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2123933128

Doc# 2123933128 Fee \$77.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 08/27/2021 12:29 PM PG: 1 OF 14

THIS DOCUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO:

Holland & Knight, LLP
150 North Riverside Plaza
Suite 2700
Chicago Illinois 60606
Attention: Francis L. Keldermans

Permanent Tax Index Number(s):

17-10-223-007-0000
17-10-223-016-0000
17-10-223-017-0000
17-10-223-018-0000
17-10-223-019-0000
17-10-223-020-0000
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17-10-223-025-0000
17-10-223-026-0000
17-10-223-027-0000
17-10-223-028-0000
17-10-223-029-0000
17-10-223-032-0000

This space reserved for Recorder's use only.

Property Address(es):

322 E. Illinois St.
Chicago, IL 60611

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made as of August 25 2021, by and among 322 STREETER, LLC, a Delaware limited liability company ("Original Maker"); 322 STREETER HOLDCO, LLC, a Delaware limited liability company ("New Maker"); MANUEL CHAVEZ III, an individual ("Guarantor") and together

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with Original Maker and New Maker, collectively, the "Loan Parties"; and AMERICAN NATIONAL INSURANCE COMPANY, a Texas insurance company ("Noteholder").

RECITALS:

- A. Original Maker has executed and delivered to Noteholder:
- (i) a Promissory Note (as amended, modified, restated or supplemented from time to time, the "Note") dated February 13, 2020, payable to the order of Noteholder in the original principal amount of \$25,900,000.00, with interest and principal payable as therein provided, evidencing a loan described therein (the "Loan");
 - (ii) a Mortgage, Security Agreement and Financing Statement (and Fixture Filing) (as amended, modified, restated or supplemented from time to time, the "Mortgage") dated of even date with the Note, securing payment of the Note covering certain real property described on Exhibit A attached hereto and incorporated herein by this referenced, together with all improvements, fixtures and personal property located on said real property and more particularly described in the Mortgage (the "Property"), recorded as Clerk's File No. 2004906068 in the Official Records of the Recorder of Deeds of Cook County, Illinois (the "Records");
 - (iii) an Absolute Assignment of Leases and Rents (as amended, modified, restated or supplemented from time to time, the "Assignment") dated of even date with the Note, to Noteholder, securing payment of the Note, recorded as Clerk's File No. 2004906069 in the Records; and
 - (iv) a Certificate and Indemnity Regarding Hazardous Substances (as amended, modified, restated or supplemented from time to time, the "Environmental Indemnity") dated of even date with the Note, to Noteholder.
- B. Guarantor has executed and delivered to Noteholder an Income Guaranty (the "Guaranty") dated of even date with the Note.
- C. Reference is made to the Note, the Mortgage, the Assignment and the Environmental Indemnity for all purposes. The Note, the Mortgage, the Assignment, the Environmental Indemnity, the Guaranty and all other documents executed by Original Maker, Guarantor and/or any other party evidencing or securing or otherwise in connection with the loan evidenced by the Note, as amended, modified, restated or supplemented from time to time, are collectively called the "Loan Documents."

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- D. The Loan Documents were modified as set forth in the Modification of Promissory Note and Other Loan Documents dated effective May 1, 2020 (the "Modification Agreement").
- E. The Note is due and payable on March 1, 2025.
- F. Original Maker is transferring Original Maker's interest in and to the Property and the other property described in the Mortgage to New Maker, of which Original Maker will be the initial sole member; thereafter, Original Maker intends to convey all of its membership interests in New Maker to Color Up, LLC, a Delaware limited liability company, which then intends to convey all of such membership interests to MVP REIT II Operating Partnership, LP, a Delaware limited partnership (such property and membership interest transfers being referred to herein as, collectively, the "Transaction").
- G. In accordance with Section VI.I of the Mortgage, and subject to the terms and conditions set forth in this Agreement, Original Maker and New Maker have requested, and Noteholder has agreed, to (i) consent to the Transaction and (ii) release Original Maker from its obligations under the Loan Documents.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing facts and the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Original Maker, New Maker, Guarantor and Noteholder hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated by reference herein.
2. Consent to the Transaction. Noteholder hereby consents to the Transaction and agrees that the consummation of the Transaction shall not constitute an Event of Default under any Loan Document. Noteholder acknowledges and agrees that the Transaction is a Permitted Transfer (as defined in the Mortgage) and that all preconditions to such Permitted Transfer have been fulfilled. If any First Refusal Right (as defined in the Mortgage) arises or has arisen in connection with the Transaction, Noteholder hereby waives such First Refusal Right.
3. Assumption of the Loan. Original Maker unconditionally assigns and New Maker unconditionally assumes all the duties, obligations, covenants, agreements, and liabilities of Original Maker under the Note and the other Loan Documents. In connection therewith, without limiting the generality of the foregoing, New Maker agrees to pay the Note at the time, in the manner and in all other respects as therein provided, to perform all of the duties, covenants and obligations provided in the Note and the other Loan Documents to be performed by Original

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Maker thereunder at the time, in the manner, and in all other respects as therein provided, and to be bound by all the terms of the Note and the other Loan Documents as fully and to the same extent as if the Note and the other Loan Documents were originally made, executed and delivered to Noteholder by New Maker. Accordingly, the Note and the other Loan Documents shall include New Maker as an obligor thereunder including, without limitation, the inclusion of New Maker as "Maker" under each Loan Document.

4. Release of Original Maker. Upon execution of this Agreement by Noteholder, Noteholder hereby releases Original Maker from any and all liabilities or obligations relating to, or arising under, the Note and the other Loan Documents.

5. Loan Balance. The Loan Parties and Noteholder acknowledge and agree that the outstanding principal balance of the Note, as of the date of this Agreement, is \$25,900,000.00, with interest paid up to and including July 31, 2021 (except for the Deferred Interest as set forth in the next sentence). New Maker acknowledges and agrees that \$216,612.69 in Deferred Interest (as defined in the Modification Agreement) remains outstanding. Notwithstanding anything to the contrary set forth in the Modification Agreement, all Deferred Interest shall be due and payable on the 30th day following the date of this Agreement.

6. Representations.

(a) Original Maker represents and warrants to Noteholder that:

(i) it is duly authorized to enter into this Agreement;

(ii) except representations and warranties regarding Original Maker's title to the Property and Original Maker's Company Agreement (as defined in the Mortgage), each of which are modified in connection with the Transaction, the representations and warranties of Original Maker contained within the Loan Documents are true and correct as of the date hereof or, if relating to an earlier date, were true and correct when made;

(iii) no condition or event has occurred and is continuing which after notice and/or the lapse of time would constitute an Event of Default under any Loan Document;

(iv) it has voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Agreement and it is not relying on any representation, whether written or oral, express or implied, made by Noteholder other than as expressly set forth in this Agreement; and

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(v) on its own initiative, it has made proposals to the Noteholder the terms of which are reflected by this Agreement, and it has received actual and adequate consideration to enter into this Agreement.

(b) New Maker represents and warrants to Noteholder that:

(i) it is duly authorized to enter into this Agreement;

(ii) the representations and warranties contained within the Loan Documents, as they relate to title to and physical condition of the Property, are true and correct as of the date hereof or, if relating to an earlier date, were true and correct when made;

(iii) no condition or event has occurred and is continuing which after notice and/or the lapse of time would constitute an Event of Default under any Loan Document;

(iv) it has voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Agreement and it is not relying on any representation, whether written or oral, express or implied, made by Noteholder other than as expressly set forth in this Agreement; and

(v) on its own initiative, it has made proposals to the Noteholder the terms of which are reflected by this Agreement, and it has received actual and adequate consideration to enter into this Agreement.

(c) Guarantor represents and warrants to Noteholder that:

(i) the representations and warranties of Guarantor contained within the Loan Documents are true and correct as of the date hereof or, if relating to an earlier date, were true and correct when made;

(ii) no condition or event has occurred and is continuing which after notice and/or the lapse of time would constitute an Event of Default under any Loan Document;

(iii) it has voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Agreement and it is not relying on any representation, whether written or oral, express or implied, made by Noteholder other than as expressly set forth in this Agreement; and

(iv) on its own initiative, it has made proposals to the Noteholder the terms of which are reflected by this Agreement, and it has received actual and adequate consideration to enter into this Agreement.

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7. Other Documents. The Loan Parties, upon request from Noteholder, agree to execute such other and further documents as may be reasonably necessary or appropriate to consummate the transactions contemplated herein or to perfect the liens and security interests intended to secure payment of the loan evidenced by the Note.

8. Title Insurance. New Maker, at its sole cost and expense, shall obtain and deliver to Noteholder the following endorsements to the loan policy of title insurance obtained by Noteholder on the date of the Note: ALTA 11-06 (Mortgage Modification).

9. Loan Document. This Agreement is included within the definition of "Loan Documents" in the Loan Documents.

10. Ratification. Except as specifically provided herein, the terms and provisions of the Loan Documents shall remain unchanged and shall remain in full force and effect. The Loan Documents as modified and amended by this Agreement are ratified and confirmed in all respects. All liens, security interests and assignments granted or created by or existing under the Loan Documents remain unchanged and continue, unabated, in full force and effect, to secure New Maker's obligation to repay the loan evidenced by the Note. New Maker acknowledges that there are no offsets, claims or defenses to its respective obligations under the Loan Documents. Guarantor hereby (i) ratifies the Guaranty, (ii) consents to the terms of this Agreement and the Transaction and (iii) agrees the Guaranty remains in full force and effect.

11. Past Acceptance. Noteholder acknowledges that Noteholder and its agents in the past may have accepted, without exercising the remedies to which Noteholder was entitled, payments and performance by Original Maker that constituted Events of Default under the Loan Documents. New Maker acknowledges that no such acceptance or grace granted by Noteholder or its agents in the past, or Noteholder's agreement to the modifications evidenced by this Agreement, has in any manner diminished Noteholder's right in the future to insist that New Maker strictly comply with the terms of the Loan Documents, as modified by the terms of this Agreement. Furthermore, New Maker specifically acknowledges that any future grace or forgiveness of Events of Default shall not constitute a waiver or diminishment of any right of Noteholder with respect to any future Event of Default of New Maker, whether or not similar to any Event of Default with respect to which Noteholder has in the past chosen, or may in the future choose, not to exercise all of the rights and remedies granted to it under the Loan Documents.

12. No Modification. This Agreement, together with the Loan Documents being executed and delivered pursuant hereto and the existing Loan Documents, as modified pursuant hereto, supersedes and merges all prior and contemporaneous promises and agreements. No subsequent modification of this Agreement or any other Loan Document, or any waiver of rights under any of the foregoing, shall be effective unless made by supplemental agreement, in writing, executed by Noteholder, New Maker and Guarantor. Noteholder and the Loan Parties further agree that this Agreement may not in any way be explained or supplemented by a prior,

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existing or future course of dealings between the parties or by any prior, existing, or future performance between the parties pursuant to this Agreement or otherwise.

13. Waivers. New Maker acknowledges that the execution of this Agreement by Notcholder is not intended nor shall it be construed as (i) an actual or implied waiver of any Event of Default under the Loan Documents as modified hereby or (ii) an actual or implied waiver of any condition or obligation imposed upon New Maker pursuant to the Loan Documents, in either case except to the extent expressly set forth herein.

14. Expenses. Contemporaneously with the execution and delivery hereof, the Loan Parties shall pay, or cause to be paid, all costs and expenses incident to the preparation hereof and the consummation of the transactions specified herein, including, without limitation, title insurance policy charges, recording fees and fees and expenses of legal counsel to Notcholder.

15. Release. The Loan Parties release, remise, acquit and forever discharge Notcholder, together with its employees, agents, representatives, consultants, attorneys, fiduciaries, servants, officers, directors, partners, predecessors, successors and assigns, subsidiary corporations, parent corporations, and related corporate divisions (all of the foregoing the "Released Parties"), from any and all actions and causes of action, judgments, executions, suits debts, claims, counterclaims, defenses, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct and/or indirect, at law or in equity, of whatsoever kind or nature, whether heretofore or hereafter accruing, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and including the date hereof, and in any way directly or indirectly arising out of or in any way connected to this Agreement or the Loan Documents, or any of the transactions associated therewith, or the Property, including specifically, but not limited to claims of usury, lack of consideration, fraudulent transfer and lender liability. **THE FOREGOING RELEASE INCLUDES ACTIONS AND CAUSES OF ACTION, JUDGMENTS, EXECUTIONS, SUITS, DEBTS, CLAIMS, DEMANDS, LIABILITIES, OBLIGATIONS, DAMAGES AND EXPENSES ARISING AS A RESULT OF THE NEGLIGENCE AND/OR THE STRICT LIABILITY OF ONE OR MORE OF THE RELEASED PARTIES.**

16. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

17. Severability. If any covenant, condition or provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not in any way affect any other covenant, condition or provision herein contained.

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18. Time is of the Essence. It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement.

19. Construction. The parties acknowledge and confirm that each of their respective attorneys have participated jointly in the review and revision of this Agreement and that it has not been written solely by counsel for one party. The parties hereto therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other.

20. Applicable Law. This Agreement and the rights and duties of the parties hereunder shall be governed for all purposes by the law of the State of Illinois and the law of the United States applicable to transactions within said State.

21. Successors. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

22. Notice and Agreement. The Loan Parties and Noteholder take notice of and agree to the following:

(a) **THE RIGHTS AND OELIGATIONS OF THE PARTIES TO THE LOAN DOCUMENTS SHALL BE DETERMINED SOLELY FROM THE LOAN DOCUMENTS AND ANY PRIOR ORAL AGREEMENTS BETWEEN THE PARTIES ARE SUPERSEDED BY AND MERGED INTO THE LOAN DOCUMENTS.**

(b) **THE LOAN DOCUMENTS AND THIS AGREEMENT REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES THERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

23. WAIVER OF JURY TRIAL. THE LOAN PARTIES AND NOTEHOLDER VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON TORT, CONTRACT OR OTHERWISE) BETWEEN OR AMONG ORIGINAL MAKER, NEW MAKER, GUARANTOR AND NOTEHOLDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE LOAN. THIS PROVISION IS A MATERIAL INDUCEMENT TO NOTEHOLDER TO ENTER THIS AGREEMENT.

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[REMAINDER OF PAGE INTENTIONALLY BLANK]

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

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EXECUTED as of the date first set forth above.

ORIGINAL MAKER:

322 STREETER, LLC,
a Delaware limited liability company

By: 322 Streeter Manager, LLC,
an Ohio limited liability company

Its: Manager

By: _____

Manuel Chavez III

Its: Manager

STATE OF OHIO

§

§ SS:

COUNTY OF HAMILTON

§

The foregoing instrument was acknowledged before me on August 16th, 2021, by Manuel Chavez III, Manager of 322 Streeter Manager, LLC, an Ohio limited liability company, the Manager of 322 STREETER, LLC, a Delaware limited liability company known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of said limited liability company. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to this notarial act.

Julie A. Dollemeyer
Notary Public

My Commission Expires: _____

[SEAL]



JULIE A. DOLLEMEYER
Notary Public, State of Ohio
My Commission Expires
December 19, 2025

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NEW MAKER:

322 STREETER HOLDCO, LLC,
a Delaware limited liability company

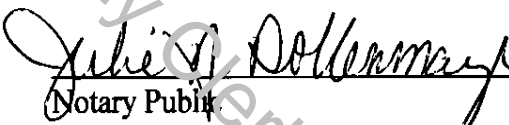
By: 
Manuel Chavez III
Its: Chief Executive Officer

STATE OF OHIO §

§ SS:

COUNTY OF HAMILTON §

The foregoing instrument was acknowledged before me this August 16th 2021, by Manuel Chavez III, Chief Executive Officer of 322 STREETER HOLDCO, LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of said limited liability company. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to this notarial act.


Notary Public

My Commission Expires: _____ [SEAL]



JULIE A. DOLLEMEYER
Notary Public, State of Ohio
My Commission Expires
December 19, 2025

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GUARANTOR:



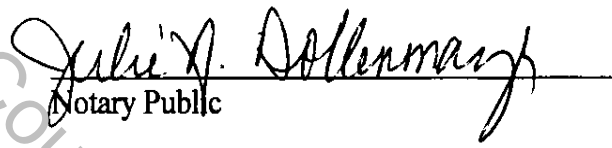
MANUEL CHAVEZ III, an individual

STATE OF OHIO §

§ SS:

COUNTY OF HAMILTON §

The foregoing instrument was acknowledged before me this August 16th, 2021, by MANUEL CHAVEZ III, an individual, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to this notarial act.



Notary Public

My Commission Expires: _____

[SEAL]





JULIE A. DOLLEMEYER
Notary Public, State of Ohio
My Commission Expires
December 19, 2025

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NOTEHOLDER:

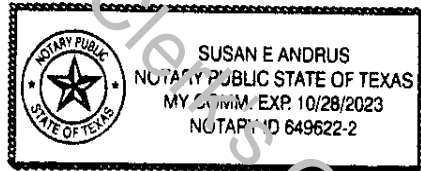
AMERICAN NATIONAL INSURANCE
COMPANY, a Texas insurance company

By: 
 Name: Robert J. Kirchner
 Title: Senior Vice President 

STATE OF TEXAS §
 COUNTY OF GALVESTON §

This instrument was acknowledged before me on August 16, 2021, by Robert J. Kirchner, Senior Vice President of AMERICAN NATIONAL INSURANCE COMPANY, a Texas insurance company, on behalf of said insurance company, for the purposes and consideration therein stated.


 Notary Public in and for the State of Texas



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EXHIBIT A

Legal Description

PARCEL 1 (GARAGE):

2A, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 3K, 3L, 3M, 3N, 3P IN RIVER EAST CENTER SUBDIVISION, BEING A RESUBDIVISION OF PART OF LOT 1 AND LOT 2 IN BLOCK 2 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 15, 2001 AS DOCUMENT 0011072755, AS AMENDED BY CERTIFICATE OF CORRECTION RECORDED JANUARY 13, 2004 AS DOCUMENT 0401339013, ALL IN COOK COUNTY ILLINOIS.

PARCEL 2:

EASEMENTS FOR INGRESS, EGRESS, SUPPORT, USE AND ENJOYMENT FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN AND CREATED BY DECLARATION OF EASEMENTS AND OPERATING REQUIREMENTS RECORDED AS DOCUMENT NUMBER 0011072756.

Property Address: 322 East Illinois Street, Chicago Illinois

PINS: 17-10-223-007-0000
17-10-223-016-0000
17-10-223-017-0000
17-10-223-018-0000
17-10-223-019-0000
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