

Illinois Anti-Predatory Lending Database Program

Doc#: 2215412020 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 06/03/2022 06:21 AM Pg: 1 of 32

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: **PIN:** 13-26-212-019-0000

**Address:**

**Street:** 3001 N. Spaulding

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60618

**Lender:** Greenstate Credit Union

**Borrower:** MRR 3001 Spaulding LLC

**Loan / Mortgage Amount:** \$2,000,000.00

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

**Certificate number:** 0B75C492-C52D-416A-847A-61B7A2C9D310

**Execution date:** 5/26/2022

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**MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS AND SECURITY AGREEMENT**

Property of Cook County Clerk's Office

This Document Prepared by and when  
Recorded Return to:

**Jeremy B.P. Hagan**  
Pugh Hagan Prahm PLC  
425 E. Oakdale Blvd., Suite 201  
Coralville, IA 52241

PIN: 13-26-212-019-0000

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Property of Cook County Clerk's Office

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## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "**Mortgage**") is made as of May 31, 2022, by and between **MRR 3001 SPAULDING LLC**, having its principal place of business at 55 East Jackson Blvd., Suite 500, Chicago, IL 60604 ("**Borrower**"), and **GREENSTATE CREDIT UNION**, having its principal place of business at 2355 Landon Road, P.O. Box 800, North Liberty, IA 52317 ("**Lender**").

### GRANTING CLAUSES

For good and valuable consideration and to secure the payment of an indebtedness in the principal sum of Two Million Dollars (\$2,000,000.00) lawful money of the United States, to be paid according to that certain Promissory Note (the "**Note**") of even date herewith from Borrower to Lender in said principal sum and by this reference made a part hereof, together with all other Indebtedness (as defined in that certain Loan Agreement dated as of the date hereof by and between the Borrower and the Lender hereinafter referred to as the "**Loan Agreement**"; terms used herein without definition having the same meaning herein as defined therein) of the Borrower (monetary (including post-petition interest, costs, fees, expenses and other amounts, whether allowed or not) or otherwise) to the Lender under the Loan Agreement or any other Loan Document, or any other document or instrument executed in connection herewith or therewith, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due (all of the foregoing, collectively, the "**Indebtedness**"), Borrower has created a security interest in and mortgaged, warranted, granted, bargained, sold, conveyed, assigned, pledged, transferred and set over, and does by these presents create a security interest in and MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, CONVEY, ASSIGN, PLEDGE, TRANSFER AND SET OVER unto Lender, its successors and assigns forever, WITH MORTGAGE COVENANTS and with all POWERS OF SALE and other STATUTORY RIGHTS AND COVENANTS in the State (as hereinafter defined), together with all interest that Borrower now has or may hereafter acquire in, the following property:

All that certain tract or parcel of land lying and being in Cook County, Illinois and being more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Land**") and all minerals, oil, gas, and other hydrocarbon substances, sand, gravel, and other materials that may be mined, produced, or extracted from the Land, in, on, or under the surface of the Land (to the extent owned by Borrower), as well as all development rights, permits, licenses, air rights, water, water rights, water stock, utility reservations, sanitary sewer, and other utility capacities relating to the Land.;

TOGETHER with the buildings, foundations, structures and improvements (including fixtures) now or hereafter located on or in the Land (collectively, the "**Improvements**");

TOGETHER with all right, power, privilege, option, title and interest, if any, of Borrower in and to the streets and roads, opened or proposed, abutting the Land, all strips and gores within or adjoining the Land, the air space and right to use the air space above the Land, all rights of ingress and egress to and from the Land, all easements, rights of way, reversions, remainders, estates, rights, titles, interests, privileges, servitudes, tenements, hereditaments, and appurtenances

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now or hereafter affecting the Land or the Improvements, all royalties and rights and privileges appertaining to the use and enjoyment of the Land or the Improvements, including all air, lateral support, streets, alleys, passages, vaults, drainage, water, oil, gas and mineral rights, development rights, all leases and licenses and options to purchase or lease, and all other interests, estates or claims, in law or in equity, which Borrower now has or hereafter may acquire in or with respect to the Land or the Improvements (collectively, the "**Appurtenances**");

The Land, the Improvements, the Appurtenances and all the privileges with the right of possession are hereinafter collectively referred to as the "**Premises**";

TOGETHER with all of the fixtures of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof (together with, in each case, attachments, components, parts and accessories) now or subsequently attached to the Property (all of the foregoing in this paragraph (c) being referred to as the "**Fixtures**");

TOGETHER with all equipment, fittings, furniture, furnishings, appliances, apparatus, and machinery in which Borrower now or hereafter has a possessory or title interest and now or hereafter installed in or located upon the Premises and all building materials, supplies and equipment now or hereafter delivered to the Premises and intended to be installed therein or located thereon; all fixtures, inventory, other goods and personal property of whatever kind and nature now contained on or in or hereafter placed on or in the Premises and used or to be used in connection with the letting or operation thereof, in which Borrower now has or hereafter may acquire a possessory or title interest and all renewals or replacements of any of the foregoing property or articles in substitution thereof, including beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, silverware, food carts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, ice makers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers, and other equipment used in the operation of the Premises (collectively, the "**Equipment**");

TOGETHER with any and all rents, revenues, issues, profits, royalties, income, cash proceeds, security deposits, accounts, moneys, and other benefits that are now due or may hereafter become due by reason of the renting, leasing, bailment of all or any portion of the Land or the Improvements, or the use or occupancy thereof (collectively "**Rents**").

TOGETHER with Subject to the rights of Borrower hereunder and under the Loan Documents, all leasehold estates, leases, subleases, sub-subleases, licenses, concessions, occupancy agreements, or other agreements (written or oral, now or at any time in effect and every

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modification, amendment, or other agreement relating thereto, including every guarantee of the performance and observance of the covenants, conditions, and agreements to be performed and observed by the other party thereto) which grant a possessory interest in, or the right to use or occupy, all or any part of the Land and/or Improvements, together with all related security and other deposits (in each case, as amended, amended and restated, supplemented, renewed, extended, substituted, or otherwise modified from time to time, collectively, "**Leases**").

TOGETHER with all security deposits and other deposits now or hereafter made by Borrower pursuant to, and all other refunds, credits, claims, causes of action and other rights now or hereafter arising under the Leases (the "**Intangibles**");

TOGETHER with all contracts and warranties necessary to remodel, repair, operate and maintain the Property (the "**Property Contracts**");

TOGETHER with (i) to the extent assignable, all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to occupancy, use or operation of the Property or any part thereof and (ii) all plans and specifications relating to the Property (the "**Property Licenses**");

TOGETHER with all proceeds, judgments, claims, compensation, awards of damages and settlements pertaining to or resulting from or in lieu of any condemnation or taking of the Premises by eminent domain or any casualty loss or damage to any of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, and including also, the right to assert, prosecute and settle claims arising out of or pertaining to such condemnation or taking or such casualty loss under insurance policies constituting an Intangible and to apply for and receive payments of proceeds under such insurance policies and in any condemnation or taking, the right to apply for and receive all refunds with respect to the payment of property taxes and assessments and all other proceeds from the conversion, voluntary or involuntary, of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, or any part thereof, into cash or liquidated claims. Collectively, all of the foregoing, are herein referred to as the "**Proceeds**".

The Intangibles, the Equipment, the Rents, the Leases, the Fixtures, the Property Contracts, the Property Licenses and the Proceeds are hereinafter collectively referred to as the "**Collateral**". The Premises and the Collateral are hereinafter collectively referred to as the "**Mortgaged Property**".

TO HAVE AND TO HOLD the Mortgaged Property, with all the privileges and appurtenances to the same belonging, and with the possession and right of possession thereof, unto Lender and its successors and assigns forever.

## ARTICLE I

### Definition of Terms

As used in this Mortgage, the terms set forth below shall have the following meanings:

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“**Advances**” means all sums, amounts or expenses advanced or paid and all costs incurred by Lender, as provided in this Mortgage or in any other Loan Document, upon failure of Borrower to pay or perform any obligation or covenant contained herein or in such other Loan Document.

“**Appurtenances**” has the meaning assigned in the Granting Clauses.

“**Bankruptcy Code**” means Title 11 of the United States Code, as the same may be amended from time to time or any successor statute thereto.

“**Bankruptcy Proceeding**” means any proceeding, action, petition or filing under the Bankruptcy Code or any similar state or federal law now or hereafter in effect relating to bankruptcy, reorganization or insolvency, or the arrangement or adjustment of debts.

“**Borrower**” means the party or parties identified and defined as Borrower on the Cover Sheet and in the preamble of this Mortgage, any subsequent owner of the Mortgaged Property, and its or their respective heirs, executors, legal representatives, successors and assigns.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which national banks in the State are not open for business.

“**Code**” means the Uniform Commercial Code of the State, as the same may be amended from time to time or any successor statute thereto.

“**Collateral**” has the meaning assigned in the Granting Clauses.

“**Default Rate**” has the meaning assigned in the Loan Agreement.

“**Environmental Law**” means any present or future federal, state or local law, statute, regulation or ordinance, and any judicial or administrative order or judgment thereunder, pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Premises, including each of the following as in effect on the date hereof or hereafter amended: the Comprehensive Environmental Response, Compensation and Liability Act 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§136 et seq.; the Occupational Safety & Health Act of 1970, as amended, 29 U.S.C. § 651 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. §300f et seq.; the National Environmental Policy Act, as amended, 42 U.S.C. §4321 et seq.; and the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq.

“**Equipment**” has the meaning assigned in the Granting Clauses.

“**Event of Default**” means any one or more of the events described in Section 4.01.

“**Fixtures**” has the meaning assigned in the Granting Clauses.

“**Hazardous Substance**” means any material, waste or substance which is: (i) included within the definitions of “**hazardous substances**,” “**hazardous materials**,” “**toxic substances**”

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or “**solid waste**” in or pursuant to any Environmental Law, or subject to regulation under any Environmental Law; (ii) listed in the United States Department of Transportation Optional Hazardous Materials Table, 49 C.F.R. §172.101, as to date or hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302, as to date or hereafter amended; or (iii) explosive, radioactive, asbestos, asbestos containing material, Microbial Matter, a hydrocarbon, a polychlorinated biphenyl, oil, or a petroleum product.

“**Impositions**” means all taxes or payments in lieu of taxes of every kind and nature, sewer rents, charges for water, for setting or repairing meters and for all other utilities serving the Premises, and assessments, levies, inspection and license fees and all other charges imposed upon or assessed against the Mortgaged Property or any portion thereof (including the Property Income), and any stamp or other taxes which might be required to be paid, or with respect to any of the Loan Documents, any of which might, if unpaid, affect the enforceability of any of the remedies provided in this Mortgage or result in a lien on the Mortgaged Property or any portion thereof, regardless of to whom assessed.

“**Improvements**” has the meaning assigned in the Granting Clauses.

“**Indebtedness**” has the meaning assigned in the Granting Clauses.

“**Intangibles**” has the meaning assigned in the Granting Clauses.

“**Leases**” has the meaning assigned in the Granting Clauses.

“**Lender**” means GreenState Credit Union, the Lender identified as such on the Cover Sheet and in the preamble of this Mortgage, and its successors and assigns (including any other holders from time to time of the Note).

“**Loan Agreement**” has the meaning assigned in the Granting Clauses.

“**Loan Documents**” mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, in connection with the Loan.

“**Losses**” means claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages of whatever kind or nature (including attorneys’ fees, costs and expenses).

“**Maturity Date**” has the meaning assigned on the Promissory Note.

“**Mortgaged Property**” has the meaning assigned in the Granting Clauses.

“**Note**” has the meaning assigned in the Granting Clauses.



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“**Permitted Encumbrances**” means the liens and security interests created by this Mortgage and the other Loan Documents and those exceptions to title set forth in Exhibit B.

“**Person**” means and includes any individual, corporation, partnership, joint venture, limited liability company, association, bank, joint-stock company, trust, unincorporated organization or government, or an agency or political subdivision thereof.

“**Premises**” has the meaning assigned in the Granting Clauses.

“**Proceeds**” has the meaning assigned in the Granting Clauses.

“**Property Contracts**” have the meaning assigned in the Granting Clauses.

“**Property Licenses**” have the meaning assigned in the Granting Clauses.

“**Rents**” has the meaning assigned in the Granting Clauses.

“**State**” means the State of Illinois.

## ARTICLE II

### Covenants, Warranties, and Representations of Borrower

Borrower covenants, warrants, represents and agrees as follows:

**Section 2.01 Payment of the Indebtedness.** Borrower shall punctually pay the Indebtedness at the times and in the manner provided in the Loan Agreement.

**Section 2.02 Title to the Mortgaged Property.**

(a) Borrower has title to the Premises and good infeasible title to the balance of the Mortgaged Property, free and clear of liens and encumbrances except Permitted Encumbrances.

(b) Borrower has full power and lawful authority to encumber the Mortgaged Property in the manner and form herein set forth.

(c) This Mortgage is and will remain a valid and enforceable lien on and security interest in the Mortgaged Property.

(d) Borrower will preserve such title and will forever warrant and defend the same and the validity and priority of the lien hereof to Lender against all claims whatsoever.

**Section 2.03 Maintenance of the Mortgaged Property.** Borrower shall maintain the Mortgaged Property in good and safe condition, working order and repair, and comply with all existing and future federal, state and local laws, ordinances, rules and regulations and court orders affecting or which may be interpreted as affecting the Mortgaged Property, including the Americans with Disabilities Act and all zoning, subdivision, land use, environmental, traffic, fire, building, and occupational safety and health rules, regulations, codes, acts and statutes to

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which it is subject. Borrower shall permit Lender and its agents to enter upon and inspect: (a) the areas of the Mortgaged Property which are open to the public at all reasonable hours without prior notice and (b) all other areas of the Mortgaged Property at all reasonable hours with reasonable prior notice (provided that Lender shall in no event be required to provide Borrower with more than 24 hours prior notice), except that no notice shall be required in the event of an emergency. Borrower shall not, without the prior consent of Lender:

- (a) change the use of the Premises;
- (b) cause or permit the use or occupancy of any part of the Premises to be discontinued if such discontinuance would violate any zoning or other law, ordinance or regulation; or
- (c) consent to any map amendment, zoning reclassification, modification or restriction affecting the Premises.

## **Section 2.04 Insurance; Restoration.**

(a) Borrower shall keep the Improvements and the Equipment insured against damage by fire, other hazards and loss of business income. Borrower shall furnish Lender with such comprehensive special form cause of loss, all risk, fire, extended coverage property insurance insuring 100% of the insurable replacement value thereof.

(b) Borrower shall also maintain commercial general liability insurance, including contractual liability, with respect to the Mortgaged Property against personal injury, death and property damage, for at least \$2,000,000.00.

(c) All insurance policies and endorsements required pursuant to this Mortgage shall: (i) be endorsed to name Lender as a primary additional insured thereunder, as its interest may appear, with loss payable to Lender, without contribution, under a long-form, non-contributory mortgagee clause, or otherwise endorsed as Lender may reasonably require; (ii) be issued by such insurance companies licensed to do business in the State; (iii) without limiting the foregoing, provide that such policy or endorsement may not be canceled or materially changed except upon 30 days prior written notice of intention of non-renewal, cancellation or material change to Lender, and that no act or thing done by Borrower or Lender shall invalidate the policy as against Lender; and (iv) be issued by companies satisfactory to the Lender, have coverages and endorsements as the Lender may require, and otherwise be in form and content satisfactory to Lender. Borrower shall deliver all original policies including all endorsements and renewals thereof, or copies thereof certified by the insurance company or authorized agent as being true copies, to Lender together with all endorsements required hereunder, on the date of this Mortgage and thereafter at least 10 days prior to the expiration date of such policies. Notwithstanding anything to the contrary contained herein or in any provision of law, the Proceeds of insurance policies coming into the possession of Lender shall not be deemed trust funds and Lender shall be entitled to dispose of such Proceeds as hereinafter provided.

(d) In the event of the foreclosure of this Mortgage or other transfer of title to or assignment of the Mortgaged Property in extinguishment of the Indebtedness in whole or in part, to the extent permitted by applicable law, all right, title and interest of Borrower in and to all

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policies of insurance required by this Mortgage and any insurance Proceeds shall inure to the benefit of and pass to Lender or any purchaser or transferee at the foreclosure sale of the Mortgaged Property.

(e) Borrower hereby irrevocably appoints Lender its attorney-in-fact, coupled with an interest, to apply and make claims for insurance Proceeds under all insurance policies, to prosecute and settle such claims and to endorse any checks, drafts or other instruments representing any insurance Proceeds whether payable by reason of loss thereunder or otherwise. Additionally, Lender may notify any and all insurers under casualty and liability insurance policies that Lender has a security interest pursuant to the provisions of this Mortgage in and to such insurance policies and any proceeds thereof, and that any payments under those insurance policies are to be made directly to Lender. Lender's rights under this Section 2.04(e) may be exercised by Lender or a court appointed receiver appointed upon the request of Lender and irrespective of whether or not an Event of Default (or any matter which, after notice or passage of time or both, would constitute an Event of Default) shall have occurred under this Mortgage.

(f) In the event of an insured loss or the occurrence of Insured damage to the Property, Borrower shall give prompt notice thereof to Lender, and if such loss exceeds Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "Threshold"), Lender shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i),(ii), (iii) and (iv) of the immediately succeeding subsection are not satisfied, then Lender, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, (iii) the loss or damage affects less than fifty percent (50%) of the Property, and (iv) the total of the insurance proceeds and such additional amounts placed on deposit with Lender by Borrower for the specific purpose of rebuilding or restoring improvements on the Property equals or exceeds, in the sole and absolute discretion of Lender, the reasonable costs of such rebuilding or restoration, then Lender shall endorse to Borrower any such payment and Borrower may collect such payment directly. In the event that an insured loss or the occurrence of insured damage to the Property, which loss or damage exceeds the Threshold but still affects less than fifty percent (50%) of the Property, Borrower may, on the advice and consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed, apply the proceeds of such insurance to the rebuilding and restoration of the Property.

## **Section 2.05 Organization and Authority.**

(a) None of the execution, delivery and performance of the Note, this Mortgage, and other Loan Documents nor the consummation of the transactions contemplated by the Loan Documents by the Borrower will constitute a violation or breach or default in (a) the Certificate of Organization or the Operating Agreement of the Borrower, (b) any provision of any lease, contract, agreement, grant or other instrument or document to which each of the Borrower by which it is bound or (c) any judgment, order, writ, injunction, decree, law, rule or regulation.

(b) The Borrower is an Illinois limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois.

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(c) The Borrower has the power and authority to own its properties, including the Mortgaged Property, carry on its business and operations as now conducted and to perform its obligations under the Loan Documents.

(d) All actions necessary to authorize the performance by the Borrower of the obligations pursuant to the Loan Documents and the transactions contemplated thereby have been taken. Each of the Loan Documents, to which the Borrower is party, is enforceable against the Borrower, in accordance with its terms, subject only to the application of bankruptcy and other laws affecting the rights of creditors generally.

**Section 2.06 Payment of Liens.** Borrower shall pay when due all payments and charges due under or in connection with any liens and encumbrances on and security interests in the Mortgaged Property or any portion thereof. Borrower shall do or cause to be done, at the sole cost of Borrower, everything necessary to fully preserve the initial priority of the lien of this Mortgage. Borrower shall keep the Mortgaged Property free from liens, including but not limited to mechanics' liens. If Borrower fails to make any such payment or if a lien attaches to the Mortgaged Property or any portion thereof, Lender may (but shall not be obligated to) make such payment or discharge such lien and Borrower shall reimburse Lender on demand for all such Advances.

**Section 2.07 Maintenance of Existence.** So long as it owns the Mortgaged Property, Borrower shall do all things necessary to preserve and keep in full force and effect its existence, franchises, licenses, authorizations, registrations, permits and approvals under the laws of the State, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court now or hereafter applicable to Borrower or to the Mortgaged Property or any portion thereof.

**Section 2.08 Costs of Defending and Upholding the Lien.** Lender may, after notice to Borrower: (a) appear in and defend any action or proceeding, in the name and on behalf of either Lender or Borrower, in which Lender is named or which Lender in its sole discretion determines may adversely affect the Mortgaged Property, this Mortgage, the lien hereof or any other Loan Document; and (b) institute any action or proceeding which Lender in its sole discretion determines should be instituted to protect its interest in the Mortgaged Property or its rights under this Mortgage or any other Loan Document, including foreclosure proceedings to the extent permitted by applicable law. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with any such action or proceeding.

**Section 2.09 Costs of Enforcement.** Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' and appraisers' fees, costs and expenses and the expenses and reasonable fees of any receiver or similar official) of or incidental to the collection of the Indebtedness, any foreclosure of this Mortgage or any other Loan Document, any enforcement, compromise or settlement of this Mortgage, any other Loan Document or the Indebtedness, or any defense or assertion of the rights or claims of Lender in respect of any thereof, by litigation or otherwise.

**Section 2.10 Interest on Advances and Expenses.** All Advances made and any reasonable expenses incurred at any time by Lender pursuant to the provisions of this Mortgage or

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the other Loan Documents or under applicable law shall be secured by this Mortgage as part of the Indebtedness, with equal rank and priority. All such Advances and expenses shall bear interest at the Default Rate from the date that each such Advance or expenses is made or incurred to the date of repayment and all such Advances and expenses with interest thereon shall be payable to Lender on demand.

**Section 2.11 Indemnification.** Borrower agrees to indemnify, to defend and to save and hold Lender harmless from any and all claims, sums, obligations, damages, losses, costs and expenses (including, without limitation, Lender's reasonable attorneys' fees, as well as Lender's architect's and engineering fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever (collectively, "Claims") that may be asserted against or incurred by Lender, its officers, directors, employees, and agents arising out of, relating to, or in any manner occasioned by this Agreement and the exercise of its rights and remedies granted Lender under this Agreement; provided however, the foregoing shall not apply to any Claims arising out of the gross negligence or willful misconduct of Lender or its agents. The foregoing indemnity provisions shall survive the cancellation of this Agreement as to all matters arising or accruing prior to such cancellation and the foregoing indemnity shall survive in the event that Lender elects to exercise any of the remedies as provided under this Agreement following default hereunder.

**Section 2.12 Prohibition Against Conveyances, Encumbrances and Borrowing.** Except with the prior consent of Lender, neither Borrower nor any Person shall transfer, convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest in

- (a) all or any portion of the Mortgaged Property; or
- (b) all or any direct or indirect ownership interest in Borrower if such transfer would constitute a Change of Control. In furtherance of the foregoing, subordinate liens (voluntary or involuntary) secured by any portion of the Mortgaged Property, or any beneficial interest in the Mortgaged Property, and any mezzanine or any other financing, secured by any ownership interest in Borrower, shall not be permitted except with the prior consent of Lender.

**Section 2.13 [Intentionally Left Blank]**

**Section 2.14 Environmental Matters; Warranties; Notice; Indemnity.** Borrower represents and warrants to Lender regarding the Premises and the Equipment that Borrower has not installed, used, generated, manufactured, produced, stored, Released, discharged or disposed of in, on, under or about the Premises, or transported to or from any portion of the Premises, any Hazardous Substance or allowed any other Person to do so, except under conditions permitted by applicable Environmental Laws and except for cleaning supplies in reasonable quantities used in the operation of the Premises so long as the supplies are maintained, used, stored and disposed of in accordance with all applicable Environmental Laws. To the best of Borrower's knowledge and belief, Borrower represents and warrants to Lender that there is no Hazardous Substance located on, in or under the Premises.

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**Section 2.15 Permitted Encumbrances.** No Permitted Encumbrance shall be amended, modified, supplemented, restated or otherwise altered by Borrower, nor shall Borrower consent or otherwise acquiesce in any of the foregoing, without in each instance the prior consent of Lender.

**Section 2.16 Compliance with Laws.** The Mortgaged Property is in compliance with all provisions of all zoning, subdivision, land use, environmental, traffic, fire, building, and occupational safety and health rules, regulations, codes, acts and statutes to which it is subject.

## ARTICLE III

### Security Agreement

**Section 3.01 Warranties, Representations and Covenants of Borrower.** Borrower covenants, warrants, represents and agrees with and to Lender that this Mortgage constitutes a security agreement under the Code and serves as a fixture filing in accordance with the Code.

## ARTICLE IV

### Default and Remedies

**Section 4.01 Events of Default.** Each of the following shall constitute an Event of Default under the Note, this Mortgage and the other Loan Documents:

(a) Any "Event of Default" under the Loan Agreement or any other Loan Document.

(b) Except as provided in Section 4.01(a), failure to perform or comply with any term, obligation, covenant or condition contained in this Mortgage, within 30 days from the date on which any officer of the Borrower knew, or as a reasonable business person should have known, thereof; *provided, however*, that if the curing of such default cannot be accomplished with due diligence within said 30-day period, Borrower commences to cure such default promptly after such receipt of notice thereof from Lender and thereafter diligently and continuously prosecutes the cure of such default, and the extension of the period for effecting a cure will not result in any material impairment of the Collateral, any portion thereof, the value thereof or the Lender's lien thereon, then such period of 30-days shall be extended for such period as Borrower needs to cure the default; provided further, however, such extended cure period shall not be applicable to any default which may be cured by the payment of money, and the period for curing such default shall not extend beyond one hundred twenty (120) calendar days.

(c) Failure to permit Lender or its agents to enter to the Mortgaged Property or to access Borrower's books and records in accordance with the terms of this Mortgage and the other Loan Documents.

**Section 4.02 Remedies.** Upon the occurrence of any Event of Default, Lender may take such actions against Borrower and/or the Mortgaged Property or any portion thereof as it deems advisable to protect and enforce its rights against Borrower and in and to the Mortgaged Property, without notice or demand except as set forth herein. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or

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otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Such actions may include the following:

(a) Lender may enter into or upon the Mortgaged Property, personally or by its agents, nominees or attorneys, and may dispossess Borrower and its agents and servants therefrom, and thereupon Lender at its sole discretion may: (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every portion of the Mortgaged Property and conduct business thereon, in any case either in the name of Lender or in such other name as Lender shall deem best; (ii) complete any construction on the Mortgaged Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; and (iv) exercise all rights and powers of Borrower with respect to the Mortgaged Property, whether in the name of Borrower or otherwise.

(b) With or without entry, personally or by its agents, nominees or attorneys, Lender may sell all or any portion of the Mortgaged Property and all or any portion of Borrower's estate, right, title, interest, claim and demand therein and right of redemption thereof at one or more private or public sales in the manner and to the extent permitted by law, as an entirety or in parcels or portions, and Lender shall have any statutory power of sale as may be provided by law in the State.

(c) Lender may institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or upon credit, as an entirety or in parcels or portions.

(d) Lender may institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due.

(e) Lender may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained in the Note, this Mortgage or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(f) Lender shall have the rights and may take such actions as are set forth, described or referred to in any rider entitled "Rider - Applicable State Law Provisions" attached hereto and made a part hereof, or as are permitted by the laws of the State.

(g) Lender may recover judgment on the Note, either before, during or after any proceedings for the foreclosure or enforcement of this Mortgage.

(h) Lender may secure the appointment of a receiver, trustee, liquidator or similar official of the Mortgaged Property or any portion thereof, and Borrower hereby consents and agrees to such appointment, without notice to Borrower and without regard to the adequacy of the security for the Indebtedness and without regard to the solvency of Borrower or any other Person liable for the payment of the Indebtedness, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court

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making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Property Income pursuant to this Mortgage or the Assignment.

(i) Lender may exercise any or all of the remedies available to a secured party under the Code.

(j) Lender may pursue any other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents.

(k) Lender may apply any funds then on deposit with Lender for payment of Impositions, rent or insurance premiums.

(l) Lender in its sole discretion may surrender any insurance policies and collect the unearned premiums and apply such sums against the Indebtedness.

(m) To the extent permitted by law, exercise any power of sale.

## **Section 4.03 General Provisions Regarding Remedies.**

(a) Proceeds of Sale. The proceeds of any sale of the Mortgaged Property received by Lender, or part thereof, shall be distributed and applied to the amounts to pay Obligations (as defined in the Loan Agreement) in such order and priority as Lender deems appropriate in its sole discretion.

(b) Effect of Judgment. No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any portion thereof, or any rights, powers or remedies of Lender hereunder. Such lien, rights, powers and remedies of Lender shall continue unimpaired as before.

(c) Right to Terminate Proceedings. Lender may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in Section 4.02 at any time before the conclusion thereof, as determined in Lender's sole discretion and without prejudice to Lender.

(d) No Waiver or Release. Lender may resort to any remedies and the security given by the Loan Documents, in whole or in part, and in such portions and in such order as determined in Lender's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided in the Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Loan Documents. No acceptance by Lender of any payment after the occurrence of an Event of Default and no payment by Lender of any Advance or obligation for which Borrower is liable hereunder shall be deemed to waive or cure such Event of Default or Borrower's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Lender, and no extension of time for the payment of the whole or any portion of the Indebtedness or any other indulgence given by Lender to Borrower or any other Person, shall



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operate to release or in any manner affect Lender's interest in the Mortgaged Property or the liability of Borrower to pay the Indebtedness, except to the extent that such liability shall be reduced by Proceeds of the sale of all or any portion of the Mortgaged Property received by Lender. No waiver by Lender shall be effective unless it is in writing and then only to the extent specifically stated.

(e) No Impairment; No Release. The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including: (i) any renewal, extension or modification which Lender may grant with respect to any of the Indebtedness; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Indebtedness. If the Mortgaged Property is sold and Lender enters into any agreement with the then owner of the Mortgaged Property extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof or of any other Loan Document, Borrower shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by Lender.

(f) Waivers and Agreements Regarding Remedies. To the fullest extent that Borrower may legally do so, Borrower:

(i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisal or appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal or appraisement, stay of execution, extension and notice of election to accelerate or declare due the whole of the Indebtedness;

(ii) waives all rights to a marshalling of the assets of Borrower, Borrower's partners, if any, and others with interests in Borrower, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Mortgaged Property for the collection of the Indebtedness without any prior or different resort for collection, or the right of Lender to the payment of the Indebtedness out of the Proceeds of sale of the Mortgaged Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one in good faith, which denies the existence or sufficiency of the facts upon which the foreclosure action is grounded or which is based on Lender's wrongful actions. If any defense, counterclaim or setoff (other than one permitted by the preceding sentence) is raised by Borrower in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, the foregoing waiver shall not bar a separate action for such damage (unless such claim is required by law or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Lender), but such separate action shall not thereafter be consolidated with Lender's foreclosure action. The

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bringing of such separate action for money damages shall not be deemed to afford any grounds for staying any such foreclosure action;

(iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties;

(v) waives the defense of laches and any applicable statutes of limitation; and

(vi) waives any right to have any trial, action or proceeding tried by a jury.

(g) Lender's Discretion. Lender may exercise its rights, options and remedies and may make all decisions, judgments and determinations under this Mortgage and the other Loan Documents in its sole unfettered discretion.

(h) Lender's Right to Waive, Consent or Release. Lender may at any time, in writing: (i) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (ii) consent to Borrower's doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (iii) release any portion of the Mortgaged Property or any interest therein, from this Mortgage and the lien of the other Loan Documents. No such act shall in any way impair the rights of Lender hereunder except to the extent specified by Lender in such writing.

(i) Possession of the Mortgaged Property. Upon the occurrence of any Event of Default hereunder and demand by Lender at its option, Borrower shall immediately surrender or cause the surrender of possession of the Premises to Lender. The covenants herein contained may be enforced by a receiver of the Mortgaged Property or any portion thereof. Nothing in this Section 4.03(i) shall be deemed a waiver of the provisions of this Mortgage prohibiting the sale or other disposition of the Mortgaged Property without the prior consent of Lender.

## ARTICLE V

### Assignment of Leases and Rents

#### Section 5.01 Assignment of Leases and Rents.

(a) Borrower hereby absolutely, presently, irrevocably, and unconditionally grants, assigns, and transfers to Lender all of Borrower's present and future right, title, interest, and estate in, to and under all Leases and Rents, whether now owned or hereafter acquired and the absolute, present, irrevocable, and unconditional right to receive, collect, and possess all Rents.

(b) This Article 5 constitutes an absolute, present, irrevocable, and unconditional assignment of Leases and Rents to Lender and not merely a collateral assignment of, or the grant of a lien or security interest in or on, Leases and Rents. Such grant, assignment, and transfer shall not be construed to: (i) bind Lender to the performance of any of the covenants,

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conditions, or provisions contained in any Lease or otherwise impose any obligation upon Lender; or (ii) create, or operate to place or impose, any responsibility, obligation, or liability upon Lender for: (A) the control, care, maintenance, management, or repair of the Premises; (B) any dangerous or defective condition of the Premises, including, without limitation, the presence of any environmental contamination or conditions; (C) any waste committed on the Premises by any Person; and/or (D) any negligence in the management, upkeep, repair, or control of the Premises.

## **Section 5.02 Revocable License.**

(a) Notwithstanding the grant, assignment and transfer of Leases and Rents from Borrower to Lender pursuant to Section 5.01, Lender grants to Borrower a revocable license to collect and receive Rents as they become due, and to retain, use, and apply Rents to the payment of the Indebtedness and to the costs and expenses incurred in connection with the operation and maintenance of the Premises, and to exercise all rights as landlord under any Lease, in each case subject to the terms of this Mortgage and the other Loan Documents. After the occurrence of an Event of Default, Borrower shall collect and receive all such Rents as trustee for the benefit of Lender.

(b) From and after the occurrence of any Event of Default:

(i) The revocable license granted to Borrower pursuant to Section 5.02(a) shall immediately and automatically, with or without notice from Lender, cease and terminate and shall be void and of no further force or effect;

(ii) Lender shall immediately and automatically be entitled to receive, collect, and possess all Rents (whether or not Lender enters upon or takes control of the Premises or has a receiver appointed for the Premises or takes any other action), as hereinafter provided in this Mortgage;

(iii) Lender may, at its sole option, notify in writing all tenants under Leases that all Rents due thereunder from and after the date of such notice shall be paid to Lender at its address set forth in this Mortgage, or at such other place as Lender shall notify Borrower or the tenants in writing; and

(iv) Any portion of Rents then or thereafter received or held by Borrower shall be payable immediately upon written demand to Lender for application by Lender, at its option, to the payment of the Indebtedness and/or expenses in connection with the operation and maintenance of the Premises.

(c) It is agreed that, if the Event of Default that gave rise to the termination of the revocable license pursuant to Section 5.02(a) is cured, then the revocable license granted pursuant to Section 5.02(a) shall be reinstated for so long as no other Event of Default shall occur and be continuing, subject to the provisions of this Section 5.02.

(d) Upon the occurrence of an Event of Default, Borrower agrees that, at Lender's sole option from time to time, Lender, and not Borrower, shall be deemed to be the creditor of each tenant under each Lease in respect of any and all assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting each

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tenant, with an option to apply in accordance with the Loan Documents any money received from such tenant in reduction of any amounts due under the Loan Documents. In each such case, Borrower, at Lender's sole option from time to time shall be obligated to file or make timely filings of claims in such proceedings and to otherwise pursue creditor's rights in such proceedings.

## ARTICLE VI

### Miscellaneous

#### Section 6.01 Notices.

(a) Unless otherwise specified therein, all notices, requests, demands, consents, waivers and other communications to be given under any Loan Document shall be in writing and shall be served either personally, by deposit with a reputable overnight courier with the charges prepaid, by personal delivery, or by registered or certified United States mail, with return receipt required and with postage prepaid, addressed to the Borrower or to the Lender at the address first written above or at such other address designated by such parties by notice to the others. Any such notices, requests, demands, consents, waivers or other communication shall be deemed to have been given upon delivery or on the date that acceptance of delivery is rejected except that any notice of change of address shall not be effective until actually received.

(b) Borrower shall notify Lender promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to the Mortgaged Property; (ii) any material change in the occupancy of the Mortgaged Property; (iii) receipt of any notice from the Landlord; or (iv) commencement of any judicial or administrative proceedings by, against or otherwise affecting Borrower or any guarantor, the Mortgaged Property, or any Person controlling, controlled by or under common control with Borrower or any guarantor, or any other action by any creditor thereof as a result of any default under the terms of any loan.

(c) All notices, requests, demands and other communications under this Mortgage shall be given to the following addresses:

If to Borrower:

MRR 166 N. Milwaukee, LLC  
Attn: Gerald Lee Nudo and Laurence H. Weiner  
55 East Jackson Blvd., Suite 500  
Chicago, IL 60604

With a copy to:

Much Shelist, P.C.  
Attn: Arnold Weinberg  
191 North Wacker Drive, Suite 1800  
Chicago, IL 60606

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If to Lender:

GreenState Credit Union  
2355 Landon Road  
P.O. Box 800  
North Liberty, IA 52317

**Section 6.02 Captions.** The captions of the sections and subsections of this Mortgage are for convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

**Section 6.03 Further Assurances.** Borrower shall do, execute, acknowledge and deliver, at its sole cost and expense, such further acts, instruments or documentation, including additional title insurance policies or endorsements, and title reinsurance, as Lender may reasonably require from time to time to better assure, transfer and confirm unto Lender the rights now or hereafter intended to be granted to Lender under this Mortgage or any other Loan Document.

**Section 6.04 Severability.** If any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Section 6.05 Borrower's Obligations Absolute.** All sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any portion thereof; (b) any restriction or prevention of or interference with any use of the Mortgaged Property or any portion thereof; (c) any title defect or encumbrance or any eviction from the Premises or any portion thereof by title paramount or otherwise; (d) any Bankruptcy Proceeding relating to Borrower, any general partner of Borrower, or any guarantor or indemnitor, or any action taken with respect to this Mortgage or any other Loan Document by any trustee or receiver of Borrower or any such general partner, guarantor or indemnitor, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Lender; (f) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

**Section 6.06 Amendments; Consents.** This Mortgage cannot be altered, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless in writing and signed by the party against which enforcement is sought.

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No consent or approval required hereunder or under any other Loan Document shall be binding unless in writing and signed by the party sought to be bound.

**Section 6.07 Other Loan Documents and Exhibits.** All of the agreements, conditions, covenants, provisions and stipulations contained in the Note and the other Loan Documents, and each of them, which are to be kept and performed by Borrower are hereby made a part of this Mortgage to the same extent and with the same force and effect as if they were fully set forth in this Mortgage, and Borrower shall keep and perform the same, or cause them to be kept and performed, strictly in accordance with their respective terms. The Cover Sheet and each exhibit, schedule and rider attached to this Mortgage are integral parts of this Mortgage and are incorporated herein by this reference. In the event of any conflict between the provisions of any such exhibit, schedule or rider and the remainder of this Mortgage, the provisions of such exhibit, schedule or rider shall prevail.

**Section 6.08 Legal Construction.**

(a) The enforcement of this Mortgage shall be governed by, and construed and interpreted in accordance with, the laws of the State.

(b) All terms contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

(c) The terms "include" and "including" as used in this Mortgage shall be construed as if followed by the phrase "without limitation". The words "hereof," "herein" and "hereunder" and words of similar import when used in this Mortgage shall refer to this Mortgage as a whole and not to any particular provision of this Mortgage, and Article, Section and Exhibit references contained in this Mortgage are references to Articles, Sections and Exhibits in or to this Mortgage unless otherwise specified.

(d) Any provision of this Mortgage or in the other Loan Documents permitting the recovery of "attorneys' fees", "attorneys' fees and expenses", "attorneys' fees and costs" or "attorneys' fees, costs and expenses" or any similar term shall be deemed: (i) to include such attorneys' fees, costs and expenses; (ii) to include such fees, costs and expenses incurred in all probate, appellate and bankruptcy proceedings, as well as any post-judgment proceedings to collect or enforce any judgment or order relating to the Indebtedness or any of the Loan Documents; and (iii) shall be deemed to be separate and several, and shall survive merger into judgment.

**Section 6.09 Merger.** So long as any Indebtedness shall remain unpaid, fee title to and any other estate in the Mortgaged Property shall not merge, but shall be kept separate and distinct, notwithstanding the union of such estates in any Person.

**Section 6.10 Time of the Essence.** Time shall be of the essence in the performance of all obligations of Borrower under this Mortgage.

**Section 6.11 Defeasance.** If all of the Indebtedness is paid in full in accordance with the Note, this Mortgage and the other Loan Documents and all of the covenants, warranties,

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conditions, undertakings and agreements made in the Note, this Mortgage and the other Loan Documents are fully kept and performed, then in that event only all rights of Lender under this Mortgage and the other Loan Documents shall terminate and the Mortgaged Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby and thereby, and Lender shall release or cause to be released such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost (to the extent permitted by the law of the State), and this Mortgage shall be void; provided, however, that no provision of this Mortgage or any other Loan Document which, by its own terms, is intended to survive such payment, performance, and release (nor the rights of Lender under any such provision) shall be affected in any manner thereby and such provision shall, in fact, survive. Recitals of any matters or facts in any release instrument executed by Lender under this Section 6.12 shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, such an instrument may describe the grantee or releasee as "the person or persons legally entitled thereto" and Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees or releases of any of the Mortgaged Property. When this Mortgage has been fully released or discharged by Lender, the release or discharge hereof shall operate as a release and discharge of the Assignment and as a reassignment of all future Leases and Property Income with respect to the Mortgaged Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

**Section 6.12 Business Purpose of Loan.** Borrower stipulates and warrants that the purpose of the Loan is for the sole purpose of carrying on or acquiring a business, professional or commercial enterprise. Borrower further stipulates and warrants that all proceeds will be used for said business, professional or commercial enterprise.

**Section 6.13 Transfer of Loan.** Lender may, at any time, sell, transfer or assign the Note, this Mortgage and the other Loan Documents or any portion thereof, and any or all servicing rights with respect thereto (collectively, a "**Transfer**"), or grant participations therein (a "**Participation**"). In the case of a Transfer, the transferee shall have, to the extent of such Transfer, the rights, benefits and obligations of "**Lender**" hereunder and the other Loan Documents. Borrower irrevocably waives any and all rights it may have under applicable state or federal law to prohibit disclosure, including any right of privacy. Further Borrower acknowledges that such information may be transmitted via the internet or by email. Lender will notify Borrower in writing of any Transfer of the Loan that results in Lender or its affiliates not retaining any ownership or servicing interest in the Loan.

**Section 6.14 Rider.** The Rider attached hereto is incorporated by this reference into this Mortgage. If any conflict or inconsistency exists between the Rider and the remainder of this Mortgage, the Rider shall govern.

*[Signature Page Follows]*

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IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered as of the day and year first above written.

BORROWER  
MRR 3001 SPAULDING LLC,  
an Illinois limited liability company

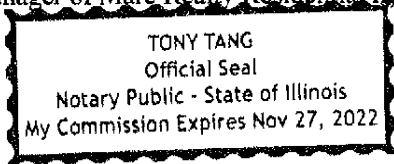
BY: MARC REALTY RESIDENTIAL II, LLC,  
an Illinois limited liability company,  
its Member

By: *Gerald L. Nudo*  
Name: Gerald L. Nudo  
Title: Manager

By: \_\_\_\_\_  
Name: Laurence H. Weiner  
Title: Manager

STATE OF ILLINOIS, COUNTY OF COOK, ss:

This instrument was acknowledged before me on this 26 day of May, 2022 by Gerald L. Nudo, Manager of Marc Realty Residential II, LLC, Member of MRR 3001 Spaulding LLC.



(Notary Seal Above)

*[Signature]*  
Notary Public

STATE OF ILLINOIS, COUNTY OF COOK, ss:

This instrument was acknowledged before me on this \_\_\_\_\_ day of May, 2022 by Laurence H. Weiner, Manager of Marc Realty Residential II, LLC, Member of MRR 3001 Spaulding LLC.

\_\_\_\_\_  
Notary Public

(Notary Seal Above)




# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered as of the day and year first above written.

BORROWER  
MRR 3001 SPAULDING LLC,  
an Illinois limited liability company

BY: MARC REALTY RESIDENTIAL II, LLC,  
an Illinois limited liability company,  
its Member

By: \_\_\_\_\_  
Name: Gerald L. Nudo  
Title: Manager

By:  \_\_\_\_\_  
Name: Laurence H. Weiner  
Title: Manager

STATE OF ILLINOIS, COUNTY OF COOK, ss:


This instrument was acknowledged before me on this \_\_\_\_\_ day of May, 2022 by Gerald L. Nudo, Manager of Marc Realty Residential II, LLC, Member of MRR 3001 Spaulding LLC.

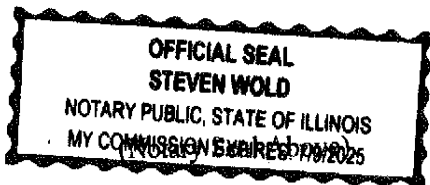
\_\_\_\_\_  
Notary Public

(Notary Seal Above)

STATE OF ILLINOIS, COUNTY OF COOK, ss:

This instrument was acknowledged before me on this 26 day of May, 2022 by Laurence H. Weiner, Manager of Marc Realty Residential II, LLC, Member of MRR 3001 Spaulding LLC.

 \_\_\_\_\_  
Notary Public



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## EXHIBIT A

### DESCRIPTION OF LAND

Lots 25, 26 and 27 in Block 15 in Avondale, being Philpot's Resubdivision of Lots 1, 2, 5 and 6 of Brand's Subdivision of the Northeast 1/4 of Section 26, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax Index Number: 13-26-212-019-0000

Address: 3001 N. Spaulding, Chicago, IL 60618

Property of Cook County Clerk's Office

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## EXHIBIT B

### PERMITTED ENCUMBRANCES

None

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## RIDER

### APPLICABLE STATE LAW PROVISIONS

The following provisions are incorporated by reference into this Mortgage. If any conflict or inconsistency exists between this Rider and the remainder of the attached Mortgage, this Rider shall govern.

(a) Protective Advances. Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after a judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* (the "Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "Protective Advances"):

(i) all advances by Lender in accordance with the terms of this Mortgage to:

(A) preserve or maintain, repair, restore or rebuild any improvements upon the Mortgaged Property;

(B) preserve the lien of this Mortgage or the priority thereof; or

(C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5-1302 of the Act;

(ii) payments by Lender of:

(A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Mortgaged Property;

(B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part hereof;

(C) other obligations authorized by this Mortgage; or

(D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any prior liens;

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(iv) reasonable attorneys' fees and other expenses incurred:

(A) in connection with the foreclosure of this Mortgage as referred to in Section 15-1504(d)(2) and 15-1510 of the Act;

(B) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Mortgage or arising from the interest of Lender hereunder; or

(C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Lender's fees and costs, including reasonable attorneys' fees, among/between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

(vii) expenses incurred and expenditures made by Lender for any one or more of the following:

(A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof;

(B) if any interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease;

(C) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property as imposed by subsection (c)(1) of Section 15-1704 of the Act;

(D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards;

(E) payments required or deemed by Lender to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property;

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(F) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member if in any way affecting the Mortgaged Property;

(G) costs incurred by Lender for demolition, preparation for and completion of construction; and

(H) pursuant to any lease or other agreement, for occupancy of the Mortgaged Property.

All Protective Advances shall be so much additional Indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Indebtedness secured by this Mortgage at any time; (B) the amount of the Indebtedness found due and owing to Lender in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Indebtedness becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5-1603 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Lender in possession; and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of sections 15-1508 and Section 15-1511 of the Act.

(b) Waiver of Right of Redemption and Reinstatement. Borrower hereby waives any and all rights of redemption and reinstatement, including, without limitation, such rights as are provided under 735 ILCS 5/15-1601 and 735 ILCS 5/15-1602.

(c) Business Loan Recital/Statutory Exemption. (i) Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(1)); (B) the Indebtedness secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4; (C) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured Indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* has been entered into solely for business purposes of Borrower and Borrower's investment or profit, as contemplated by said section.

(i) Without limiting the generality of anything contained herein, Borrower acknowledges and agrees that the transaction of which this Mortgage is part is a

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transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 (1992)) or residential real estate (as defined in 735 ILCS 5/15-1219 (1992)).

(d) Maximum Principal Amount. This Mortgage shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Mortgage also secures any and all future obligations and Indebtedness arising under or in connection with this Mortgage, which future obligations and Indebtedness shall have the same priority as if all such future obligations and Indebtedness were made on the date of execution hereof. Nothing in this Section or in any other provision of this Mortgage shall be deemed an obligation on the part of Lender to make any future advances of any sort. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Lender in connection with the Indebtedness to be secured hereby and which are to be reimbursed by Borrower under the terms of this Mortgage; provided, however, that the total Indebtedness shall not in any event exceed Four Million Dollars (\$4,000,000.00)

(e) Lender in Possession. In addition to any provision of the Mortgage authorizing the Lender to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1702 of the Act.

(f) Illinois Mortgage Foreclosure Act. It is the express intention of Lender and Borrower that the rights, remedies, powers and authorities conferred upon Lender pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provisions in this Mortgage are deemed inconsistent with any provision in the Act, the provisions of the 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 be construed in a manner consistent with the Act.

(g) Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

Unless the Borrower provides Lender with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Mortgaged Property or any other collateral for the Indebtedness. This insurance may, but need not protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Mortgaged Property or any other collateral for the Indebtedness. Borrower may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Borrower has obtained insurance as required by the Mortgage, the Loan Agreement or any of the other Loan Documents. If Lender purchases insurance for the Mortgaged Property or any other collateral for the Indebtedness, Borrower will be responsible for

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the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

(h) After Acquired Mortgaged Property. The lien hereof will automatically attach, without further act, to all after-acquired Land or Improvements attached to and/or used in connection with or in the operation of the Land or Improvements or any part thereof.

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