mortgagee pursuant to this Paragraph 6 shall be part of the Secured Obligations and shall bear interest at the Default Rate. Nothing contained in this Paragraph 6 shall require Mortgagee to incur any expense or take any action hereunder, and inaction by Mortgagee shall never be considered a waiver of any right accruing to Mortgagee on account of this Paragraph 6.

7. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid directly to Mortgagee. Mortgagor hereby grants a security interest to Mortgagee in and to such proceeds. Mortgagee is authorized to collect such proceeds and, at Mortgagee's sole option and discretion, to apply said proceeds either to restoration or repair of the Property or in payment of the Secured Obligations. In the event the Property is restored, Mortgagee may pay the condemnation proceeds in accordance with its customary construction loan payment procedures, and may charge its customary fee for such services.

8. Mortgagor Not Released; Forbearance by Mortgagee Not a Waiver; Remedies Cumulative. Extension or other modification granted by Mortgagee to any successor in interest of Mortgagor of the time for payment or performance of all or any part of the Secured Obligations shall not operate to release, in any manner, the liability of the Mortgagor. Any forbearance or inaction by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. Any acts performed by Mortgagee to protect the security of this Mortgage, as authorized by Paragraph 6 or otherwise, shall not be a waiver of any rights or remedies of Mortgagee hereunder. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. No consent or waiver by Mortgagee to or of any breach or default by Mortgagor shall be deemed a consent or waiver to or of any other breach or default.

9. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor.

10. Charges. If the Obligations secured by this Mortgage are subject to a law which sets maximum charges, and that law is finally interpreted so that the interest or other charges collected or to be collected in connection with the Obligations exceed the permitted limits, then any such charges shall be reduced by the amount necessary to reduce the charges to the permitted limit; and any sums already collected from Mortgagor which exceeded permitted limits ("Excess Charges")

# UNOFFICIAL COPY

will, at Mortgagee's option, either be refunded to Mortgagor or applied as a credit against the Secured Obligations.

11. Legislation Affecting Mortgagee's Rights. If an enactment, modification or expiration of an applicable governmental law, ruling or regulation has the effect of rendering any provision of the Loan Agreement, the Notes, this Mortgage or any of the other Loan Documents unenforceable according to its terms, Mortgagee, at its option upon giving written notice to Mortgagor, may invoke any remedies permitted by Paragraph 16.

12. Notice. Except for any notice required under applicable law to be given in another manner, any notices required or given under this Mortgage shall be given by hand delivery, by nationally recognized overnight courier service or by certified mail, return receipt requested. Notices shall be given at the addresses set forth as follows:

To Mortgagee: Barrington Bank & Trust Company, N.A.  
201 S. Hough Street.  
Barrington, Illinois 60010  
Attention: Paul Ebert

With a copy to: Horwood Marcus & Berk Chartered  
500 W. Madison, Suite 3700  
Chicago, Illinois 60661  
Attn: Eric S. Rein

To Mortgagor: McDonagh Demolition, Inc.  
7243 W. Touhy Avenue  
Chicago, Illinois 60631  
Attention: Geraldine McDonagh

Notices shall be deemed to have been given and effective on the date of delivery if hand-delivered, the next business day after delivery to the nationally recognized overnight courier service if by such courier service, or two business days after the date of mailing shown on the certified receipt, if mailed. Any party hereto may change the address to which notices are given by notice as provided herein.

13. Governing Law; Severability. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage, the Loan Agreement, the Notes, or any of the other Loan Documents conflicts with applicable law, or is adjudicated to be invalid or unenforceable same shall not affect other provisions of this Mortgage, the Loan Agreement, the Notes, or any of the other Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage, the Loan Agreement, the Notes or any of the other Loan Documents are declared to be severable and the validity or enforceability of the remainder of the Loan Documents in question shall be construed without reference to the conflicting, invalid or unenforceable clause or provision.

# UNOFFICIAL COPY

14. Prohibitions on Transfer of the Property or of an Interest in Mortgagor. It shall be an immediate default if, without the prior written consent of Mortgagee, which consent may be granted or withheld at Mortgagee's reasonable discretion, Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale (including an installment sale), assignment, transfer, lien, pledge, hypothecate, mortgage, security interest, or other encumbrance or alienation, whether by operation of law, voluntarily or otherwise, (collectively "Transfer") of the Property or any part thereof or interest therein, or of all or a portion of the interest of Mortgagor (each of the foregoing is referred to as a "Prohibited Transfer"). In the event of such default, Mortgagee may declare any outstanding unpaid Obligations, including interest, immediately due and payable. The foregoing provisions of this Paragraph 14 shall not, however, apply to the lien of current Impositions and assessments not yet due and payable.

15. Event of Default. Each of the following shall constitute an event of default ("Event of Default") under this Mortgage:

A. Borrowers' or Mortgagor's failure to pay or perform any obligations under the Loan Agreement, the Notes, this Mortgage or any other Loan Document, subject to applicable cure periods, if any;

B. The occurrence of any material breach of any representation or warranty contained in this Mortgage or any other Loan Document;

C. A Prohibited Transfer occurs;

D. A court having jurisdiction shall enter a decree or order for relief in respect of Mortgagor in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law; or if Mortgagor, or any beneficiary of or person in control of Mortgagor, shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or reorganization, reorganization or other relief under the Federal Bankruptcy Act or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee (or similar official) of the Mortgagor or for any part of the Property or any substantial part of the Mortgagor's other property; (iii) make any assignment for the benefit of Mortgagor's creditors; or (iv) fail generally to pay Mortgagor's debts as they become due;

E. All or a substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon;

F. This Mortgage shall not constitute a valid first lien on and security interest in the Property (subject only to the Permitted Encumbrances), or if such lien and security interest shall not be perfected;

G. The Property is abandoned;

H. An indictment or other charge is filed against Mortgagor in any jurisdiction, under any federal or state law, for which forfeiture of the Property or of other collateral securing the



# UNOFFICIAL COPY

Secured Obligations or of any other funds, property or other assets of Mortgagor, unless such charge is dismissed within forty-five days after filing; or

I. Mortgagor's failure to pay, when due, any amount payable under any other obligation of Mortgagor, however created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

If any default hereunder, other than a default in payments, is curable and if Mortgagor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Mortgagor, after Mortgagee sends written notice to Mortgagor demanding cure of such default, (i) cures the default within fifteen (15) days; or (ii) if the cure requires more than fifteen (15) days, immediately initiates steps which Mortgagee deems in Mortgagee's sole discretion to be sufficient to cure the default, and thereafter continues, and completes all reasonable and necessary steps sufficient to cure the default as soon as reasonably practical.

16. REMEDIES. AT ANY TIME AFTER AN EVENT OF DEFAULT, MORTGAGEE, AT MORTGAGEE'S OPTION, MAY FORECLOSE THIS MORTGAGE BY JUDICIAL PROCEEDING. MORTGAGEE SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS INCLUDING ABSTRACTS AND TITLE REPORTS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED OBLIGATIONS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PROPERTY SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN THIS MORTGAGE; AND THIRD, ANY BALANCE TO MORTGAGOR.

17. Appointment of Receiver. Upon the occurrence of an Event of Default hereunder, Mortgagee shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the Rents (as hereinafter defined) including those past due. The receiver shall have the power to collect the Rents from the time of acceleration through the pendency of any foreclosure proceeding and during the full statutory period of redemption, if any.

18. Release. Upon payment of all Secured Obligations, Mortgagee shall release this Mortgage upon payment by Mortgagor of all costs and fees to release same, if any. Mortgagor shall be responsible for recording the release, including all related costs of recordation.

19. Security Agreement. Without limiting any other provisions of this Mortgage, this Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (herein called the "Code") with respect to all fixtures, apparatus, equipment or articles, and all replacements and substitutions, now or hereafter located on the Property, including but not limited to the air-conditioning, heating, gas, water, power, light, refrigeration, and ventilation systems which are presently located at the Property, and with respect to all funds and other sums which may be deposited with Mortgagee pursuant hereto (all for the purposes of this paragraph called "Collateral"), and Mortgagor hereby grants to Mortgagee a security interest in such

# UNOFFICIAL COPY

Collateral. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property. When the Secured Obligations shall become due, whether by acceleration or otherwise, Mortgagee shall have all remedies of a secured party under the Code. This Mortgage is intended to be a financing statement with respect to any other Collateral which constitutes "fixtures" within the meaning of the Code. Mortgagor shall execute and deliver to Mortgagee any financing statements necessary to perfect the security interest in the Collateral created hereby. Any Code requirement for reasonable notice shall be met if such notice is delivered as provided herein at least five days prior to the time of any sale, disposition, or other event or matter giving rise to the notice (which period of time and method of notice is agreed to be commercially reasonable).

20. Principal Amount of Mortgage. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced for Impositions and insurance premiums or to protect the security of this Mortgage, exceed \$14,000,000.00.

21. Exhibits. All Exhibits attached hereto, if any, are incorporated herein and made a part hereof.

22. Environmental Compliance. Mortgagor hereby represents and warrants to Mortgagee and covenants with Mortgagee that the Property and Mortgagor have been and are currently in compliance with all environmental laws. There have been, to the best of Mortgagor's actual knowledge based on all appropriate and thorough inquiry, no past, and there are no pending or threatened, environmental actions to which Mortgagor is a party or which relate to the Property. Mortgagor shall comply with all environmental laws. Mortgagor shall indemnify, defend (at trial and appellate levels and with counsel, experts and consultants acceptable to Mortgagee and at Mortgagor's sole cost) and hold Mortgagee and its affiliates free and harmless from and against any liability to Mortgagee related to the environmental condition at the Property (collectively, "Mortgagor's Indemnification Obligations"). Mortgagor's Indemnification Obligations shall survive in perpetuity.

23. Compliance with Illinois Mortgage Foreclosure Law. If any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et. seq. of the Illinois Compiled Statutes) (the "Act") the provisions of the Act shall take precedence over the Mortgage provisions, but shall not invalidate or render unenforceable any other Mortgage provision that can be construed in a manner consistent with the Act. If any Mortgage provision shall grant to Mortgagee any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of such provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 16 of this Mortgage, shall be added to the Obligations secured by this Mortgage or by the judgment of foreclosure.

24. Interpretation. This Mortgage shall be construed pursuant to the laws of the State of Illinois. The headings of sections and paragraphs in this Mortgage are for convenience only and

# UNOFFICIAL COPY

shall not be construed in any way to limit or define the content, scope, or intent of the provisions. The use of singular and plural nouns, and masculine, feminine, and neuter pronouns, shall be fully interchangeable, where the context so requires. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included. Time is of the essence of the payment and performance of this Mortgage.

25. Waiver of Right of Redemption. To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction, or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such right of redemption of Mortgagor, and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by involving or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Notes.

26. APPLICABLE LAW; VENUE. THIS MORTGAGE AND THE TRANSACTIONS EVIDENCED HEREBY SHALL BE CONSTRUED AND INTERPRETED UNDER THE LAWS OF THE STATE OF ILLINOIS. MORTGAGOR, IN ORDER TO INDUCE MORTGAGEE TO ENTER INTO THE MODIFICATION AGREEMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH HEREBY IS ACKNOWLEDGED, AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO OR FROM THIS MORTGAGE SHALL BE LITIGATED ONLY IN COURTS HAVING A SITUS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR SAID COUNTY. MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT BY MORTGAGEE IN CONNECTION WITH THIS ASSIGNMENT IN ACCORDANCE WITH THIS SECTION. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ASSIGNEE TO ENTER INTO THE MODIFICATION AGREEMENT.

# UNOFFICIAL COPY

27. WAIVER OF TRIAL BY JURY. THE MORTGAGOR AND THE MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

28. Assignment of Leases and Rents.

A. All right, title, and interest of Mortgagor in and to all present and future leases affecting the Property, written or oral (individually, a "Lease" and collectively, "Leases"), and all rents, income, receipts, revenues, issues, avails and profits from or arising out of the Property (collectively "Rents") are hereby transferred and assigned to Mortgagee as further security for the payment of the Secured Obligations, and Mortgagor hereby grants a security interest to Mortgagee in and to the same. If requested by Mortgagee, Mortgagor shall submit all future Leases affecting the Property to Mortgagee for its approval prior to execution, and all approved and executed Leases shall be specifically assigned to Mortgagee by an instrument satisfactory to Mortgagee. Each Lease shall, at the option of Mortgagee, be paramount or subordinate to this Mortgage.

B. If, without Mortgagee's prior written consent, Mortgagor; (i) as lessor, fails to perform and fulfill any term, covenant, or provision in any Lease; (ii) suffers or permits to occur any breach or default under the provisions of any separate assignment of any Lease given as additional security for the Secured Obligations; (iii) fails to fully protect, insure, preserve, and cause continued performance or fulfillment of the terms, covenants, or provisions, which are required to be performed by the lessee or the lessor of any other Lease or Leases hereafter assigned to Mortgagee; (iv) cancels, terminates, or materially amends or modifies any Lease; or (v) permits or approves an assignment by lessee of a Lease or a subletting of all or any part of the Property demised in the Lease; such occurrence shall constitute an Event of Default hereunder.

C. Mortgagee shall have the right to assign Mortgagor's right, title and interest in any Leases to any subsequent holder of this Mortgage or the Notes and other Loan Documents or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise.

D. Upon an Event of Default, this Mortgage shall constitute a direction to each lessee under the Leases and each guarantor thereof, if any, to pay all Rents directly to Mortgagee without proof of the Event of Default. While this assignment is a present assignment,

# UNOFFICIAL COPY

Mortgagee shall not exercise any of the rights or powers conferred upon it by this paragraph until an Event of Default shall occur under this Mortgage.

E. If Mortgagor, as lessor, shall neglect or refuse to perform and keep all of the covenants and agreements contained in the Lease or Leases, then Mortgagee may, at its option, perform and comply with any such Lease covenants and agreements. All related costs and expenses incurred by Mortgagee shall become a part of the Secured Obligations and shall be due and payable upon demand by Mortgagee with interest thereon accruing thereafter at the Default Rate. Mortgagee, however, shall not be obligated to perform or discharge any obligation, duty or liability under any Lease. Mortgagor shall, defend, protect, indemnify and hold Mortgagee harmless from and against any and all liability, loss or damage to Mortgagee under the Leases or under or by reason of their assignments and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of all alleged obligations or undertakings on its part to perform or discharge any Lease terms, covenants or agreements. The amount of any such liability, loss or damage arising under the Leases or under or by reason of their assignment, or in the defense of any claims or demands, including costs, expenses and reasonable attorneys' fees, incurred by Mortgagee shall be a part of the Secured Obligations due and payable upon demand with interest thereon accruing thereafter at the Default Rate.


*[Signature page follows.]*

# UNOFFICIAL COPY

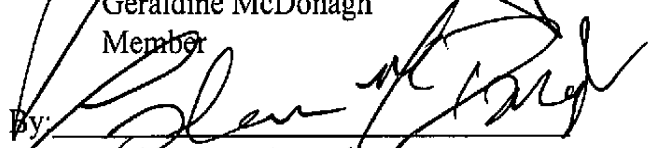
**IN WITNESS WHEREOF**, Mortgagor has executed and delivered this Mortgage the day and year first above written.

**MORTGAGOR:**

**MCDONAGH CONSTRUCTION, LLC**, an Illinois limited liability company

By:   
Geraldine McDonagh

Member

By:   
Coleman McDonagh

Member

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

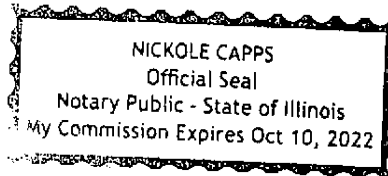
STATE OF ILLINOIS )  
 )  
COUNTY OF Cook ) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Geraldine McDonagh, as a Member of McDonagh Construction, LLC, an Illinois limited liability company, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her own and free and voluntary act, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28 day of October, 2020.

Nickole Capps  
Notary Public

My Commission Expires: 10/10/22



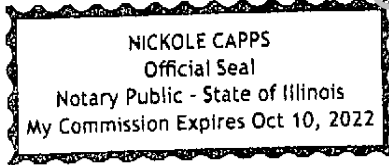
STATE OF ILLINOIS )  
 )  
COUNTY OF Cook ) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Coleman McDonagh, as a Member of McDonagh Construction, LLC, an Illinois limited liability company, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his own and free and voluntary act, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28 day of October, 2020.

Nickole Capps  
Notary Public

My Commission Expires: 10/10/22



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

LOT 4 IN BLOCK 2 IN THE RESUBDIVISION OF LOTS 1 TO 10 AND 13 TO 17 IN BLOCK 1 OF RUST AND GILCHRIST'S SUBDIVISION OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 11, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

P.I.N.: 16-11-215-031-0000

Common Address: 618 North Kedzie Avenue  
Chicago, Illinois 60612



# UNOFFICIAL COPY

## EXHIBIT "B"

### PERMITTED ENCUMBRANCES

Items 1 , 3, and 4 on Schedule B, Part 1 of the Pro Forma Loan Policy issued by First American Title Insurance Company (Policy No. 1030210-2).

Property of Cook County Clerk's Office