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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

Doc#: 2121112143 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 07/30/2021 06:25 AM Pg: 1 of 18

The property identified as: **PIN:** 14-20-216-017-0000

Address:

Street: 3700-04 NORTH CLARK STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60613

Lender: PINNACLE BANK, A TENNESSEE BANKING CORPORATION

Borrower: MAR REAL ESTATE, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY

Loan / Mortgage Amount: \$2,512,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity or person.

6719436 2/4
Freedom Title Corporation
2220 Hicks Road
Suite 206
Rolling Meadows, IL 60008

Certificate number: 18EC102E-FBB4-4A32-B21C-A5E2FEF489DD

Execution date: 7/16/2021

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After Recording Return to:
Pinnacle Bank
5980 Fairview Road
Charlotte, NC 28210

Prepared by:
J. Christian Stevenson
Kirk Palmer & Thigpen, P.A.
1300 Baxter Street, Suite 300
Charlotte, NC 28204

Legal Description:
See Exhibit A attached hereto

Property Address:
3700 N. Clark Street
Chicago, Cook County Illinois 60613

Freedom Title Corporation
2220 Hicks Road
Suite 206
Rolling Meadows, IL 60008

**MORTGAGE
AND SECURITY AGREEMENT**

0719436 2/4

MORTGAGE AND SECURITY AGREEMENT dated as of July 23, 2021 (together with any amendments or modifications hereto in effect from time to time, the "Mortgage"), by **MAR REAL ESTATE, LLC**, a North Carolina limited liability company ("Mortgagor"), whose address is 729 N. Shore Drive, Charleston, SC 29412, in favor of **PINNACLE BANK**, a Tennessee banking corporation ("Lender"), having an address at 5980 Fairview Road, Charlotte, NC 28210.

(This Document Serves as a Fixture Filing under Illinois Uniform Commercial Code and is to be filed in the real property records.)

WITNESSETH:

WHEREAS, pursuant to that certain Loan Agreement dated as of July 23, 2021 by and between Mortgagor and Lender (as amended, modified, restated or supplemented from time to time, the "Loan Agreement"), Lender agreed to make available to Mortgagor a loan in the maximum principal amount of up to **\$2,512,000.00** (the "Loan"), as evidenced by that certain Promissory Note dated the same date as the Loan Agreement, executed by Mortgagor payable to the order of Lender in the original principal amount of **\$2,512,000.00** (as amended, modified, restated or supplemented from time to time, the "Note"). Unless the context otherwise requires, all terms used herein without definition shall have the respective definitions provided therefor in the Loan Agreement; and

WHEREAS, Mortgagor is the owner of fee simple title to those certain tracts of land located in the County of Cook, State of Illinois, as more particularly described in Schedule "A" attached hereto and made a part hereof (the "Land"); and

WHEREAS, to induce Lender to make the Loan and to secure payment of the Note and the other obligations described below, Mortgagor has agreed to execute and deliver this Mortgage.

GRANTING CLAUSES

NOW, THEREFORE, to secure to Lender (i) the repayment of all sums due under this Mortgage, the Loan Agreement, the Note (and all extensions, renewals, replacements and amendments thereof) and the other Loan Documents; (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; and (iii) all

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other obligations or indebtedness of Mortgagor to Lender of whatever kind or character and wherever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including attorneys' fees (subsections (i), (ii) and (iii) collectively, the "**Liabilities**"), Mortgagor has mortgaged, granted, conveyed, bargained, sold, transferred, assigned and set over and by these presents DOES HEREBY MORTGAGE, GRANT, CONVEY, BARGAIN, SELL, TRANSFER, ASSIGN AND SET OVER TO LENDER, ITS SUCCESSORS AND ASSIGNS, in fee simple, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "**Premises**"):

(A) The Land;

(B) Any and all buildings and improvements now or hereafter erected on, under or over the Land (the "**Improvements**");

(C) Any and all fixtures, machinery, equipment and other articles of real, personal or mixed property, belonging to Mortgagor, at any time now or hereafter installed in, attached to or situated in or upon the Land, or the buildings and improvements now or hereafter erected thereon, or used or intended to be used in connection with the Land, or in the operation of the buildings and improvements, plant, business or dwelling situate thereon, whether or not such real, personal or mixed property is or shall be affixed thereto, and all replacements, substitutions and proceeds of the foregoing (all of the foregoing herein called the "**Service Equipment**"), including without limitation: (i) all appliances, furniture and furnishings; all articles of interior decoration, floor, wall and window coverings; all office, restaurant, bar, kitchen and laundry fixtures, utensils, appliances and equipment; all supplies, tools and accessories; all storm and screen windows, shutters, doors, decorations, awnings, shades, blinds, signs, trees, shrubbery and other plantings; (ii) all building service fixtures, machinery and equipment of any kind whatsoever; all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing, security, irrigating, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and equipment; all elevators, escalators, lifts, cranes, hoists and platforms; all pipes, conduits, pumps, boilers, tanks, motors, engines, furnaces and compressors; all dynamos, transformers and generators; (iii) all building materials, building machinery and building equipment delivered on site to the Land during the course of, or in connection with any construction or repair or renovation of the buildings and improvements; (iv) all parts, fittings, accessories, accessions, substitutions and replacements therefor and thereof; and (v) all files, books, ledgers, reports and records relating to any of the foregoing;

(D) Any and all leases, subleases, tenancies, licenses, occupancy agreements or agreements to lease all or any portion of the Land, Improvements, Service Equipment or all or any other portion of the Premises and all extensions, renewals, amendments, modifications and replacements thereof, and any options, rights of first refusal or guarantees relating thereto (collectively, the "**Leases**"); all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards and payments of any kind payable under the Leases or otherwise arising from the Land, Improvements, Service Equipment or all or any other portion of the Premises including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance and deficiency rents (collectively, the "**Rents**"); all of the following personal property (collectively referred to as the "**Contracts**"): all accounts, general intangibles and contract rights (including any right to payment thereunder, whether or not earned by performance) of any nature relating to the Land, Improvements, Service Equipment or all or any other portion of the Premises or the use, occupancy, maintenance, construction, repair, operation or sale thereof; all management agreements, franchise agreements, utility agreements and deposits, building service contracts, maintenance contracts, construction contracts and architect's agreements; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies, books of account and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Land, Improvements, Service Equipment or all or any other portion of the Premises;

(E) Any and all estates, rights, tenements, hereditaments, privileges, easements, reversions, remainders and appurtenances of any kind benefiting or appurtenant to the Land, Improvements or all or any other portion of the Premises; all means of access to and from the Land, Improvements or all or any other portion of the Premises, whether public or private; all streets, alleys, passages, ways, water courses, water and mineral rights relating to the Land, Improvements or all or any other portion of the Premises; all rights of Mortgagor as declarant or unit owner under any declaration of condominium or association applicable to the Land, Improvements or all or any other portion of the Premises including, without limitation, all development rights and special declarant rights;

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and all other claims or demands of Mortgagor, either at law or in equity, in possession or expectancy of, in, or to the Land, Improvements or all or any other portion of the Premises (all of the foregoing described in this subsection E herein called the "Appurtenances"); and

(F) Any and all "proceeds" of any of the above-described Land, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, which term "proceeds" shall have the meaning given to it in the Uniform Commercial Code (the "Code") of the State in which the Premises is located (collectively, the "Proceeds") and shall additionally include whatever is received upon the use, lease, sale, exchange, transfer, collection or other utilization or any disposition or conversion of any of the Land, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, voluntary or involuntary, whether cash or non-cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and inventory.

TO HAVE AND TO HOLD the above mortgaged, granted and conveyed Premises unto and to the proper use and benefit of Lender, its successors and assigns, to its own proper use and benefit forever to secure the Liabilities herein received; provided, however, that if (i) all the Liabilities, including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements secured hereunder, are paid in full, (ii) each and every representation, warranty, agreement and covenant of this Mortgage and the other Loan Documents are complied with and abided by, (iii) any swap agreements secured hereunder have matured or been terminated, then this Mortgage and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be null and void and canceled of record.

AND Mortgagor covenants and agrees with and represents to Lender as follows:

1. **FUTURE ADVANCES; PROTECTION OF PROPERTY.** This Mortgage shall also secure any additional loans as well as any and all present or future advances and readvances under the Liabilities made by Lender to or for the benefit of Mortgagor or the Premises, to the fullest extent permitted by applicable law, including, without limitation: (a) principal, interest (including, to the extent provided in the Note, deferred, accrued, or capitalized interest), late charges, fees and other amounts due under the Liabilities or this Mortgage; (b) all advances by Lender to Mortgagor or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Premises; (c) all advances made or costs incurred by Lender for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums, appraisal charges, environmental inspection audit testing or compliance costs, and costs incurred by Lender for the enforcement and protection of the Premises or the lien of this Mortgage; (d) all legal fees, costs and other expenses incurred by Lender by reason of any default or otherwise in connection with the Liabilities; provided, however, that nothing contained herein shall create an obligation on the part of Lender to make future advances or readvances to Mortgagor. The maximum principal amount which may be secured hereby at any one time is **\$5,024,000.00**. All future advances made by Lender for the benefit of Mortgagor from time to time under this Mortgage or the Liabilities and whether or not such advances are obligatory or are made at the option of Lender, made at any time from and after the date of this Mortgage, and all interest accruing thereon shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the Liabilities over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Premises given priority by law.

Mortgagor agrees that if, at any time during the term of this Mortgage or following a foreclosure hereof (whether before or after the entry of a judgment of foreclosure), Mortgagor fails to perform or observe any covenant or obligation under this Mortgage including, without limitation, payment of any of the foregoing, Lender may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All amounts advanced by Lender shall be added to the amount secured by this Mortgage and the other Loan Documents (and, if advanced after the entry of a judgment of foreclosure, by such judgment of foreclosure), and shall be due and payable on demand, together with interest at the Default Rate (as defined in the Note), such interest to be calculated from the date of such advance to the date of repayment thereof.

2. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

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2.1. **Payment and Performance.** Mortgagor shall (a) pay to Lender all sums required to be paid by Mortgagor under the Loan Documents, in accordance with their stated terms and conditions; (b) perform and comply with all terms, conditions and covenants set forth in each of the Loan Documents by which Mortgagor is bound; and (c) perform and comply with all of Mortgagor's obligations and duties as landlord under any Leases.

2.2. **Seisin and Warranty.** Mortgagor hereby warrants that (a) Mortgagor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Premises; (b) Mortgagor has the right, full power and lawful authority to grant, convey and assign the same to Lender in the manner and form set forth herein; and (c) this Mortgage is a valid and enforceable first lien on the Premises, free and clear of all liens and encumbrances other than those set forth in any title insurance policy issued in favor of, and accepted by Lender in connection with this Mortgage. Mortgagor hereby covenants that Mortgagor shall (a) preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Lender against all lawful claims whatsoever; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Lender to protect fully the lien of this Mortgage.

2.3. **Insurance.** (a) Mortgagor shall obtain and maintain at all times throughout the term of this Mortgage the following insurance: (i) comprehensive general public liability insurance covering all operations of Mortgagor; (ii) "All-Risk" fire and extended coverage hazard insurance (non-reporting Commercial Premises Policy with Special Cause of Loss form) covering the Premises in an aggregate amount not less than 100% of the agreed upon full insurable replacement value of the Premises, including coverage for loss of rents or business interruption; (iii) during the course of any construction, reconstruction, remodeling or repair of any Improvements, builders' all-risk extended coverage insurance (non-reporting Completed Value with Special Cause of Loss form) in amounts based upon the completed replacement value of the Improvements (excluding roads, foundations, parking areas, paths, walkways and like improvements) and endorsed to provide that occupancy by any person shall not void such coverage; (iv) if the Premises is required to be insured pursuant to the National Flood Insurance Reform Act of 1994, and the regulations promulgated thereunder, flood insurance in an amount at least equal to the lesser of the agreed upon full insurable replacement value of the Premises (less any value attributable to the Land) or the maximum limit of coverage available; (v) insurance which complies with the workers' compensation and employers' liability laws of all states in which Mortgagor shall be required to maintain such insurance; and (vi) such other insurance as Lender may reasonably require.

(b) Each insurance policy required under this Section shall: (i) be written by an insurance company reasonably acceptable to the Lender, which is authorized or licensed to do business in the state within which the Premises is located; (ii) be for terms of a least one year, with premium prepaid; (iii) be subject to the reasonable approval of Lender as to insurance companies, amounts, content, forms of policies and expiration dates; and (iv) name Lender, its successors and assigns: (1) as an additional insured under all liability insurance policies, and (2) as the first mortgagee, under a standard non-contributory mortgagee clause, on all property insurance policies and all loss of rents or loss of business income insurance policies.

(c) Mortgagor further agrees that each insurance policy: (i) shall provide at least thirty (30) days prior written notice to Lender prior to any policy reduction or cancellation for any reason; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of setoff, counterclaim, deduction or subrogation against Mortgagor; and (iv) shall exclude Lender from the operation of any coinsurance clause.

(d) At least thirty (30) days prior to the expiration of any insurance policy, Mortgagor shall furnish evidence satisfactory to Lender that such policy has been renewed or replaced or is no longer required.

(e) Notwithstanding the foregoing, in the event that Mortgagor fails to maintain insurance in accordance with this Section 2.3., and Lender elects to obtain insurance to protect its interests hereunder, Lender may obtain insurance in any amount and of any type Lender deems appropriate to protect Lender's interest only and Lender shall have no duty or obligation to Mortgagor to maintain insurance in any greater amount or of any other type for the benefit of Mortgagor. All insurance premiums incurred or paid by Lender shall

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be at Mortgagor's sole cost and expense in accordance with Section 1 hereof. Lender's election to obtain insurance shall not be deemed to waive any Event of Default (as hereinafter defined) hereunder.

2.4. **Taxes and Other Charges.** Mortgagor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Premises when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the Premises. Notwithstanding the foregoing, Mortgagor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of such taxes, assessments, water and sewer rents, or other governmental charges, provided that: (a) Mortgagor has established on its books or by deposit of cash with Lender, at the option of Lender, a reserve for the payment thereof in such amount as Lender may require; and (b) such contest operates to prevent collection, stay any proceedings which may be instituted to enforce payment of such item, and prevent a sale of the Premises to pay such item. Mortgagor shall promptly provide to Lender, upon request, copies of receipted tax bills, canceled checks or other evidence satisfactory to Lender evidencing that such taxes, assessments, water and sewer rents, and other governmental charges have been timely paid. Mortgagor shall not claim or demand or be entitled to any credit on account of the Liabilities for any part of the taxes paid with respect to the Premises or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Premises, or any part thereof, by reason of this Mortgage.

2.5. **Escrows.** If required by Lender, Mortgagor shall pay to Lender at the time of each installment of principal and interest due under the Note and the Loan Agreement, and commencing with the first payment due after the date of such request, a sum equal to (a) the amount of the next installment of taxes and assessments levied or assessed against the Premises, and/or (b) the premiums which will next become due on the insurance policies required by this Mortgage, all in amounts as estimated by Lender, less all sums already paid therefor or deposited with Lender for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such taxes and assessments and/or premiums, as applicable, will become due, such sums to be held by Lender to pay the same when due. If such escrow funds are not sufficient to pay such taxes and assessments and/or insurance premiums, as applicable, at the same become due, Mortgagor shall pay to Lender, upon request, such additional amounts as Lender shall estimate to be sufficient to make up any deficiency. No amount paid to Lender hereunder shall be deemed to be trust funds but may be commingled with general funds of Lender and no interest shall be payable thereon. Upon the occurrence of an Event of Default, Lender shall have the right, at its sole discretion, to apply any amounts so held against the Liabilities.

2.6. **Transfer of Title.** Without the prior written consent of Lender in each instance, Mortgagor shall not cause or permit any transfer of the Premises or any part thereof, whether voluntarily, involuntarily or by operation of law, nor shall Mortgagor enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Premises. A "transfer" of the Premises includes: (a) the direct or indirect sale, transfer or conveyance of the Premises or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Premises; (c) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, partnership, limited liability company or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity; (d) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Mortgagor leasing all or a substantial part of the Premises for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

2.7. **No Encumbrances.** Except as may otherwise be permitted in the Loan Agreement, Mortgagor shall not create or permit to exist any mortgage, pledge, lien, security interest (including, without limitation, a purchase money security interest), encumbrance, attachment, levy, distraint or other judicial process on or against the Premises or any part thereof (including, without limitation, fixtures and other personalty), whether superior or inferior to the lien of this Mortgage, without the prior written consent of Lender.

2.8. **Removal of Fixtures.** Mortgagor shall not remove or permit to be removed from the Premises any fixtures presently or in the future owned by Mortgagor as the term "fixtures" is defined by the law of

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the state where the Premises is located (unless such fixtures have been replaced with similar fixtures of equal or greater utility and value).

2.9. **Maintenance and Repair; Alterations.** (a) Mortgagor shall (i) abstain from and not permit the commission of waste in or about the Premises; (ii) keep the Premises, at Mortgagor's own cost and expense in good and substantial repair, working order and condition; (iii) make or cause to be made, as and when necessary, all repairs and replacements, whether or not insurance proceeds are available therefor; and (iv) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any part of the Premises. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Premises and shall be covered by the lien of this Mortgage.

(b) Lender, and any persons authorized by Lender, shall have the right, but not the obligation, to enter upon the Premises at any reasonable time to inspect and photograph its condition and state of repair. In the event any such inspection reveals, in the sole discretion of Lender, the necessity for any repair, alteration, replacement, clean-up or maintenance, Mortgagor shall, at the discretion of Lender, either: (i) cause such work to be effected immediately; or (ii) promptly establish an interest bearing reserve fund with Lender in an amount determined by Lender for the purpose of effecting such work.

2.10. **Compliance with Applicable Laws.** Mortgagor agrees to observe, conform and comply, and to cause its tenants to observe, conform and comply with all federal, state, county, municipal and other governmental or quasi-governmental laws, rules, regulations, ordinances, codes, requirements, covenants, conditions, orders, licenses, permits, approvals and restrictions, including without limitation, Environmental Laws (as defined below) and the Americans with Disabilities Act of 1990 (collectively, the "Legal Requirements"), now or hereafter affecting all or any part of the Premises, its occupancy or the business or operations now or hereafter conducted thereon and the personality contained therein, within such time as required by such Legal Requirements. Mortgagor represents and warrants that it has caused the Premises to be designed, and the Premises currently is, in compliance with all Legal Requirements applicable to the Premises.

2.11. **Damage, Destruction and Condemnation.** (a) If all or any part of the Premises shall be damaged or destroyed, or if title to or the temporary use of the whole or any part of the Premises shall be taken or condemned by a competent authority for any public or quasi-public use or purpose, there shall be no abatement or reduction in the amounts payable by Mortgagor under the Loan Documents and Mortgagor shall continue to be obligated to make such payments.

(b) If all or any part of the Premises is partially or totally damaged or destroyed, Mortgagor shall give prompt notice thereof to Lender, and Lender may make proof of loss if not made promptly by Mortgagor. Mortgagor hereby authorizes and directs any affected insurance company to make payment under such insurance, including return of unearned premiums, to Lender instead of to Mortgagor and Lender jointly, and Mortgagor appoints Lender as Mortgagor's attorney-in-fact to endorse any draft thereof, which appointment, being for security, is coupled with an interest and irrevocable. Lender is hereby authorized and empowered by Mortgagor to settle, adjust or compromise, in consultation with Mortgagor, any claims for loss, damage or destruction to the Premises. However, so long as no Event of Default has occurred and Mortgagor is diligently pursuing its rights and remedies with respect to a claim of loss, Lender will obtain Borrower's written consent (which consent shall not be unreasonably withheld or delayed) before making proof of loss or settling or compromising such claim. Mortgagor shall pay all costs of collection of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Lender as security for payment of the Liabilities. Lender shall have the option, in its sole discretion, of paying or applying all or any part of the insurance proceeds to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Premises in accordance with Lender's standard construction loan disbursement conditions and requirements; or (iii) Mortgagor. Notwithstanding the foregoing, if at any time during the term of this Mortgage title to the whole or materially all of the Premises shall be damaged or destroyed, the Lender shall apply such insurance proceeds which it receives to payment of the Liabilities and any balance then remaining shall be paid to the Mortgagor as its interest may appear. In the event that the amount of the proceeds received by the Lender shall not be sufficient to pay the then unpaid principal balance of the Liabilities, with the accrued interest thereon, and any other sums secured by this Mortgage, the Mortgagor shall, within ten (10) days after the application of the award or proceeds as aforesaid, pay such deficiency to the Lender. For the purposes of

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this Section 2.11 "materially all of the Premises" shall be deemed to have been taken if the portion of the Premises taken shall preclude, in the Lender's sole judgment, the effective use of the Premises as an economically viable unit for its intended purposes.

(c) Immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of all or any part of the Premises, Mortgagor shall give notice to Lender. Mortgagor shall, at its sole cost and expense, diligently prosecute any such proceeding and shall consult with Lender, its attorneys and experts, and shall cooperate with it in the defense of any such proceeding. Lender may participate in any such proceeding and Mortgagor shall from time to time deliver to Lender all instruments requested by it to permit such participation. Mortgagor shall not, without Lender's prior written consent, enter into any agreement (i) for the taking or conveyance in lieu thereof of all or any part of the Premises, or (ii) to compromise, settle or adjust any such proceeding. All awards and proceeds of condemnation are hereby assigned to Lender, and Mortgagor, upon request by Lender, agrees to make, execute and deliver any additional assignments or documents necessary from time to time to enable Lender to collect the same. Such awards and proceeds shall be paid or applied by Lender, in its sole discretion, to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Premises in accordance with Lender's standard construction loan disbursement conditions and requirements; or (iii) Mortgagor. Notwithstanding the foregoing, if at any time during the term of this Mortgage title to the whole or materially all of the Premises shall be taken in any condemnation proceedings or by agreement between the Mortgagor and the Lender and those authorized to exercise such right, the Lender shall apply such award or proceeds which it receives to payment of the Liabilities and any balance then remaining shall be paid to the Mortgagor as its interest may appear. In the event that the amount of the award or proceeds received by the Lender shall not be sufficient to pay the then unpaid principal balance of the Liabilities, with the accrued interest thereon, and any other sums secured by this Mortgage, the Mortgagor shall, within ten (10) days after the application of the award or proceeds as aforesaid, pay such deficiency to the Lender.

(d) Nothing herein shall (i) relieve Mortgagor of its duty to repair, restore, rebuild or replace the Premises following damage or destruction or partial condemnation if no or inadequate insurance proceeds or condemnation awards are available to defray the cost of repair, restoration, rebuilding or replacement or (ii) limit the Lender's rights and remedies under any of the other Loan Documents.

(e) Notwithstanding the provisions of subparagraphs (b) and (c) above, in the event that all or any part of the Premises is damaged by fire or other casualty or is condemned, and Mortgagor promptly notifies Lender of its desire to repair and restore the same, then provided that the following terms and conditions are and remain fully satisfied by Mortgagor, Lender shall disburse insurance proceeds for repair and restoration of the Premises against completed work in accordance with Lender's standard construction loan disbursement conditions and requirements (which may be contained in an agreement which Lender may require Mortgagor to sign); otherwise, and to the extent of any excess proceeds, Lender shall have the right to apply the proceeds toward reduction of the Liabilities, and in the event that the amount of the award or proceeds received by the Lender shall not be sufficient to pay the then unpaid principal balance of the Liabilities, the Mortgagor shall, within ten (10) days after the application of the award or proceeds as aforesaid, pay such deficiency to the Lender:

(i) no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under any of the Loan Documents shall have occurred;

(ii) Mortgagor shall have delivered evidence satisfactory to Lender that the Premises can be fully repaired and restored at least six (6) months prior to the maturity of the Loan;

(iii) no Lease is cancelable or terminable by the tenant or Mortgagor on account of the casualty or, if it is, the tenant or Mortgagor, as applicable, has waived in writing its right to cancel;

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(iv) the work is performed under a stipulated sum or guaranteed maximum price contract satisfactory to Lender in accordance with plans and specifications and a budget satisfactory to Lender and in compliance with all Legal Requirements;

(v) Mortgagor shall have deposited with Lender for disbursement in connection with the restoration the greater of: (1) the applicable deductible under the insurance policies covering the loss; or (2) the amount by which the cost of restoration of the Premises to substantially the same value, condition and character as existed prior to such damage is estimated by Lender to exceed the net insurance proceeds available for restoration; and

(vi) Mortgagor has paid as and when due all of Lender's costs and expenses incurred in connection with the collection and disbursement of insurance proceeds, including without limitation, inspection, monitoring, engineering and legal fees. If not paid on demand, and at Lender's option, such costs may be deducted from the disbursements made by Lender or added to the sums secured by this Mortgage in accordance with the provisions of Section 1 hereof.

2.12. **Required Notices.** In addition to any notice requirements set forth in the Loan Agreement, Mortgagor shall immediately notify Lender of any of the following: (a) a substantial change in the occupancy or use of all or any part of the Premises; (b) receipt of any notice from the holder of any lien or security interest in all or any part of the Premises; (c) a pending or threatened condemnation of all or any part of the Premises; (d) a fire or other casualty causing damage to all or any part of the Premises; (e) receipt of any notice with regard to any Release of Hazardous Substances (as such terms are defined below) or any other environmental matter affecting the Premises or Mortgagor's interest therein; (f) receipt of any request for information, demand letter or notification of potential liability from any entity relating to potential responsibility for investigation or clean-up of Hazardous Substances on the Premises or at any other site owned or operated by Mortgagor; (g) receipt of any notice from any tenant of all or any part of the Premises alleging a default, failure to perform or any right to terminate its lease or to set-off rents; or (h) receipt of any notice of the imposition of, or of threatened or actual execution on, any lien on or security interest in all or any part of the Premises.

2.13. **Right to Reappraise.** Lender shall have the right to conduct or have conducted by an independent appraiser acceptable to Lender appraisals of the Premises in form and substance satisfactory to Lender at the sole cost and expense of Mortgagor; provided, however, that Mortgagor shall not be obligated to bear the expense of such appraisals so long as (a) no Event of Default exists, and (b) such appraisals are not required by applicable law, rule or regulation of any governmental authority having jurisdiction over Lender. The cost of such appraisals, if chargeable to Mortgagor as aforesaid, shall be added to the Liabilities and shall be secured by this Mortgage in accordance with the provisions of Section 1 hereof.

3. **SECURITY AGREEMENT.** This Mortgage constitutes a security agreement under the Code and shall be deemed to constitute a fixture financing statement. Mortgagor, as debtor, hereby grants to Lender, as secured party, a security interest in the personal and other property (other than real property) owned by Mortgagor and included in the Premises, and all replacements of, substitutions for, and additions to, such property, and the proceeds thereof. Mortgagor shall, at Mortgagor's own expense, execute, deliver, file and refile any financing or continuation statements or other security agreements Lender may require from time to time to perfect, confirm or maintain the lien of this Mortgage with respect to such property. A photocopy of an executed financing statement shall be effective as an original. Without limiting the foregoing, Mortgagor hereby irrevocably appoints Lender attorney-in-fact for Mortgagor to execute, deliver and file such instruments for or on behalf of Mortgagor at Mortgagor's expense, which appointment, being for security, is coupled with an interest and shall be irrevocable.

4. **INTENTIONALLY OMITTED.**

5. **DECLARATION OF NO OFFSET.** Mortgagor represents to Lender that Mortgagor has no knowledge of any offsets, counterclaims or defenses to the Liabilities either at law or in equity. Mortgagor shall, within three (3) days upon request in person or within seven (7) days upon request by mail, furnish to Lender or

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Lender's designee a written statement in form satisfactory to Lender stating the amount due under the Liabilities and whether there are offsets or defenses against the same, and if so, the nature and extent thereof.

6. ENVIRONMENTAL MATTERS.

6.1. **Definitions.** As used herein, "Environmental Laws" shall mean all existing or future federal, state and local statutes, ordinances, regulations, rules, executive orders, standards and requirements, including the requirements imposed by common law, concerning or relating to industrial hygiene and the protection of health and the environment including but not limited to: (a) those relating to the generation, manufacture, storage, transportation, disposal, release, emission or discharge of Hazardous Substances (as hereinafter defined); (b) those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Premises; and (c) those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Premises. Any terms mentioned herein which are defined in any Environmental Law shall have the meanings ascribed to such terms in said laws; provided, however, that if any of such laws are amended so as to broaden any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment.

6.2. **Representations, Warranties and Covenants.** Mortgagor represents, warrants, covenants and agrees, to the best of its knowledge, and subject to the environmental reports provided by Mortgagor to Lender, as follows:

(a) Neither Mortgagor nor the Premises or any occupant thereof is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority pertaining to any Environmental Law. Mortgagor shall not cause or permit the Premises to be in violation of, or do anything which would subject the Premises to any remedial obligations under, any Environmental Law, and shall promptly notify Lender in writing of any existing, pending or threatened investigation or inquiry by any governmental authority in connection with any Environmental Law. In addition, Mortgagor shall provide Lender with copies of any and all material written communications with any governmental authority in connection with any Environmental Law, concurrently with Mortgagor's giving or receiving of same.

(b) Mortgagor has taken all steps necessary to determine and has determined that there has been no release, spill, discharge, leak, disposal or emission (individually a "Release" and collectively, "Releases") of any hazardous material, hazardous substance or hazardous waste, including gasoline, petroleum products, explosives, toxic substances, solid wastes and radioactive materials (collectively, "Hazardous Substances") at, upon, under or within the Premises. The use which Mortgagor or any other occupant of the Premises makes or intends to make of the Premises will not result in Release of any Hazardous Substances on or to the Premises. During the term of this Mortgage, Mortgagor shall take all steps necessary to determine whether there has been a Release of any Hazardous Substances on or to the Premises and if Mortgagor finds a Release has occurred, Mortgagor shall remove or remediate the same promptly upon discovery at its sole cost and expense.

(c) Intentionally Deleted.

(d) The Premises: (i) is being and has been operated in compliance with all Environmental Laws, and all permits required thereunder have been obtained and complied with in all respects; and (ii) does not have any Hazardous Substances present excepting small quantities of petroleum and chemical products, in proper storage containers, that are necessary for the construction or operation of the commercial business of Mortgagor and its tenants, and the usual waste products therefrom ("Permitted Substances").

(e) Mortgagor will and will cause its tenants to operate the Premises in compliance with all Environmental Laws and, other than Permitted Substances, will not place or permit to be placed any Hazardous Substances on the Premises.

(f) No lien has been attached to or threatened to be imposed upon the Premises, and there is no basis for the imposition of any such lien based on any governmental action under Environmental Laws. Neither Mortgagor nor any other person has been, is or will be involved in operations at the Premises which could lead to the imposition of environmental liability on Mortgagor, or on any subsequent or former owner of the

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Premises, or the creation of an environmental lien on the Premises. In the event that any such lien is filed, Mortgagor shall, within (30) days from the date that the Mortgagor is given notice of such lien (or within such shorter period of time as is appropriate in the event that steps have commenced to have the Premises sold), either: (i) pay the claim and remove the lien from the Premises; or (ii) furnish a cash deposit, bond or other security satisfactory in form and substance to Lender in an amount sufficient to discharge the claim out of which the lien arises.

6.3. **Right to Inspect and Cure.** Lender shall have the right to conduct or have conducted by its agents or contractors such environmental inspections, audits and tests as Lender shall deem necessary or advisable from time to time at the sole cost and expense of Mortgagor; provided, however, that Mortgagor shall not be obligated to bear the expense of such environmental inspections, audits and tests so long as (i) no Event of Default exists, and (ii) Lender has no cause to believe in its sole reasonable judgment that there has been a Release or threatened Release of Hazardous Substances at the Premises or that Mortgagor or the Premises is in violation of any Environmental Law. The cost of such inspections, audits and tests, if chargeable to Mortgagor as aforesaid, shall be added to the Liabilities and shall be secured by this Mortgage. Mortgagor shall, and shall cause each tenant of the Premises to, cooperate with such inspection efforts; such cooperation shall include, without limitation, supplying all information requested concerning the operations conducted and Hazardous Substances located at the Premises. In the event that Mortgagor fails to comply with any Environmental Law, Lender may, in addition to any of its other remedies under this Mortgage, cause the Premises to be in compliance with such laws and the cost of such compliance shall be added to the sums secured by this Mortgage in accordance with the provisions of Section 1 hereof.

6.4. **INDEMNIFICATION.** MORTGAGOR HEREBY ASSUMES LIABILITY FOR, AND HEREBY AGREE TO PAY, PROTECT, DEFEND (AT TRIAL AND APPELLATE LEVELS) AND WITH ATTORNEYS, CONSULTANTS AND EXPERTS ACCEPTABLE TO LENDER, AND SAVE LENDER HARMLESS FROM AND AGAINST, AND HEREBY INDEMNIFY LENDER FROM AND AGAINST ANY AND ALL LIENS, DAMAGES, LOSSES, LIABILITIES, OBLIGATIONS, SETTLEMENT PAYMENTS, PENALTIES, ASSESSMENTS, CITATIONS, DIRECTIVES, CLAIMS, LITIGATION, DEMANDS, DEFENSES, JUDGMENTS, SUITS, PROCEEDINGS, COSTS, DISBURSEMENTS AND EXPENSES OF ANY KIND OR OF ANY NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS', CONSULTANTS' AND EXPERTS' FEES AND DISBURSEMENTS ACTUALLY INCURRED IN INVESTIGATING, DEFENDING, SETTLING OR PROSECUTING ANY CLAIM, LITIGATION OR PROCEEDING) (COLLECTIVELY "COSTS") WHICH MAY AT ANY TIME BE IMPOSED UPON, INCURRED BY OR ASSERTED OR AWARDED AGAINST LENDER OR THE PREMISES, AND ARISING DIRECTLY OR INDIRECTLY FROM OR OUT OF: (I) THE VIOLATION OF ANY ENVIRONMENTAL LAWS, WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF MORTGAGOR; (II) THE PRESENCE, RELEASE OR THREAT OF RELEASE OF ANY HAZARDOUS SUBSTANCES, ON, IN, UNDER OR AFFECTING ALL OR ANY PORTION OF THE PREMISES OR ANY SURROUNDING AREAS, REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF MORTGAGOR; (III) THE FAILURE BY MORTGAGOR TO COMPLY FULLY WITH THE TERMS AND CONDITIONS OF THIS SECTION 6 OF THIS MORTGAGE; (IV) THE BREACH OF ANY REPRESENTATION OR WARRANTY CONTAINED IN THIS SECTION 6 OF THIS MORTGAGE; OR (V) THE ENFORCEMENT OF THIS SECTION 6 OF THIS MORTGAGE, INCLUDING, WITHOUT LIMITATION, THE COST OF ASSESSMENT, CONTAINMENT AND/OR REMOVAL OF ANY AND ALL HAZARDOUS SUBSTANCES FROM ALL OR ANY PORTION OF THE PREMISES OR ANY SURROUNDING AREAS, THE COST OF ANY ACTIONS TAKEN IN RESPONSE TO THE PRESENCE, RELEASE OR THREAT OF RELEASE OF ANY HAZARDOUS SUBSTANCES ON, IN, UNDER OR AFFECTING ANY PORTION OF THE PREMISES OR ANY SURROUNDING AREAS TO PREVENT OR MINIMIZE SUCH RELEASE OR THREAT OF RELEASE SO THAT IT DOES NOT MIGRATE OR OTHERWISE CAUSE OR THREATEN DANGER TO PRESENT OR FUTURE PUBLIC HEALTH, SAFETY, WELFARE OR THE ENVIRONMENT, AND COSTS INCURRED TO COMPLY WITH THE ENVIRONMENTAL LAWS IN CONNECTION WITH ALL OR ANY PORTION OF THE PREMISES OR ANY SURROUNDING AREAS. "COSTS" AS USED IN THIS SECTION 6 SHALL ALSO INCLUDE ANY DIMINUTION IN THE VALUE OF THE SECURITY AFFORDED BY THE PREMISES OR ANY FUTURE REDUCTION OF THE SALES PRICE OF THE PREMISES BY REASON OF ANY MATTER SET FORTH IN THIS SECTION 6. THE

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FOREGOING INDEMNITY SHALL SPECIFICALLY NOT INCLUDE ANY SUCH COSTS RELATING TO HAZARDOUS SUBSTANCES WHICH ARE INITIALLY PLACED ON, IN OR UNDER THE PREMISES AFTER FORECLOSURE OR OTHER TAKING OF TITLE TO THE PREMISES BY LENDER.

6.5 SURVIVAL. THIS SECTION 6 INCLUDING THE INDEMNITY CONTAINED HEREIN SHALL SURVIVE THE RELEASE OF THE LIEN OF THIS MORTGAGE, OR THE EXTINGUISHMENT OF THE LIEN BY FORECLOSURE OR ACTION IN LIEU THEREOF.

6.6 Environmental Indemnity Agreement. Upon Lender's request, Mortgagor shall execute and deliver an Environmental Indemnity Agreement satisfactory in form and substance to Lender, to more fully reflect Mortgagor's representations, representations, warranties, covenants and indemnities with respect to the Environmental Laws.

7. EVENTS OF DEFAULT. Each of the following shall constitute a default (each, an "Event of Default") hereunder.

7.1. The occurrence or existence of any of the events or conditions described in Article VII of the Loan Agreement or any other Loan Document as an "Event of Default";

7.2. A breach of any covenant contained in Sections 2.6, 2.7 or 2.11 hereof; or

7.3. A breach by Mortgagor of any other term, covenant, condition, obligation or agreement under this Mortgage not cured by Mortgagor within the applicable notice and cure periods set forth in the Loan Agreement.

8. REMEDIES. If an Event of Default shall have occurred, Lender may take any of the following actions:

8.1. **Acceleration.** Lender may declare the entire amount of the Liabilities immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Lender may charge and collect interest from the date of default on the unpaid balance of the Liabilities, at the Default Rate set forth in the Note. In addition, any and all accelerations of any portion of the remaining principal balance of the Liabilities (including, without limitation, foreclosure by Lender under this Mortgage) shall be subject to any prepayment consideration set forth in the Note or Loan Agreement, if any.

8.2. **Possession.** Lender may enter upon and take possession of the Premises, with or without legal action, lease the Premises, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as Lender, in Lender's sole discretion, may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Premises, or on account of the Liabilities. Lender is given full authority to do any act which Mortgagor could do in connection with the management and operation of the Premises. This covenant is effective either with or without any action brought to foreclose this Mortgage and without applying for a receiver of such rents. In addition to the foregoing, upon the occurrence of an Event of Default, Mortgagor shall pay monthly in advance to Lender or to any receiver appointed to collect said rents the fair and reasonable rental value for Mortgagor's use and occupation of the Premises, and upon default in any such payment Mortgagor shall vacate and surrender the possession of the Premises to Lender or to such receiver. If Mortgagor does not vacate and surrender the Premises then Mortgagor may be evicted by summary proceedings.

8.3. **Foreclosure.** The Lender may foreclose the lien of this Mortgage and sell, as an entirety or in separate lots or parcels, the Premises under the judgment or decree of a court or courts of competent jurisdiction. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Lender may determine. Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Premises and the failure to make any such tenants parties

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defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Lender to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Premises. Upon any such foreclosure sale, Lender may bid for and purchase the Premises and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability. Upon any such foreclosure sale, Lender may, if permitted by law, apply toward payment of the foreclosure purchase price, in lieu of cash, any portion of or all sums due to Lender under the Note, this Mortgage or any other instrument securing the Note.

8.4 **Illinois Specific Provisions.** (a) If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes Chapter 735, Section 5/15-1101 et seq. (the "Illinois Act"), the provisions of the Illinois Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Illinois Act.

(b) Without in any way limiting or restricting any of the Lender's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, the Lender shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Illinois Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to the Lender any rights, remedies, powers or authorities upon default of Mortgagor which are more limited than the rights that would otherwise be vested in the Lender under the Illinois Act in the absence of said provision, the Lender shall be vested with all of the rights, remedies, powers and authorities granted in the Illinois Act to the fullest extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Lender, to the extent reimbursable, under Sections 5/15-1510, 5/15-1512, or any other provision of the Illinois Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure.

(d) Mortgagor waives, to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraiser's report before sale of any portion of the Premises, (ii) all rights of reinstatement, redemption, valuation, appraisal, homestead, moratorium, exemption, extension, stay of execution, notice of election to mature or declare due the whole of the Liabilities in the event of foreclosure of the liens hereby created, (iii) all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties, (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or other Loan Documents or any other Liabilities, and (v) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order. Without limiting the generality of the preceding sentence, Mortgagor, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of reinstatement or redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Premises shall be sold in the event of any sale or sales pursuant hereto and to have any of the Premises and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness. The Lender shall have the right to determine the order in which any or all of the Premises shall be subjected to the remedies provided herein. The Lender shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, on behalf of itself and all persons now or hereafter interested in the Premises, voluntarily and knowingly hereby acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either Agricultural real estate (as defined in the Illinois Act), or Residential real estate (as defined in the Illinois Act).

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8.5. **Appointment of Receiver.** Lender may petition a court of competent jurisdiction to appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not, and without regard to whether Mortgagor has committed waste or allowed deterioration of the Premises, and Lender or any agent of Lender may be appointed as such receiver. Mortgagor hereby agrees that Lender has a special interest in the Premises and absent the appointment of such receiver the Premises shall suffer waste and deterioration and Mortgagor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Lender pursuant to Section 8.2 above and such other powers which may be necessary or customary in such cases for the protection, possession, control, management and operation of the Premises during such period.

8.6. **Waiver of Certain Rights.** To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshaling or forbearance, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of assets of Mortgagor, including the Premises, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of this Mortgage to a sale of the Premises for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Lender under the terms of this Mortgage to the payment of the secured indebtedness out of the proceeds of sale of the Premises in preference to every other claimant whatsoever. Mortgagor waives any right or remedy which Mortgagor may have or be able to assert, pursuant to any provision of North Carolina or Illinois law, pertaining to the rights and remedies of sureties. If any law referred to in this Section and now in force, of which Mortgagor or Mortgagor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Premises might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

8.7. **Rights as a Secured Party.** Lender shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Code. Lender may elect to foreclose such of the Premises as then comprise fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Code. To the extent permitted by law, Mortgagor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

8.8. **Excess Monies.** Lender may apply on account of the Liabilities any unexpended monies still retained by Lender that were paid by Mortgagor to Lender: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Mortgagor.

8.9. **Other Remedies.** Lender shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not any other Liabilities shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for any default by Mortgagor existing at the time the earlier action was commenced. In addition, Lender shall have the right to set-off all or any part of any amount due by Mortgagor to Lender under any of the Liabilities, against any indebtedness, liabilities or obligations owing by Lender in any capacity to Mortgagor, including any obligation to disburse to Mortgagor any funds or other property on deposit with or otherwise in the possession, control or custody of Lender.

9. **MISCELLANEOUS.**

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9.1. **Notices.** All notices and communications under this Mortgage shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed at the beginning of this Mortgage. Notice shall be deemed to have been given and received: (a) if by hand delivery, upon delivery; (b) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (c) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

9.2. **Remedies Cumulative.** The rights and remedies of Lender as provided in this Mortgage or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Lender at law or in equity. The failure, at any one or more times, of Lender to assert the right to declare the Liabilities due, grant any extension of time for payment of the Liabilities, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Mortgage or the rights of Lender.

9.3. **No Implied Waiver.** Lender shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Lender, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

9.4. **Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Mortgage shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

9.5. **Binding Effect; No Third Party Beneficiary.** The covenants, conditions, waivers, releases and agreements contained in this Mortgage shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Mortgage cannot be assigned by Mortgagor without the prior written consent of Lender, and any such assignment or attempted assignment by Mortgagor shall be void and of no effect with respect to Lender. Mortgagor and Lender acknowledge that this Mortgage is made solely for the benefit of the parties hereto and no third party should or may assume that any third-party beneficiary rights are extended or created hereby.

9.6. **Modifications.** This Mortgage may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.7. **Commercial Loan.** Mortgagor represents and warrants that the loans or other financial accommodations included as Liabilities secured by this Mortgage were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

9.8. **Applicable Law.** MORTGAGOR AGREES THAT ITS AND LENDER'S RIGHTS AND OBLIGATIONS UNDER THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES THEREOF. HOWEVER, THIS SECTION SHALL IN NO EVENT BE CONSTRUED TO PROVIDE THAT THE SUBSTANTIVE LAW OF THE STATE OF ILLINOIS SHALL APPLY TO THE OBLIGATIONS SECURED BY THIS MORTGAGE WHICH ARE AND SHALL CONTINUE TO BE GOVERNED BY THE SUBSTANTIVE LAW OF THE STATE OF NORTH CAROLINA.

9.9. **Joint and Several Liability.** If Mortgagor consists of more than one person or entity, the word "Mortgagor" shall mean each of them and their liability shall be joint and several.

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9.10. **Loan Agreement.** This Mortgage is made subject to and with the benefit of the respective representations and warranties, agreements, covenants, terms, conditions, limitations and other provisions of the Loan Agreement. In the event of a conflict between this Mortgage and the Loan Agreement, the terms of the Loan Agreement shall take precedence and control.

9.11. **Terms; Headings.** The singular used herein shall be deemed to include the plural; the masculine deemed to include the feminine and neuter; and the named parties deemed to include their heirs, successors and assigns. The term "Lender" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The captions and headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Mortgage or the intent of any provision hereof.

9.12. **Imposition of Tax.** In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation which in any manner changes or modifies the laws now in force governing the taxation of debts secured by deeds of trust or the manner of collecting taxes so as to affect adversely Lender, Mortgagor will promptly pay any such tax on or before the due date thereof; and if Mortgagor fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits Mortgagor from making such payment or would penalize Lender if Mortgagor makes such payment, then the entire balance of the Loan shall become due and payable upon demand at the option of Lender.

9.13. **WAIVER OF TRIAL BY JURY.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE MORTGAGOR AND THE LENDER MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR THE LENDER TO ACCEPT THIS MORTGAGE AND MAKE THE LOAN.

9.14 **CONSENT TO JURISDICTION.** TO INDUCE MORTGAGOR TO ACCEPT THIS MORTGAGE, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO THE LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED ON THE SIGNATURE PAGE HEREOF AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

9.15 **Business Loan.** Mortgagor stipulates, represents, warrants, affirms and agrees that each of the loans and other obligations secured hereby constitute a "business loan" within the meaning of the Illinois Compiled Statutes, Chapter 815, Sections 205/4(a) or (c), as amended.

9.16 **No Property Manager Lien.** Any property management agreement for or relating to all or any part of the Premises, whether now in effect or entered into hereafter by Mortgagor or on behalf of Mortgagor, shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Mortgage any and all mechanic's lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law, including, without limitation, Illinois Compiled Statutes, Chapter 770, Section 60/1), as amended. Such property management agreement or a short form thereof, including such subordination, shall, at the Lender's request, be recorded with the office of the recorder of deeds for the county in which the Premises is located. Mortgagor's failure to cause any of the foregoing to occur shall constitute an Event of Default under this Mortgage.

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor, intending to be legally bound, has duly executed and delivered this Mortgage as of the day and year first above written.

MORTGAGOR:

MAR REAL ESTATE, LLC,
a North Carolina limited liability company

By: Mark S. Richardson (SEAL)
Name: Mark S. Richardson
Title: Manager

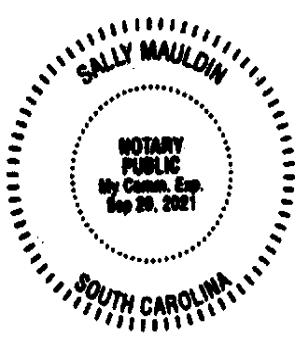
STATE OF South Carolina
COUNTY OF Anderson

I, Sally Mauldin a Notary Public for the County and State aforesaid do hereby certify that Mark S. Richardson, the Manager of MAR Real Estate, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 16 day of July, 2021.

Sally Mauldin
Notary Public

My Commission Expires: 9/20/2021



UNOFFICIAL COPY

SCHEDULE A

DESCRIPTION OF PROPERTY

COMMERCIAL PARCEL 1:

ALL OF LOT 19, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +23.13 FEET CHICAGO CITY DATUM, IN EMILY E. FORDYCE'S SUBDIVISION OF THAT PART OF BLOCK 8, LYING EAST OF RACINE AVENUE OF EDSON SUBDIVISION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMERCIAL PARCEL 2:

THAT PART OF LOT 19 IN EMILY E. FORDYCE'S SUBDIVISION OF THAT PART OF BLOCK 8, LYING EAST OF RACINE AVENUE OF EDSON SUBDIVISION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.23 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +23.13 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 19; THENCE NORTH 89°53'40" WEST ALONG THE SOUTH LINE OF LOT 19 AFORESAID 107.19 FEET; THENCE NORTH 25°59'01" WEST 13.10 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 19; THENCE NORTH 63°00'32" EAST ALONG THE NORTHERLY LINE OF LOT 19 AFORESAID 92.15 FEET TO THE NORTHEAST CORNER OF SAID LOT 19; THENCE SOUTH 29°48'20" EAST ALONG THE EASTERLY LINE OF LOT 19 AFORESAID 21.18 FEET; THENCE SOUTH 62°34'52" WEST 30.18 FEET; THENCE SOUTH 27°25'08" EAST 4.58 FEET; THENCE NORTH 62°41'00" EAST 30.37 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 19; THENCE SOUTH 29°48'20" EAST ALONG THE EASTERLY LINE OF LOT 19 AFORESAID 36.17 FEET TO THE POINT OF BEGINNING. IN COOK COUNTY, ILLINOIS.

COMMERCIAL PARCEL 3:

THAT PART OF LOT 19 IN EMILY E. FORDYCE'S SUBDIVISION OF THAT PART OF BLOCK 8, LYING EAST OF RACINE AVENUE OF EDSON SUBDIVISION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BELOW AN INCLINED PLANE DEFINED BY HEREINAFTER DESCRIBED POINTS "A", "B" AND "C" AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +23.13 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 19 THENCE NORTH 29°48'20" WEST ALONG THE EASTERLY LINE OF LOT 19 AFORESAID 36.17 FEET; THENCE SOUTH 62°41'00" WEST 7.34 FEET TO THE POINT OF BEGINNING SAID POINT BEING ALSO THE AFOREMENTIONED POINT "A" HAVING AN ELEVATION OF +23.13 CHICAGO CITY DATUM; THENCE NORTH 27°25'08" WEST 4.63 FEET TO A POINT, SAID POINT BEING ALSO THE AFOREMENTIONED POINT "B" HAVING AN ELEVATION OF +23.13 CHICAGO CITY DATUM; THENCE SOUTH 62°34'52" WEST 23.03 FEET TO A POINT, SAID POINT BEING ALSO THE AFOREMENTIONED POINT "C" HAVING AN ELEVATION OF +36.23 CHICAGO CITY DATUM; THENCE SOUTH 27°25'08" EAST 4.58 FEET; THENCE NORTH 62°41'00" EAST 23.03 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.