

Illinois Anti-Predatory  
Lending Database  
Program

Doc#: 2234208201 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 12/08/2022 02:51 PM Pg: 1 of 24

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: PIN: 04-04-303-031-0000

Address:

Street: 783 GREENWOOD ROAD

Street line 2:

City: NORTHBROOK

State: IL

ZIP Code: 60062

Lender: LOAN FUNDER LLC, SERIES 43945

Borrower: AMERICAN LLC

Loan / Mortgage Amount: \$1,008,480.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is not owner-occupied.

1/3  
FIDELITY NATIONAL TITLE

0022026945

Certificate number: 3A891A7B-3C82-4AEE-8AE7-30F1210ECEBE

Execution date: 11/23/2022

**UNOFFICIAL COPY**

Page 1 of 23



**American LLC**  
**\$1,008,480.00**  
**November 23, 2022**

*Prepared By and*

**After Recording Return to:**  
**LOAN FUNDER LLC, SERIES 43945**  
 645 Madison Avenue,  
 Floor 19, New York,  
 NY 10022

**COMMERCIAL MORTGAGE, SECURITY AGREEMENT AND**  
**FIXTURE FILING**

**MERS MIN #: 101516205800439455**

**DATED:** November 23, 2022

**BORROWER:** American LLC  
 1425 McHenry Road, Buffalo Grove, IL 60089

**MORTGAGEE:** MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.  
 ("MERS") as Nominee for LOAN FUNDER LLC, SERIES 43945  
 P.O. Box 2026  
 Flint, MI 48501-2026

**LENDER:** LOAN FUNDER LLC, SERIES 43945  
 645 Madison Avenue, 19th Floor, New York, NY 10022

**PROPERTY:** 783 Greenwood Road, Northbrook, IL 60062

**LOAN AMOUNT:** \$1,008,480.00

KNOW ALL MEN BY THESE PRESENTS that American LLC, a[n] Illinois Limited Liability Company, having an office at 1425 McHenry Road, Buffalo Grove, IL 60089 ~~Mortgagor~~ or "Borrower", as the case maybe), for the consideration of **One Million Eight Thousand Four Hundred Eighty and 00/100 Dollars (\$1,008,480.00)** and other good and valuable consideration, received to its full satisfaction from **LOAN FUNDER LLC, SERIES 43945**, a Delaware Limited Liability Company, having its principal place of business at 645 Madison Avenue, 19th Floor, New York, NY 10022 ("Lender"), does hereby give, grant, bargain and confirm unto Mortgage Electronic Registration Systems, Inc. ("MERS" or **Mortgagee**) (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following:

- (A) All right, title and interest in and to those premises more commonly known as **783 Greenwood Road, Northbrook, IL 60062** (the "Property") which is more particularly described in SCHEDULE A (the "Premises") which is attached hereto and made a part hereof;
- (B) TOGETHER WITH (1) all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Premises and now or hereafter owned, or the ownership of which is hereafter required, and (2) all building materials, supplies and other

# UNOFFICIAL COPY



property stored at or delivered to the Premises or any other location for incorporation into the improvements located or to be located on the Premises, and all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever now or hereafter owned, or the ownership of which is hereafter acquired, by Mortgagor and now or hereafter located in or on, now or hereafter attached to, and used or intended to be used in connection with, or with the operation of, or the occupancy of, the Premises, buildings, structures or other improvements, or in connection with any construction being conducted or which may now or hereafter be conducted thereon, and now or hereafter owned, or the ownership of which is hereafter acquired by Mortgagor and all extensions, additions, improvements, betterments, renewals, substitutions and replacements now or hereafter made with respect to any of the foregoing, and all of the right, title and interest of Mortgagor in and to such personal property which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and a part of the real property encumbered hereby (the "Improvements");

- (C) TOGETHER WITH (1) all estate, right, title and interest of Mortgagor, of whatever character, whether now owned or hereafter acquired, in and to (a) all streets, roads and public places, open or proposed, in front of or adjoining the Premises, and the land lying in the bed of such streets, roads and public places, and (b) all other sidewalks, alleys, ways, passages, strips and gores of land adjoining or used or intended to be used in connection with any of the property described in paragraphs (A) and (B) hereof, or any part thereof; and (2) all water courses, water rights, easements, rights-of-way and rights of use or passage, public or private, and all estates, interest, benefits, powers, rights (including, without limitation, any and all lateral support, drainage, slope, sewer, water, air, mineral, oil, gas and subsurface rights), privileges, licenses, profits, rents, royalties, tenements, hereditaments, reversions and subreversions, remainders and subremainders and appurtenances whatsoever in any way belonging, relating or appertaining to any of the property described in paragraphs (A) and (B) hereof, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor; and
- (D) TOGETHER WITH (a) all estate, right, title and interest of Mortgagor of, in and to all judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) or (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) or (C) hereof, or any part thereof; and Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquitances therefor, and (if it so elects) to apply the same, after deducting therefrom any expenses incurred by Lender in the collection and handling thereof, toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; and (b) all contract rights, general intangibles, governmental permits, licenses and approvals, actions and rights in action, including without limitation all rights to insurance proceeds and unearned premiums, arising from or relating to the property described in paragraphs (A), (B) and (C) above; and (c) all proceeds, products, replacements additions, substitutions, renewals and accessions of and to the property described in paragraphs (A), (B) and (C).

All of the property described in paragraphs (A), (B), (C) and (D) above, and each item of property therein described, is herein referred to as the "Mortgaged Property".

TO HAVE AND TO HOLD the above granted and bargained Premises, with the appurtenances

# UNOFFICIAL COPY



Page 3 of 23

thereof, unto it, the said Lender, its successors and assigns forever, to it and their own proper use and behoof. And also, the said Mortgagor does for itself, its successors and assigns, covenant with the said Lender, its successors and assigns, that at and until the ensembling of these presents, they are well seized of the Premises as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free and clear of all encumbrances whatsoever.

AND FURTHERMORE, Mortgagor does by these presents bind itself, its legal representatives and its successors and assigns forever to WARRANT AND DEFEND the above granted and bargained Mortgaged Property to MERS, its successors and assigns, against all claims and demands whatsoever.

## THE CONDITION OF THIS Mortgage IS SUCH THAT:

WHEREAS, MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the Mortgagee under this Security Instrument. MERS is organized and existing under the laws of State of Delaware and has a mailing address of P.O. Box 2026, Flint, MI 48501-2026, and a street address of 1901 E Voorhees Street, Suite C, Danville, IL 61834. The MERS telephone number is (888) 679-MERS.

WHEREAS, Mortgagor is indebted to Lender by virtue of a commercial loan transaction (the "Loan") in the sum of **One Million Eight Thousand Four Hundred Eighty and 00/100 Dollars (\$1,008,480.00)** as evidenced by (1) a certain Commercial Non-Revolver Line of Credit Promissory Note in the principal amount of **One Million Eight Thousand Four Hundred Eighty and 00/100 Dollars (\$1,008,480.00)** (as same may be amended, restated, or modified from time to time, the "Note") dated **November 23, 2022** executed by Mortgagor and delivered to Lender, with all amounts remaining unpaid thereon being finally due and payable on **November 23, 2023** and (2) that certain Loan Agreement (as same may be amended, restated, or modified from time to time, "Loan Agreement") of even date herewith;

WHEREAS, the terms and repayment of such obligations of the Mortgagor are set forth in the Note;

WHEREAS, to secure payment and performance of the indebtedness and obligations represented by the Note, the Mortgagor is hereby executing this Mortgage in favor of MERS;

WHEREAS, Mortgagor represents and warrants that it has full power and authority to execute and deliver the Note, this Mortgage and all other documents, agreements and instruments required of it by Lender in connection with the making of the Loan (the Note, this Mortgage, and all such other documents, agreements and instruments executed and delivered by Mortgagor in connection with the Loan being sometimes collectively referred to herein as the "Loan Documents").

NOW, THEREFORE, Mortgagor hereby covenants and agrees with Lender as follows:

## ARTICLE ONE: COVENANTS OF Mortgagor

### 1.01 Performance of Loan Documents.

Mortgagor shall cause to be performed, observed and complied with all provisions hereof, of the Note and each of the Loan Documents, and will promptly pay to Lender the principal, with interest thereon, and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of the Loan Documents when payment shall become due (the entire principal amount of the Note, all accrued interest thereon and all obligations and indebtedness thereunder and

# UNOFFICIAL COPY



hereunder and under all of the Loan Documents described being referred to herein as the "Indebtedness").

## 1.02 General Representations, Covenants and Warranties.

Mortgagor represents and covenants that (a) Mortgagor is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities and no bankruptcy or insolvency case or proceeding is pending or contemplated by or against Mortgagor; (b) all reports, statements and other data furnished by Mortgagor to Lender in connection with the Loan are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading; (c) this Mortgage, the Note and all other Loan Documents are legal, valid and binding obligations of Mortgagor enforceable in accordance with their respective terms and the execution and delivery thereof do not contravene any contract or agreement to which Mortgagor is a party or by which Mortgagor may be bound and do not contravene any law, order, decree, rule or regulation to which Mortgagor is subject; (d) there are no actions, suits or proceedings pending, or to the knowledge of Mortgagor threatened, against or affecting Mortgagor or any part of the Mortgaged Property; (e) all costs arising from construction of any improvements and the purchase of all equipment located on the Mortgaged Property which have been incurred prior to the date of this Mortgage have been paid; (f) the Mortgaged Property has frontage on, and direct access for ingress and egress to the street(s) described in any survey submitted to Lender; (g) electric, sewer, water facilities and any other necessary utilities are, or will be, available in sufficient capacity to service the

Mortgaged Property satisfactorily during the term of the Note, and any easements necessary to the furnishing of such utility service by Mortgagor have been or will be obtained and duly recorded (evidence satisfactory to Lender that all utility services required for the use, occupancy and operations of the Mortgaged Property shall be provided to Lender immediately upon Lender's request); (h) there has not been, is not presently and will not in the future be any activity conducted by Mortgagor or any tenant at or upon any part of the Mortgaged Property that has given or will give rise to the imposition of a lien on any part of the Mortgaged Property; (i) Mortgagor is not in default under the terms of any instrument evidencing or securing any indebtedness of Mortgagor and there has occurred no event which would, if uncured or uncorrected, constitute a default under any such instrument with the giving of notice, or the passage of time or both; and (j) Lender has legal capacity to enter into the Loan and to execute and deliver the Loan Documents, and the Loan Documents have been duly and properly executed on behalf of Lender.

## 1.03 Compliance with Laws; Permits; Notice.

Mortgagor covenants and warrants that the Mortgaged Property presently complies with and shall continue to comply with all applicable restrictive covenants, applicable zoning, wetlands and subdivision ordinances and building codes, all applicable health and environmental laws and regulations and all other applicable laws, statutes, rules, ordinances, codes, and regulations, and Mortgagor has not received any notice that the Mortgaged Property is not in compliance with any such laws, statutes, rules, ordinances, codes and regulations. If Mortgagor receives notice from any federal, state or other governmental body that it is not in compliance with any such laws, statutes, rules, ordinances, codes and regulations, Mortgagor shall provide Lender with a copy of such notice promptly. Mortgagor agrees to comply with all federal, state and municipal local laws, statutes, rules, ordinances, codes and regulations in connection with the construction and development of the Mortgaged Property. Mortgagor has obtained all licenses, permits, authorizations, consents and approvals necessary for the construction and development of the Mortgaged Property, and all such licenses, permits, authorizations, consents and approvals are in full force and effect and all appeal periods have expired. Unless required by applicable law or unless Lender has otherwise agreed in writing, Mortgagor shall not allow changes in the nature of the occupancy for which the Premises



# UNOFFICIAL COPY



were intended at the time this Mortgage was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Mortgaged Property without Lender's prior written consent. Mortgagor warrants and represents that its use, and the use by any of its tenants, of the Mortgaged Property is in accordance and compliance with the terms and conditions of any and all rules, regulations, and laws that may be applicable to the Mortgaged Property, including, without limitation, all federal, state and local laws, ordinances, rules and regulations regarding hazardous and toxic materials and that Mortgagor shall maintain and continue such compliance and shall require and ensure its tenants' compliance with the same. Mortgagor shall maintain or shall cause their agent to maintain in its possession, available for the inspection of the Lender, and shall deliver to the Lender, upon three (3) business days' request, evidence of compliance with all such requirements. Mortgagor hereby indemnifies and holds Lender free of and harmless from and against any and all claims, demands, damages or liabilities that Lender may incur with regard thereto.

## **1.04 Taxes and Other Charges.**

**1.04.1 Impositions.** Subject to the provisions of this Section 1.04, Mortgagor shall pay, at least five (5) days before the date due, all real estate taxes, personal property taxes, assessments, water and sewer rates and charges, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalk in front of or adjoining the Premises, and all other governmental levies and charges (collectively, the "Impositions"), of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, which shall be assessed, levied, confirmed, imposed or become a lien upon or against the Mortgaged Property or any part thereof, or which shall be or be payable with respect thereto. Mortgagor shall deliver to Lender, within twenty (20) days after the due date of each payment in connection with the Impositions or any assessment for local improvements ("Assessment"), the original or a true Photostatic copy of the official receipt evidencing such payment or other proof of payment satisfactory to Lender.

## **1.04.2 Insurance.**

(a) Mortgagor shall keep all buildings erected on or to be erected on the Mortgaged Property insured against loss by fire and such other hazards as the Lender may require and Mortgagor shall obtain and maintain insurance with respect to other insurable risks and coverage relating to the Mortgaged Property including, without limitation, fire, builder's risk, worker's compensation, physical damages, loss of rentals or business interruption, earthquake (if applicable), and liability insurance, all such insurance to be in such sums and upon such terms and conditions as Lender reasonably may require, with loss proceeds by the terms of such policies made payable to the Lender as its interest may appear. Mortgagor covenants that all insurance premiums shall be paid not later than fifteen (15) days prior to the date on which such policy could be cancelled for non-payment. If, to Mortgagor knowledge, any portion of the Mortgaged Property is in an area identified by any federal governmental authority as having special flood hazards, and flood insurance is available, a flood insurance policy meeting the current guidelines of FEMA's Federal Insurance and Mitigation Administration is in effect with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (1) the outstanding principal balance of the Loan, (2) the full insurable value of the Mortgaged Property, and (3) the maximum amount of insurance available under the Flood Disaster Protection Act of 1973, as amended. All such insurance policies (collectively, the "hazard insurance policy") shall contain a standard Lender clause naming the Lender and its successors and assigns as beneficiary, and

# UNOFFICIAL COPY



may not be reduced, terminated, or canceled without thirty (30) days' prior written notice to the Lender.

(b) Such insurance companies shall be duly qualified as such under the laws of the states in which the Mortgaged Property is located, duly authorized and licensed in such states to transact the applicable insurance business and to write the insurance provided, and companies whose claims paying ability is rated in the two highest rating categories by A.M. Best with respect to hazard and flood insurance. Such insurance shall be in amounts not less than the greater of: (i) the outstanding principal balance of the Loan, or (ii) the amount necessary to avoid the operation of any co-insurance provisions with respect to the Premises.

(c) All such policies shall provide for a minimum of thirty (30) days prior written cancellation notice to Lender. Lender, upon its request to Mortgagor, shall have the custody of all such policies and all other policies which may be procured insuring said Mortgaged Property, the same to be delivered, to Lender at its office and all renewal policies to be delivered and premiums paid to Lender at its office at least twenty (20) days before the expiration of the old policies; and Mortgagor agrees that upon failure to maintain the insurance as above stipulated or to deliver said renewal policies as aforesaid, or to pay the premiums therefor, Lender may, without obligation to do so, procure such insurance and pay the premiums therefor and all sums so expended shall immediately be paid by Mortgagor and unless so paid, shall be deemed part of the debt secured hereby and shall bear interest at the rate set forth in the Note, and thereon the entire principal sum unpaid, including such sums as have been paid for premiums of insurance as aforesaid, and any and all other sums which shall be payable hereunder shall become due and payable forthwith at the option of Lender, anything herein contained to the contrary notwithstanding. In case of loss and payment by any insurance company, the amount of insurance money received shall be applied either to the Indebtedness secured hereby, or in rebuilding and restoring the damaged property, as Lender may elect.

(d) Mortgagor has not engaged in and shall not engage in any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either including, without limitation, no unlawful fee, commission, kickback, or other unlawful compensation or value of any kind has been or will be received, retained, or realized by any attorney, firm, or other person, and no such unlawful items have been received, retained, or realized by Mortgagor.

(e) No action, inaction, or event has occurred and no state of facts exists or has existed that has resulted or will result in the exclusion from, denial of, or defense to coverage under any applicable special hazard insurance policy or bankruptcy bond, irrespective of the cause of such failure of coverage.

**1.04.3 Deposits for Impositions and Insurance.** Notwithstanding anything to the contrary contained in any of the Loan Documents, upon demand by Lender, after failure by Mortgagor to pay any of the amounts specified in Sections 1.04.1 or 1.04.2, Mortgagor shall deposit with Lender on the first day of each month an amount equal to one twelfth (1/12th) of the sum of: (i) the aggregate annual payments for the Impositions; (ii) the annual insurance premiums on the policies of insurance required to be obtained and kept in force by Mortgagor under this Mortgage; and (iii) all other periodic charges (other than interest and principal under the Note) arising out of the ownership of the Mortgaged Property or any portion thereof which are or with notice or the passage of time or both will become a lien against the

# UNOFFICIAL COPY



Mortgaged Property or any part thereof ((i), (ii), and (iii), collectively, the “Annual Payments”). Such sums will not bear interest and are subject to adjustment or additional payments in order to assure Lender that it will have the full amount of any payment on hand at least one (1) month prior to its due date. Lender shall hold said sums in escrow to pay said Annual Payments in the manner and to the extent permitted by law when the same become due and payable. **Notwithstanding anything herein to the contrary, however, such deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of Lender.** If the total payments made by Mortgagor to Lender, on account of said Annual Payments up to the time when the same become due and payable, shall exceed the amount of payment for said Annual Payments actually made by Lender, such excess shall be credited by Lender against the next payment or payments due from Mortgagor to Lender on account of said Annual Payments. If, however, said payments made by Mortgagor shall not be sufficient to pay said Annual Payments when the same become due and payable, Mortgagor agrees to promptly pay to Lender the amount necessary to make up any deficiency. In case of default in the performance of any of the agreements or provisions contained in the Note, Lender may, at its option, at any time after such default, apply the balance remaining of the sums accumulated, as a credit against the principal or interest of the Mortgage Indebtedness, or both.

**1.04.4 Late Charge.** Lender may collect a “late charge” of five percent (5%) on any payment or installment due or required to be paid pursuant to the terms of this Mortgage or the Note which is not paid within ten (10) days of when the same is required to be paid to cover the extra expenses involved in handling such delinquent payment.

**1.04.5 Proof of Payment.** Upon a request of Lender, Mortgagor shall deliver to Lender, within twenty (20) days after the due date of any payment required in this Section 1.04, proof of payment satisfactory to Lender.

**1.05 Condemnation.** Lender shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or on account of, any damage or taking through condemnation, eminent domain or the like, and Lender is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor name any action or proceeding relating to any such condemnation, taking or the like and to settle or compromise any claim in connection therewith.

#### **1.06 Care of Mortgaged Property; Demolition and Alteration.**

Mortgagor shall maintain the Mortgaged Property in good condition and repair, shall not commit or suffer any waste of the Mortgaged Property, and shall comply with or cause to be complied with, all statutes, laws, rules, ordinances and requirements of any governmental authority relating to the Mortgaged Property; and Mortgagor shall promptly repair, restore, replace or rebuild any part of the Mortgaged Property now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any proceeding of the character referred to in Section 1.05. Mortgagor shall complete and pay for, within a reasonable time, any structure in the process of construction on the Mortgaged Property at any time during the term of the Loan; and Mortgagor shall not initiate, join in, or consent to any change in any private restrictive covenants, or private restrictions, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof, without the written consent of Lender. Mortgagor agrees that no building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished, or materially altered, without the prior written consent of Lender, except that Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete,



# UNOFFICIAL COPY



provided that simultaneously with or prior to such removal any such equipment shall be replaced with other equipment of value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrance, and by such removal and replacement Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage.

## **1.07 Transfer and Encumbrance of Mortgaged Property.**

(a) Mortgagor shall not sell, convey, transfer, suffer any type of change in title or ownership, lease, assign or further encumber any interest in any part of the Mortgaged Property, without the prior written consent of Lender. Any such sale, conveyance, transfer, pledge, lease, assignment or encumbrance made without Lender's prior written consent shall be null and void and shall constitute a default hereunder.

(b) Mortgagor shall not, without the prior written consent of Lender, permit any further assignment of the rents, royalties, issues, revenues, income, profits or other benefits from the Mortgaged Property, or any part thereof, and any such assignment without the prior written consent of Lender shall be null and void and shall constitute a default hereunder. Mortgagor agrees that in the event the ownership of the Mortgaged Property or any part thereof is permitted by Lender to be vested in a person other than Mortgagor, Lender may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage and the Note and other sums hereby secured without in any way vitiating or discharging Mortgagor liability hereunder or upon the Note and other sums hereby secured. No sale of the Mortgaged Property and no forbearance to any person with respect to this Mortgage and no extension to any person of the time for payment of the Note and other sums hereby secured given by Lender shall operate to release, discharge, modify, change or affect the original liability of Mortgagor either in whole or in part. Furthermore, Mortgagor does hereby agree to Mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the Property.

(c) If Mortgagor shall sell, convey, assign or transfer all or any part of the Mortgaged Property or any interest therein or any beneficial interest in Mortgagor without Lender's prior written consent, Lender may, at Lender's option, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or other notice, or any other action, all of which are hereby waived by Mortgagor and all other parties obligated in any manner on the Indebtedness, declare the Indebtedness to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment, lease or transfer, and upon such declaration the entire unpaid balance of the Indebtedness shall be immediately due and payable. Mortgagor shall keep the Mortgaged Property free from mechanics' liens, materialmen's liens and encumbrances. If any prohibited lien or encumbrance is filed against the Mortgaged Property, Mortgagor shall cause the same to be removed and discharged of record within thirty (30) days after the date of filing thereof.

(d) Mortgagor shall obtain, upon request by Lender, from all persons hereafter having or acquiring any interest in or encumbrance on the Mortgaged Property or the said equipment or accessions, a writing duly acknowledged, and stating the nature and extent of such interest or encumbrance and that the same is subordinate to this Mortgage and no offsets or defenses exist in favor thereof against this Mortgage or the Note hereby secured, and deliver such writing to Lender.

**1.08 Further Assurances.** At any time and from time to time upon Lender's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled, at such time and in such offices and places as shall be deemed desirable by Lender, any and all such further mortgages, instruments of further assurance, certificates and such other documents as Lender may consider necessary or desirable in order to effectuate, complete or perfect,

# UNOFFICIAL COPY



Page 9 of 23

or to continue and preserve, the obligations of Mortgagor under the Note and this Mortgage, the lien of this Mortgage as a lien upon all of the Mortgaged Property, and unto all and every person or persons deriving any estate, right, title or interest under this Mortgage. Upon any failure by Mortgagor to do so, Lender may make, execute, record, file, re-record or refile any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to do so.

**1.09 Uniform Commercial Code Security Agreement and Fixture Filing.** This Mortgage is intended to be a security agreement and fixture filing which is to be filed for record in the real estate records pursuant to the Uniform Commercial Code in effect from time to time in the State where the Property is located for any of the goods specified above in this Mortgage as part of the Mortgaged Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code and Mortgagor hereby agrees to execute and deliver any additional financing statements covering said goods from time to time and in such form as MERS may require to perfect a security interest with respect to said goods. Mortgagor shall pay all costs of filing such financing statements and renewals and releases thereof and shall pay all reasonable costs and expenses of any record searches for financing statements which MERS may reasonably require. Without the prior written consent of MERS, Mortgagor shall not create or suffer to be created, pursuant to the Uniform Commercial Code, any other security interest in said goods, including replacements and additions thereto. Upon Mortgagor breach of any covenant or agreement of Mortgagor contained in this Mortgage, including the covenants to pay when due all sums secured by this Mortgage, MERS shall have the remedies of a secured party under the Uniform Commercial Code and, at MERS's option, may also invoke the remedies permitted by applicable law as to such goods.

**AS IT IS RELATED HERETO:**

**DEBTOR IS:** American LLC  
1425 McHenry Road, Buffalo Grove, IL 60089

**SECURED PARTY IS:** LOAN FUNDER LLC, SERIES 43945  
645 Madison Avenue, 19th Floor, New York, NY 10022

Mortgagor represents, covenants, and warrants that as of the date hereof as follows: Mortgagor full, correct, and exact legal name is set forth immediately above in this Section 1.09. Mortgagor is an organization of the type and is incorporated in, organized, or formed under the laws of the state specified in the introductory paragraph to this Mortgage. In the event of any change in name or identity of Mortgagor, Mortgagor hereby authorizes Lender to file such Uniform Commercial Code forms as are necessary to maintain the priority of the lien of this Mortgage upon the Mortgaged Property which may be deemed personal property or fixtures, including future replacement thereof, which serves as collateral under this Mortgage.

**1.10 Lease Covenants.** Each and every covenant on the part of Mortgagor contained in any assignment of lessor's interest in leases or any assignment of rents, royalties, issues, revenues, profits, income or other benefits made collateral hereto is made an obligation of Mortgagor hereunder as if fully set forth herein.

**1.11 After-Acquired Property.** To the extent permitted by and subject to applicable law, the lien of this Mortgage will automatically attach, without further act, to all after-acquired property located in, on, or attached to, or used, or intended to be used, in connection with, or with the renovation of, the Mortgaged Property or any part thereof; provided, however, that, upon request of Lender, Mortgagor shall execute and deliver such instrument or instruments as shall reasonably be requested by Lender

# UNOFFICIAL COPY



to confirm such lien, and Mortgagor hereby appoints Lender its attorney-in-fact to execute all such instruments, which power is coupled with an interest and is irrevocable.

**1.12 Expenses.** Unless otherwise agreed in writing, Mortgagor will pay when due and payable all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorneys' fees, court costs, fees of inspecting architect(s) and engineer(s) and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with: (a) the preparation and execution of the Loan Documents; (b) the funding of the Loan; (c) in the event an Event of Default occurs hereunder or under the Note or any of the Loan Documents, all costs, fees and expenses, including, without limitation, all reasonable attorneys' fees in connection with the enforcement under the Note or foreclosure under this Mortgage, preparation for enforcement of this Mortgage or any other Loan Documents, whether or not suit or other action is actually commenced or undertaken; (d) enforcement of this Mortgage or any other Loan Documents; (e) court or administrative proceedings of any kind to which Lender may be a party, either as plaintiff or defendant, by reason of the Note, the Mortgage or any other Loan Documents; (f) preparation for and actions taken in connection with Lender's taking possession of the Mortgaged Property; (g) negotiations with Mortgagor, its beneficiary, or any of its agents in connection with the existence or cure of any Event of Default or default; (h) any proposed refinancing by Mortgagor or any other person or entity of the debt secured hereby; (i) the transfer of the Mortgaged Property in lieu of foreclosure; (j) inspection of the Mortgaged Property pursuant to Section 1.15; and (k) the approval by Lender of actions taken or proposed to be taken by Mortgagor, its beneficiary, or other person or entity which approval is required by the terms of this Mortgage or any other of the Loan Document. Mortgagor will, upon demand by Lender, reimburse Lender or any takeout lender for all such expenses which have been incurred or which shall be incurred by either of them; and will indemnify and hold harmless Lender from and against, and reimburse it for, the same and for all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by it by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever or asserted against it on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Mortgaged Property, or with this Mortgage or the Indebtedness.

**1.13 Lender's Performance of Defaults.** If Mortgagor defaults in the payment of any tax, Assessment, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition, agreement or term in this Mortgage, the Note or in any of the Loan Documents, Lender may, without obligation to do so, to preserve its interest in the Mortgaged Property, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by Lender in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Lender, together with interest thereon at the default rate, as provided in the Note, from the date incurred until paid by Mortgagor, shall be added to the Indebtedness and secured by the lien of this Mortgage to the extent permitted by law. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition, agreement or term, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

**1.14 Financial Statements, Books, and Records.**

Mortgagor will furnish to Lender, within thirty (30) days after a request therefor, a detailed statement in writing, covering the period of time specified in such request, showing all income derived from the operation of the Mortgaged Property, and all disbursements made in connection therewith, and

# UNOFFICIAL COPY



containing a list of the names of all tenants and occupants of the Mortgaged Property, the portion or portions of the Mortgaged Property occupied by each such tenant and occupant, the rent and other charges payable under the terms of their leases or other agreements and the period covered by such leases or other agreements.

**1.15 Inspection.** Lender, and any persons authorized by Lender, shall have the right, at Lender's option, to enter and inspect the Premises during the fourth (4<sup>th</sup>) month and at all other reasonable times during the term of the Loan. Mortgagor shall pay any professional fees and expenses, which may be incurred by Lender in connection with such inspection.

**1.16 Loan to Value Covenant.** If at any one or more time(s) during the term of the Note the then aggregate outstanding and committed principal amount of the Note, plus accrued interest and fees thereon, plus all amounts outstanding under any debts secured by prior liens on the Mortgaged Property, is greater than eighty percent (80%) of the value of the Mortgaged Property, as determined by Lender based upon Lender's review of any appraisal and such other factors as Lender may deem appropriate, then Mortgagor shall within thirty (30) days following a request by Lender, prepay the Note by an amount sufficient to cause the then outstanding principal amount of the Note, plus accrued interest and fees thereon, to be reduced to an amount equal to or less than eighty percent (80%) of the value of the Mortgaged Property. The inability of Mortgagor to reduce the principal balance of the Note within thirty (30) days following request by Lender shall be, at Lender's option, an Event of Default, hereunder.

## ARTICLE TWO: DEFAULTS

**2.01 Event of Default.** The term "Event of Default" or "default" wherever used in this Mortgage, shall mean anyone or more of the following events: (a) failure by Mortgagor to pay any installment of principal and/or interest under the Note within five (5) days after the same becomes due and payable; (b) failure by Mortgagor to observe or perform, or upon any default in, any other covenants, agreements or provisions herein, in the Note, or in any of the Loan Documents; (c) failure by Mortgagor to pay any Imposition, Assessment, other utility charges on or lien against the Mortgaged Property; (d) failure by Mortgagor to keep in force the insurance required in this Mortgage; (e) failure by Mortgagor to either deliver the policies of insurance described in this Mortgage or to pay the premiums for such insurance as provided herein; (f) failure by Mortgagor to pay any installment, which may not then be due or delinquent, of any Assessment for local improvements for which an official bill has been issued by the appropriate authorities and which may now or hereafter affect the Mortgaged Property, and may be or become payable in installments; (g) the actual or threatened waste, removal or demolition of, or material alteration to, any part of the Mortgaged Property, except as permitted herein; (h) the vesting of title, or any sale, conveyance, transfer, leasing, assignment or further encumbrance in any manner whatsoever of any interest in the Mortgaged Property, or any part thereof, in or to anyone other than the present owner, or any change in title or ownership of the Mortgaged Property, or any part thereof, without the prior written consent of Lender; (i) all or a material portion of the Mortgaged Property being taken through condemnation, eminent domain, or any other taking such that Lender has reason to believe that the remaining portion of the Mortgaged Property is insufficient to satisfy the outstanding balance of the Note, or the value of the Mortgaged Property being impaired by condemnation, eminent domain or any other taking, (which term when used herein shall include, but not be limited to, any damage or taking by any governmental authority or any other authority authorized by the laws of any state or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily for a period in excess of thirty (30) days, or permanently; (j) the merger or dissolution of Mortgagor or the death of



# UNOFFICIAL COPY



any guarantor of the Note (“Guarantor”); (k) any representation or warranty of Mortgagor or Guarantor made herein or in any such guaranty or in any certificate, report, financial statement, or other instrument furnished in connection with the making of the Note, the Mortgage, or any such guaranty, shall prove false or misleading in any material respect; (l) Maker makes or takes any action to make a general assignment for the benefit of its creditors or becomes insolvent or has a receiver, custodian, trustee in Bankruptcy, or conservator appointed for it or for substantially all or any of its assets; (m) Mortgagor files, or becomes the subject of, a petition in bankruptcy, or upon the commencement of any proceeding or action under any bankruptcy laws, insolvency laws, relief of debtors laws, or any other similar law affecting Mortgagor, provided however, that Mortgagor shall have sixty (60) days from the filing of any involuntary petition in bankruptcy to have the same discharged and dismissed; (n) the Mortgaged Property becomes subject to (1) any tax lien which is superior to the lien of the Mortgage, other than a lien for local real estate taxes and assessments not due and payable or (2) any mechanic's, materialman's, or other lien which is, or is asserted to be, superior to the lien of the Mortgage and such lien shall remain undischarged for thirty (30) days, (o) Mortgagor fails to promptly cure any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property; (p) in the event of any material adverse change in the financial condition of Mortgagor; or (q) any of the aforementioned events occur with respect to any Guarantor.

## ARTICLE THREE: REMEDIES

In the event that an Event of Default or default shall have occurred, the remedies available to Lender include, but are not limited to, any and all rights and remedies available hereunder, any and all rights and remedies available at law, in equity, or by statute. Without limiting the foregoing, the rights and remedies available to Lender shall include, but not be limited to, any one or more of the following:

**3.01 Acceleration of Maturity.** If an Event of Default shall have occurred, Lender may, at its option, declare without demand or notice all of the outstanding Indebtedness to be due and payable immediately, and upon such declaration such Indebtedness shall immediately become and be due and payable without demand or notice.

**3.02 Lender's Right to Enter and Take Possession.** If an Event of Default shall have occurred, Mortgagor, upon demand on Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property and Lender itself, or by such officers or agents as it may appoint, may enter and take possession of the Mortgaged Property, collect and receive the rents and income therefrom, and to apply so much of said rents and income as may be required in the necessary expenses of running said Premises, including reasonable attorneys' fees, management agents' fees, and if the Lender manages the Premises with its own employees, an amount equal to the customary management agents' fees charged for similar property in the area where the Premises are located, and to apply the balance of said rents and income to the payment of the amounts due upon said Note, or in payment of taxes assessed against the Premises, or both. And for this purpose, and in case of such default, the Mortgagor hereby assigns, transfers and sets over to the Lender the rents and income accruing from said Premises. Nothing contained in the foregoing provisions shall impair or affect any right or remedy which the Lender might now or hereafter have, were it not for such provisions, but the rights herein given shall be in addition to any others which the Lender may have hereunder.

**3.03 Receiver.** If an Event of Default shall have occurred, Lender, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled to apply for the appointment of a receiver of the rents and profit of the Mortgaged Property without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Mortgaged Property as security for the amounts due Lender, or the solvency of any



# UNOFFICIAL COPY



person or limited liability company liable for the payment of such amounts.

### **3.04 Waiver of Appraisal, Valuation, Stay, Exemption, and Redemption Laws, etc.; Marshaling.**

Mortgagor agrees to the full extent permitted by law that after an Event of Default neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, exemption, moratorium, or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure hereof.

**3.05 Suits to Protect the Property.** Lender shall have the power and authority to institute and maintain any suits and proceedings as Lender may deem advisable in order to (a) prevent any impairment of the Mortgaged Property, (b) foreclose this Mortgage (c) preserve and protect its interest in the Mortgaged Property and (d) to restrain the enforcement of, or compliance with, any legislation or other governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Lender's interest. Furthermore, Mortgagor understands and agrees that MERS holds only legal title to the rights granted by Mortgagor in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right (a) to exercise any or all of the aforementioned rights, including, but not limited to, the right to foreclosure and sell the Property; and (b) to take any action required of Lender including, but not limited to, releasing and canceling this security instrument.

**3.06 Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial case or proceeding affecting Mortgagor, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such case or proceeding for the entire Indebtedness at the date of the institution of such case or proceeding, and for any additional amounts which may become due and payable by Mortgagor after such date.

**3.07 Application of Monies by Lender.** After the occurrence of an Event of Default, any monies collected or received by Lender shall be applied in such priority as Lender may determine in its sole and absolute discretion, to such matters including, but not limited to, the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender, to deposits for Impositions and Insurance and insurance premiums due, to the cost of insurance, Impositions, Assessments, and other charges and to the payment of the Indebtedness.

**3.08 No Waiver.** Notwithstanding any course of dealing or course of performance, neither failure nor delay on the part of Lender to exercise any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

**3.09 No Waiver of One Default to Affect Another.** No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Lender (a) grants forbearance or an extension of time for the payment of any of the Indebtedness; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other of

# UNOFFICIAL COPY



the Loan Documents; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other of the Loan Documents or releases or any party liable under the Note; (e) consents to the filing of any map, plat or replat of the Premises; (f) consents to the granting of any easement on the Premises; or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under this Mortgage or otherwise of Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signer, endorser, surety or guarantor. No such act or omission shall preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby.

**3.10 Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Lender by the Note, this Mortgage or any other of the Loan Documents is exclusive of any other right, power and remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other of the Loan Documents, or now or hereafter existing at law, in equity or by statute.

**3.11 Interest after Event of Default, Default Rate.** If an Event of Default shall have occurred, all sums outstanding and unpaid under the Note and this Mortgage shall, at Lender's option, bear interest at the default rate set forth in the Note.

## ARTICLE FOUR: MISCELLANEOUS PROVISIONS

**4.01 Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Lender shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not.

### 4.02 Addresses for Notices, etc.

(a) Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage shall be in writing, signed by the party giving or making the same, and shall be sent by certified mail, return receipt requested, as follows:

**Mortgagor:** American LLC  
1425 McHenry Road, Buffalo  
Grove, IL 60089

**Mortgagee:** LOAN FUNDER LLC, SERIES 43945  
645 Madison Avenue, 19th Floor,  
New York, NY 10022

Either party may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party, but no such notice of change shall be effective unless and until received by such other party.

**4.03 Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or expand or otherwise affect any of the terms hereof.

# UNOFFICIAL COPY



**4.04 Provisions Subject to Applicable Laws; Severability** All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any law and are intended to be limited to the extent necessary so that they will not render this Mortgage l invalid or unenforceable. In the event that any of the covenants, agreements, terms or provisions contained in the Note, or in this Mortgage or in any other Loan Documents shall be deemed invalid, illegal or unenforceable in any respect by a court with appropriate jurisdiction, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

**4.05 Modification.** This Mortgage, the Note, and all other Indebtedness are subject to modification. Neither this Mortgage, nor any term hereof, may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge, or termination is sought.

**4.06 Governing Law.** THIS Mortgage IS MADE BY Mortgagor AND ACCEPTED BY LENDER IN THE STATE OF New York EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED IN THE MORTGAGED PROPERTY UNDER THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED. TO THE FULLEST EXTENT PERMITTED BY THE LAW OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED, THE LAW OF THE STATE OF New York SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS. AND THE DEBT OR OBLIGATIONS ARISING HEREUNDER (BUT THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT LENDER'S RIGHTS WITH RESPECT TO SUCH SECURITY INTEREST CREATED IN THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED).

**4.07 Prejudgment Remedies.** THE Mortgagor HEREBY REPRESENTS, COVENANTS, AND AGREES THAT THE PROCEEDS OF THE LOAN SECURED BY THIS Mortgage, AND EVIDENCED BY THE LOAN AGREEMENT, AND THE NOTE SHALL BE USED FOR GENERAL COMMERCIAL PURPOSES AND THAT SUCH LOAN IS A "COMMERCIAL TRANSACTION" AS DEFINED BY THE STATUTES OF THE STATE OF New York. THE Mortgagor HEREBY WAIVES SUCH RIGHTS AS IT MAY HAVE TO NOTICE AND/OR HEARING UNDER ANY APPLICABLE FEDERAL OR STATE LAWS INCLUDING, WITHOUT LIMITATION, New York GENERAL STATUTES PERTAINING TO THE EXERCISE BY THE LENDER OF SUCH RIGHTS AS THE LENDER MAY HAVE INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK PREJUDGMENT REMEDIES AND/OR TO DEPRIVE THE Mortgagor OF OR AFFECT THE USE OF OR POSSESSION OR ENJOYMENT OF THE Mortgagor PROPERTY PRIOR TO THE RENDITION OF A FINAL JUDGMENT AGAINST THE Mortgagor. THE Mortgagor FURTHER WAIVES ANY RIGHT IT MAY HAVE TO REQUIRE THE LENDER TO PROVIDE A BOND OR OTHER SECURITY AS A PRECONDITION TO OR IN CONNECTION WITH ANY PREJUDGMENT REMEDY SOUGHT BY THE LENDER, AND WAIVES ANY OBJECTION TO THE ISSUANCE OF SUCH PREJUDGMENT REMEDY BASED ON ANY OFFSETS, CLAIMS, DEFENSES, OR COUNTERCLAIMS TO ANY ACTION BROUGHT BY THE LENDER. FURTHER, THE Mortgagor HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISAL, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS.

# UNOFFICIAL COPY



**4.08 Effects of Changes and Laws Regarding Taxation.** In the event of an enactment of any law deducting from the value of the Mortgaged Property any Mortgage lien thereon, or imposing upon Lender the payment of any or part of the Impositions, charges, or Assessments previously paid by Mortgagor pursuant to this Mortgage, or change in the law relating to the taxation of mortgages, debts secured by mortgages or Lender's interest in the Mortgaged Property so as to impose new incidents of taxes on Lender, then Mortgagor shall pay such Impositions or Assessments or shall reimburse Lender therefor; provided that, however, if in the opinion of counsel to Lender such payment cannot lawfully be made by Mortgagor, then Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable without prior notice to Mortgagor, and Lender may invoke any remedies permitted by applicable law.

**4.09 Purpose of Loan.**

Mortgagor represents and warrants that the proceeds from this Loan are to be used solely for business and commercial purposes and not at all for any personal, family, household, or other noncommercial or farming or agricultural purposes. Mortgagor acknowledges that Lender has made this Loan to Mortgagor in reliance upon the above representation. Said representation will survive the closing and repayment of the Loan.

**4.10 Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

**4.11 Usury Laws.** This Mortgage, the Note, and the other Loan Documents are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate permitted by applicable law. If, by the terms of this Mortgage, the Note, or any of the Loan Documents, Mortgagor is at any time required or obligated to pay interest on the debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

**4.12 Construction.** This Mortgage and the Note shall be construed without regard to any presumption or other rule requiring construction against the party causing this Mortgage and the Note to be drafted.

**4.13 Release of Mortgage.** If all of Mortgagor's obligations under the Loan Documents are paid in full in accordance with the terms of the Loan Documents, no Default then exists hereunder and no Event of Default then exists under any other Loan Document, and if Mortgagor shall well and truly perform all of Mortgagor's covenants contained herein, then this conveyance shall become null and void and be released, and the Mortgaged Property shall be released to Mortgagor, at Mortgagor's request and expense.

**4.14 Entire Agreement.** This Mortgage, together with the other Loan Documents executed in connection herewith, constitutes the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior proposals, negotiations, agreements, and understandings relating to such subject matter. In entering into this Mortgage, Mortgagor acknowledges that it is not relying on any representation, warranty, covenant, promise, assurance, or other statement of any kind made by the Lender or by any employee or agent of the Lender.



# UNOFFICIAL COPY



## 4.15 State Specific Provisions.

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

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

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

(d) This Mortgage secures the payment of the entire indebtedness secured hereby; provided, however, the maximum aggregate amount secured by this Mortgage at any one time shall not exceed One Million Eight Thousand Four Hundred Eighty and 00/100 Dollars (\$1,008,480.00) (to equal two times the total loan amount that may ever be advanced).

(e) The terms and provisions of this Mortgage that are intended to survive the release or satisfaction of this Mortgage shall so survive, whether said release or satisfaction was voluntarily granted by Mortgagee or the secured parties, as a result of a judgment upon judicial foreclosure of this Mortgage or in the event a deed in lieu of foreclosure is granted by Mortgagor to Mortgagee and/or the secured parties.

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



# UNOFFICIAL COPY



purview and operation of 815 ILCS 205/4(1)(l).

(g) Pursuant to the terms of the Collateral Protection Act (815 ILCS 180/1 et seq.), Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagee's expense to protect Mortgagor's interests in the Property, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Mortgagee may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained the insurance as required hereunder. If Mortgagee purchases insurance, the Mortgagor will be responsible for the documented costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total obligation secured hereby. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.

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

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

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

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

(4) The powers of a receiver listed in 735 ILCS 5/15-1704 shall be added to all the powers of a receiver listed in this Mortgage.

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

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

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

(A) all advances by Mortgagee in accordance with the terms of the Mortgage or the Loan Agreement to:

- (i) preserve, maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Subsection

# UNOFFICIAL COPY



Page 19 of 23

- (b) (5) of Section 5/15-1302 of the Act;
- (B) payments by Mortgagee of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrances; (ii) real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (iii) other obligations authorized by the Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;
- (C) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
- (D) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Property;
- (E) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 5/15-1508 (b) (1) of the Act;
- (F) expenses deductible from proceeds of sale as referred to in Section 5/15-1512 (a) and (b) of the Act; and
- (G) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Section 5/15-1704 (c) (1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Property; and (ix) if the Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force;
- (8) All Protective Advances shall be additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate set forth in the Note; and
- This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b) (5) of Section 5/15-1302 of the Act.

(i) Pursuant to the provisions of 765 ILCS 5/31.5, the mere recordation of this Mortgage entitles Mortgagee immediately to collect and receive rents upon the occurrence of an Event of Default, as defined, without first taking any acts of enforcement under applicable law, including providing notice to Mortgagor, filing foreclosure proceedings, or seeking the appointment of a receiver. Further, Mortgagee's right to rents does not depend on whether or not Mortgagee takes possession of the

# UNOFFICIAL COPY



Page 20 of 23

Mortgaged Property as permitted herein. In Mortgagee's sole discretion, Mortgagee may choose to collect rents either with or without taking possession of the Mortgaged Property.

NOW, THEREFORE, if the Note and any Indebtedness secured by this Mortgage shall be well and truly paid according to their tenor and if all the terms, covenants, conditions, and agreements of the Mortgagor contained herein and in the Note and Loan Documents, shall be fully and faithfully performed, observed, and complied with, then this Mortgage deed shall be void, but shall otherwise remain in full force and effect.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY



Page 21 of 23

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the November 23, 2022.

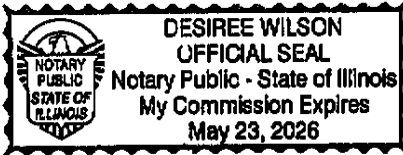
American LLC

By Serhiy Syhlyanyk  
Serhiy Syhlyanyk, Sole Member

State of Illinois )  
County of Cook ) ss.:

On the 23<sup>rd</sup> day of November in the year 2022, before me, the undersigned notary public, personally appeared Serhiy Syhlyanyk, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument as Managing Member of American LLC.

[Signature]  
Notary Public



Property of Cook County Clerk's Office

# UNOFFICIAL COPY



Page 22 of 23

**SCHEDULE A**  
**PROPERTY DESCRIPTION**

{ATTACH LEGAL DESCRIPTION HERE}

Property address is commonly known as:

**783 Greenwood Road, Northbrook, IL 60062**

**For APN/Parcel ID(s): 04-04-303-031-0000**

**For Tax Map ID(s): 04-04-303-031-0000**

---

LOTS 26, 27, AND 28 AND THE SOUTH 26 FEET OF LOT 29 IN OLIVER SALINGER AND COMPANY'S, DUNDEE ROAD ACRES BEING A SUBDIVISION OF THE EAST 36 RODS OF THE WEST 74 FEET RODS OF THE SOUTH 120 RODS OF SOUTHWEST 1/4 OF SECTION 4 TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

Page 23 of 23



**SCHEDULE B**  
**PERMITTED ENCUMBRANCES**

None

Property of Cook County Clerk's Office