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2020-081013

2020 Nov 6

8:33 AM

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
MICHAEL B BROWN
RECORDER

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY INSTRUMENT, AND FIXTURE FILING**

by

Alan Investments III, LLC, a Delaware limited liability company

as Mortgagor

**Document is
NOT OFFICIAL!**

to and in favor of

**This Document is the property of
the Lake County Recorder!**

DLP Lending Fund, LLC a Delaware limited liability company

as Mortgagee

STOP

**THIS INSTRUMENT IS A MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT, AND
FIXTURE FILING AS DEFINED IN IC 26-1-9.1-102(A)(40) OF THE UNIFORM COMMERCIAL
CODE (REVISED) AS IN EFFECT IN INDIANA, COVERIN BOTH REAL AND PERSONAL
PROPERTY, INCLUDING GOODS THAT ARE OR ARE TO BECOME FIXTURES. IT IS TO BE
FILED IN THE REAL ESTATE RECORDS OF LAKE COUNTY, INDIANA, AND UPON SUCH
FILING IS EFFECTIVE AS A FIXTURE FILING UNDER THE CODE. THE FIXTURES OR
GOODS THAT ARE OR ARE TO BECOME FIXTURES WILL BE SITUATED ON THE REAL
PROPERTY DESCRIBED IN EXHIBIT A HEREOF.**



55.00
CHK# 11657834
KK
EE
Loan 6

DEF2029384

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY INSTRUMENT, AND FIXTURE FILING**

THE MAXIMUM SECURED AMOUNT UNDER THIS MORTGAGE IS \$56,250.00

LN-6 DEF2029384

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY INSTRUMENT, AND FIXTURE FILING (together with any amendments or modifications hereto in effect from time to time, the "**Mortgage**"), is made and effective as of **August 26, 2020** by and between **Alan Investments III, LLC**, a Delaware limited liability company with an address of 16 Berryhill Rd., Suite 200, Columbia, SC 29210 (the "**Mortgagor**") and **DLP Lending Fund, LLC**, a Delaware limited liability company with an address of 95 Highland Avenue, Suite 300, Bethlehem, PA 18017 ("**Mortgagee**").

WITNESSETH

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of **Two Million Two Hundred Twenty Five Thousand Five Hundred Ninety Three and 00/100 (\$2,225,593.00) Dollars** (the "**Loan**"), together with interest thereon, as evidenced by a certain Promissory Note of even date herewith (together with any amendments or modifications thereto in effect from time to time) (the "**Note**");

WHEREAS, the indebtedness secured by this Mortgage includes, without limitation, the indebtedness evidenced by the Note, the final re-payment of which, if not sooner paid, is due **August 1, 2021** if not extended or modified, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as provided in this Mortgage, the Note, or the Loan Documents (as the term is defined in the Note);

WHEREAS, Mortgagor is the owner of that certain tract of land located at **1713 E. 28th Ave., Lake Station IN 46405-2009** situated in the County of **Lake**, State of **Indiana**, as is more particularly described in **Schedule "A"** attached hereto and made a part hereof (the "**Real Estate**"); and

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

GRANTING CLAUSES

NOW, THEREFORE, to secure to Mortgagee (i) the repayment of all sums due under the Note and Mortgage (and all extensions, renewals, replacements, and amendments thereof); (ii) the performance of all terms, conditions, and covenants set forth in the Note, Mortgage, and Loan Documents (as the term is defined in the Note); (iii) all other obligations or indebtedness of Mortgagor to Mortgagee of whatever kind or character and whenever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including attorneys' fees (subsections (i), (ii), and (iii) hereof collectively, the "**Liabilities**"), Mortgagor has mortgaged, granted, and conveyed and by these presents **DOES HEREBY MORTGAGE AND WARRANT, GRANT AND CONVEY, TRANSFER, ASSIGN, BARGAIN AND SELL UNTO MORTGAGEE, ITS SUCCESSORS, AND ASSIGNS**, all powers of sale and all statutory rights under the laws of the State of Indiana, and grants to Mortgagee a security interest in, and all of Mortgagor's right, title, and interest now owned or hereafter acquired in and to each of the following (collectively, the "**Property**");

(A) The Real Estate, together with any and all other, further or additional title, estates, interest, or rights of which may at any time be acquired by Mortgagor in or to the Real Estate;

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

(C) Any and all fixtures, machinery, equipment, and other articles of real, personal, or mixed property belonging to Mortgagor, at any time now or hereafter installed in, attached to, or situated in or upon the Real Estate or the Improvements, or used or intended to be used in connection with or operation of the Real Estate or Improvements, whether or not such real, personal, or mixed property is or shall be affixed thereto, and all replacements, substitutions, and proceeds of the foregoing (all of the foregoing herein called the "**Service Equipment**"), including without limitation: (i) all appliances, furniture, and furnishings; all articles of interior decoration, floor, wall, and window coverings; all office, restaurant, bar, kitchen and laundry fixtures, utensils, appliances, and equipment; all supplies, tools, and accessories; all storm and screen windows, shutters, doors, decorations, awnings, shades, blinds, signs, trees, shrubbery, and other plantings; (ii) all building service fixtures, machinery, and equipment of any kind whatsoever; all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing, security, irrigating, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and

equipment; all elevators, escalators, lifts, cranes, hoists and platforms; all pipes, conduits, pumps, boilers, tanks, motors, engines, furnaces and compressors; all dynamos, transformers, and generators; (iii) all building materials, building machinery, and building equipment delivered on site to the Real Estate during the course of, or in connection with, any construction, repair, or renovation of the Improvement; (iv) all parts, fittings, accessories, accessions, substitutions and replacements therefor and thereof; and (v) all files, books, ledgers, reports, and records relating to any of the foregoing;

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

(E) Any and all estates, rights, tenements, hereditaments, privileges, easements, reversions, remainders and appurtenances of any kind benefiting or appurtenant to the Real Estate, Improvements or all or any other portion of the Property; all means of access to and from the Real Estate, Improvements or all or any other portion of the Property, whether public or private; all streets, alleys, passages, ways, water courses, water and mineral rights relating to the Real Estate, Improvements or all or any other portion of the Property; all rights of Mortgagor as declarant or unit owner under any declaration of condominium or association applicable to the Real Estate, Improvements or all or any other portion of the Property including, without limitation, all development rights and special declarant rights; and all other claims or demands of Mortgagor, either at law or in equity, in possession or expectancy of, in, or to the Real Estate, Improvements or all or any other portion of the Property (all of the foregoing described in this subsection E herein called the "Appurtenances"); and

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

TO HAVE AND TO HOLD the above granted and conveyed Property unto and to the proper use and benefit of Mortgagee, its successors and assigns, forever.

PROVIDED ALWAYS, and these presents are upon the express condition, that if (i) all the Liabilities are paid in full, and (ii) each and every representation, warranty, agreement, and covenant of the Note, Mortgage, and Loan Documents are complied with and abided by, then this Mortgage and the estate hereby created shall cease and be null and void and canceled of record.

The terms of the Note and Loan Documents are hereby made a part of this Mortgage to the same extent and with the same effect as if fully set forth herein. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Note and/or Loan Documents.

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

1. **MORTGAGE.**

1.1. **PURCHASE MONEY MORTGAGE.** If any of the debt secured by this Mortgage is loaned to Mortgagor to acquire title to the Property, this Mortgage shall be deemed a purchase money mortgage.

1.2. **FUTURE ADVANCES.** This Mortgage secures, and the Liabilities include, (i) all advances made by Mortgagee with respect to all or any portion of the Property for the payment of taxes, maintenance charges, insurance premiums, or costs incurred for the protection of all or any portion of the Property or the lien of this Mortgage and (ii) all expenses incurred by Mortgagee by reason of an Event of Default hereunder. This Mortgage shall constitute a lien on the Property from the time this Mortgage is left of record for, among other things, all such advances and expenses, plus interest thereon, regardless of the time when such advances are made or such expenses are incurred.

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

2.1. **Payment and Performance.** Mortgagor shall (a) pay to Mortgagee all sums required to be paid by Mortgagor under the Loan Documents, in accordance with their stated terms and conditions; (b) perform and comply with all terms, conditions, and covenants set forth in each of the Loan Documents by which Mortgagor is bound; and (c) to the extent applicable, perform and comply with all of Mortgagor's obligations and duties as landlord under any Leases. The Loan is not secured by either (d) an assignment of an individual obligor's salary, wages, or other compensation, or (e) household furniture or other goods used for personal, family, or household purposes.

2.2. **Seisin and Warranty.** Mortgagor hereby warrants that (a) Mortgagor has a fee simple interest in the Real Estate; (b) Mortgagor has the right, power, and lawful authority to mortgage, grant, convey, and assign the same to Mortgagee in the manner and form set forth herein; and (c) this Mortgage is a valid and enforceable first lien on the Real Estate. Mortgagor hereby covenants that Mortgagor shall (a) preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against all lawful claims whatsoever; and (b) execute, acknowledge, and deliver all such further documents or assurances as may at any time hereafter be required by Mortgagee to protect fully the lien of this Mortgage.

2.3. **Insurance.**

(a) Mortgagor shall obtain and maintain at all times throughout the term of this Mortgage the following: (i) comprehensive general public liability insurance covering all operations of Mortgagor; (ii) "All-Risk" fire and extended coverage hazard insurance covering the Property in an aggregate amount not less than 100% of the agreed upon full insurable replacement value of the Property; (iii) during the course of any construction, reconstruction, remodeling, or repair of any Improvements, builders' all-risk extended coverage insurance in amounts based upon the completed replacement value of the Improvements (excluding roads, foundations, parking areas, paths, walkways and like improvements) and endorsed to provide that occupancy by any person shall not void such coverage; (iv) if the Property is required to be insured pursuant to the National Flood Insurance Reform Act of 1994, and the regulations promulgated thereunder, and/or if Mortgagee determines, in Mortgagee's sole discretion, at any time, that flood insurance is required, flood insurance in an amount at least equal to the lesser of the agreed upon full insurable replacement value of the Property (less any value attributable to the Real Estate) or the maximum limit of coverage available; (v) insurance that complies with the workers' compensation and employers' liability laws of all states in which Mortgagor shall be required to maintain such insurance; and (vi) such other insurance Mortgagee may reasonably require.

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

(c) Mortgagor further agrees that each insurance: (i) shall provide at least thirty (30) days' prior written notice to Mortgagee prior to any policy reduction or cancellation for any reason; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Mortgagee in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of such

insurance; (iii) shall waive all rights of setoff, counterclaim, deduction, or subrogation against Mortgagor; and (iv) shall exclude Mortgagee from the operation of any coinsurance clause.

- (d) At least thirty (30) days prior to the expiration of any insurance policy, Mortgagor shall furnish evidence satisfactory to Mortgagee that the policy has been renewed or replaced or is no longer required.
- (e) Notwithstanding the foregoing, in the event Mortgagor fails to maintain insurance in accordance with this Section 2.3., and Mortgagee elects to obtain insurance to protect its interests hereunder, Mortgagee may obtain insurance in any amount and of any type Mortgagee deems appropriate to protect Mortgagee's interest only and Mortgagee shall have no duty or obligation to Mortgagor to maintain insurance in any greater amount or of any other type for the benefit of Mortgagor. All insurance premiums incurred or paid by Mortgagee shall be at Mortgagor's sole cost and expense. Mortgagee's election to obtain insurance shall not be deemed to waive any Event of Default (as hereinafter defined).

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

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

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

(e) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment, or other transfer of or the grant of a security interest in and to any Leases. Any default under this section shall cause an immediate acceleration of the Liabilities without any demand by the Mortgagee.

2.7. No Encumbrances.

(a) Mortgagor shall not create or permit to exist any mortgage, pledge, lien, security interest (including, without limitation, a purchase money security interest), encumbrance, attachment, levy, distraint, or other judicial process on or against the Property or any part thereof (including, without limitation, fixtures and other personalty), whether superior or inferior to the lien of this Mortgage, without the prior written consent of Mortgagee. If any lien or encumbrance is filed or entered without Mortgagee's consent, Mortgagor shall have it removed of record within fifteen (15) days after it is filed or entered.

(b) By placing or accepting a mortgage, lien, or encumbrance of any type, whether voluntary or involuntary, against the Mortgaged Premises, the holder thereof shall be deemed to have agreed, without any further act or documentation being required, that its mortgage, lien, or encumbrance shall be subordinate in lien priority to this Mortgage and to any future amendments, consolidations or extensions hereof (including, without limitation, amendments which increase the interest rate on the Notes, extend the term of the Liabilities, provide for future advances secured by this Mortgage, or provide for the release of portions of the Property with or without consideration).

(c) The holder of any subordinate mortgage or other lien, whether or not consented to by the Mortgagee, expressly agrees by acceptance of such subordinate mortgage or other lien that it waives and relinquishes any rights it may have, whether under a legal theory of marshaling of assets or any other theory at law or in equity, to restrain the Mortgagee from, or recover damages from the Mortgagee as a result of, the Mortgagee exercising its various remedies hereunder or under any other documents evidencing or securing the Liabilities, in such order and with such timing as the Mortgagee deems appropriate in its sole discretion.

(d) The Mortgagee may, at any time or from time to time, renew, extend or increase the amount of this Mortgage, alter or modify the terms hereof or of the Notes in any way, waive any of the terms, covenants, or conditions hereof or of the Notes in whole or in part, release any portion of the Property or any other security, and grant such extensions and indulgences in relation to the Liabilities as the Mortgagee may determine, without the consent of any junior lien or encumbrance or any obligation to give notice of any kind thereto, and without in any manner affecting the priority of the lien hereof on all or any part of the Property.

2.8. Removal of Fixtures. Mortgagor shall not remove or permit to be removed from the Property any fixtures presently or in the future owned by Mortgagor as the term "fixtures" is defined by the law of the state where the Property is located (unless such fixtures have been replaced with similar fixtures of equal or greater utility and value).

2.9. Maintenance and Repair; Alterations.

(a) Mortgagor shall (i) abstain from and not permit the commission of waste in or about the Property; (ii) keep the Property, at Mortgagor's own cost and expense, in good and substantial repair, working order and condition; (iii) make or cause to be made, as and when necessary, all repairs and replacements, whether or not insurance proceeds are available therefor; (iv) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any part of the Property; (v) keep the Property free from mechanics' liens or other liens or claims of liens not expressly subordinated to the lien hereof; and (vi) pay when due any indebtedness which may be secured by a lien or charge on the Property superior or equal to the lien hereof. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Mortgage.

(b) Mortgagee, and any persons authorized by Mortgagee, shall have the right, but not the obligation, to enter upon the Property at any reasonable time to inspect and photograph its condition and state of repair. In the

event any such inspection reveals, in the sole discretion of Mortgagee, the necessity for any repair, alteration, replacement, clean-up, or maintenance, Mortgagor shall, at the discretion of Mortgagee, either: (i) cause such work to be effected immediately; or (ii) promptly establish an interest bearing reserve fund with Mortgagee in an amount determined by Mortgagee for the purpose of effecting such work.

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

2.11. Damage, Destruction, and Condemnation.

- (a) If all or any part of the Property shall be damaged or destroyed, or if title to or the temporary use of the whole or any part of the Property shall be taken or condemned by a competent authority for any public or quasi-public use or purpose, there shall be no abatement or reduction in the amounts payable by Mortgagor under the Loan Documents and Mortgagor shall continue to be obligated to make such payments.
- (b) If all or any part of the Property is partially or totally damaged or destroyed, Mortgagor shall give prompt notice thereof to Mortgagee, and Mortgagee may make proof of loss if not made promptly by Mortgagor. Mortgagor hereby authorizes and directs any affected insurance company to make payment under such insurance, including return of unearned premiums, to Mortgagee rather than to Mortgagor and Mortgagee jointly, and Mortgagor appoints Mortgagee as Mortgagor's attorney-in-fact to endorse any draft thereof, which appointment, being for security, is coupled with an interest and is irrevocable. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust, or compromise, in consultation with Mortgagor, any claims for loss, damage, or destruction to the Property. Mortgagor shall pay all costs of collection of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Mortgagee as security for payment of the Liabilities. Mortgagee shall have the option, in its sole discretion, of paying or applying all or any part of the insurance proceeds to: (i) reduction of the Liabilities; (ii) restoration, replacement, or repair of the Property in accordance with Mortgagee's standard construction loan disbursement conditions and requirements; or (iii) Mortgagor.
- (c) Immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of all or any part of the Property, Mortgagor shall give notice to Mortgagee. Mortgagor shall, at its sole cost and expense, diligently prosecute any such proceeding and shall consult with Mortgagee, its attorneys and experts, and shall cooperate with it in the defense of any such proceeding. Mortgagee may participate in any such proceeding and Mortgagor shall from time to time deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor shall not, without Mortgagee's prior written consent, enter into any agreement (i) for the taking or conveyance in lieu thereof of all or any part of the Property, or (ii) to compromise, settle, or adjust any such proceeding. All awards and proceeds of condemnation are hereby assigned to Mortgagee, and Mortgagor, upon request by Mortgagee, agrees to make, execute, and deliver any additional assignments or documents necessary from time to time to enable Mortgagee to collect the same. Such awards and proceeds shall be paid or applied by Mortgagee, in its sole discretion, to: (i) reduction of the Liabilities; (ii) restoration, replacement, or repair of the Property in accordance with Mortgagee's standard construction loan disbursement conditions and requirements; or (iii) Mortgagor.
- (d) Nothing herein shall relieve Mortgagor of its duty to repair, restore, rebuild, or replace the Property following damage or destruction or partial condemnation if no or inadequate insurance proceeds or condemnation awards are available to defray the cost of repair, restoration, rebuilding, or replacement.
- (e) Notwithstanding the provisions of subparagraphs (b) and (c) above, in the event that all or any part of the

Property is damaged by fire or other casualty, and Mortgagor promptly notifies Mortgagee of its desire to repair and restore the same, then provided that the following terms and conditions are and remain fully satisfied by Mortgagor, Mortgagee shall disburse insurance proceeds for repair and restoration of the Property against completed work in accordance with Mortgagee's standard construction loan disbursement conditions and requirements (which may be contained in an agreement which Mortgagee may require Mortgagor to sign); otherwise, and to the extent of any excess proceeds, Mortgagee shall have the right to apply the proceeds toward reduction of the Liabilities:

- (i) No uncured Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under any of the Loan Documents shall have occurred;
- (ii) Mortgagor shall have delivered evidence satisfactory to Mortgagee that the Property can be fully repaired and restored prior to the maturity of the Note;
- (iii) no Lease is cancelable or terminable by any tenant or Mortgagor on account of the casualty or, if it is, said tenant or Mortgagor, as applicable, has waived in writing its right to cancel;
- (iv) the work is performed under a stipulated sum or guaranteed maximum price contract satisfactory to Mortgagee in accordance with plans and specifications and a budget satisfactory to Mortgagee and in compliance with all legal Requirements;
- (v) Mortgagor shall have deposited with Mortgagee for disbursement in connection with the restoration the greater of: (1) the applicable deductible under the insurance policies covering the loss; or (2) the amount by which the cost of restoration of the Property to substantially the same value, condition, and character as existed prior to such damage is estimated by Mortgagee to exceed the net insurance proceeds available for restoration; and
- (vi) Mortgagor has paid as and when due all of Mortgagee's reasonable costs and expenses incurred in connection with the collection and disbursement of insurance proceeds, including without limitation, inspection, monitoring, engineering, and legal fees.

2.12. Required Notices. Mortgagor shall notify Mortgagee within three (3) days of: (a) receipt of any notice from any governmental or quasi-governmental authority relating to the structure, use, or occupancy of the Property or alleging a violation of any Legal Requirement; (b) a substantial change in the occupancy or use of all or any part of the Property; (c) receipt of any notice from the holder of any lien or security interest in all or any part of the Property; (d) commencement of any litigation affecting or potentially affecting the financial ability of Mortgagor or the value of the Property; (e) a pending or threatened condemnation of all or any part of the Property; (f) a fire or other casualty causing damage to all or any part of the Property; (g) receipt of any notice with regard to any Release of Hazardous Substances (as such terms are defined below) or any other environmental matter affecting the Property or Mortgagor's interest therein; (h) receipt of any request for information, demand letter, or notification of potential liability from any entity relating to potential responsibility for investigation or clean-up of Hazardous Substances on the Property or at any other site owned or operated by Mortgagor; (i) receipt of any notice from any tenant of all or any part of the Property alleging a default, failure to perform or any right to terminate its lease or to set-off rents; or (j) receipt of any notice of the imposition of, or of threatened or actual execution on, any lien on or security interest in all or any part of the Property.

2.13. Books and Records; Inspection. Mortgagor shall keep and maintain (a) complete and accurate books and records, in accordance with generally accepted accounting principles consistently applied, reflecting all items of income and expense in connection with the operation of the Property, and (b) copies of all written contracts, leases and other agreements affecting the Property. Mortgagee or its designated representatives shall, upon reasonable prior notice to Mortgagor, have (a) the right of entry and free access to the Property during business hours (which may be without notice in any case of emergency) to inspect the Property, and (b) the right to examine and audit all books, contracts, and records of Mortgagor relating to the Property. As to any leases affecting the Property, Mortgagor is responsible for immediately providing Mortgagee with a true and correct copy of such written lease executed by any tenant of all or a portion of the Property. Mortgagor shall not allow any tenant to gain possession of any part of all of the Property without

executing a written lease.

2.14. **Right to Reappraise.** Mortgagee shall have the right to conduct or have conducted by an independent appraiser acceptable to Mortgagee appraisals of the Property in form and substance satisfactory to Mortgagee at the sole cost and expense of Mortgagor; provided, however, that Mortgagor shall not be obligated to bear the expense of such appraisals so long as (a) no Event of Default exists, and (b) such appraisals are not required by applicable law, rule, or regulation of any governmental authority having jurisdiction over Mortgagee.

2.15. **No Credits on Account of the Liabilities.** Mortgagor shall not claim or demand or be entitled to any credit on account of the Liabilities for any part of the taxes paid with respect to the Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Property, or any part thereof, by reason of this Mortgage.

2.16. **Protection of Security.** Mortgagor agrees to appear in and defend any suit, action, or proceeding that affects the Property, the Note, the Mortgage, the Assignment of Leases (and Rents), the Liabilities, or the rights or powers of Mortgagee and should Mortgagee elect also to appear in or defend any such action or proceeding, or should Mortgagee be made a party to such action by reason of this Mortgage, Mortgagor will at all times, indemnify and on demand reimburse Mortgagee from any and all loss, damages, expense, or cost arising out of or incurred in connection with any such suit, action, or proceeding, including without restriction, costs of evidence of title and reasonable attorneys' fees, and the sum of all such expenditures, together with interest thereon from date of any such expenditure at the Default Rate shall be due and payable immediately on demand and shall be added to and become part of the Liabilities.

Mortgagee shall have power: (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Property and in the income, revenues, rents, and profits arising therefrom, and (c) 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 would impair the security hereunder or be prejudicial to the interest of Mortgagee.

Mortgagor will pay or reimburse Mortgagee for all reasonable attorneys' fees, appraiser's fees, environmental assessment costs and other costs and expenses incurred by Mortgagee in any action, proceeding or dispute of any kind in which Mortgagee is made a party, or appears as party plaintiff or defendant, affecting the Note, this Mortgage, the Assignment of Leases (and Rents), or any of the other Loan Documents, Mortgagee, the Leases, or the Property, including but not limited to the foreclosure of this Mortgage by any law procedure or pursuant to the judgment or decree of a court of competent jurisdiction, any condemnation action involving the Property, or any action to protect the security hereof; and any such amounts paid by Mortgagee shall be paid by Mortgagor to Mortgagee on demand, together with interest thereon from the date of any such expenditure at the Default Rate (or at such lesser rate of interest as may be the maximum not prohibited by applicable law) and shall be added to and become part of the Liabilities.

2.17. **No Claim Against Mortgagee.** Nothing contained in this Mortgage shall constitute any consent or request by Mortgagee, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Property, or any part thereof, nor as giving Mortgagor or tenant under any Lease any right, power, or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against Mortgagee in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

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

behalf of Mortgagor at Mortgagor's expense, which appointment, being for security, is coupled with an interest and shall be irrevocable.

4. **ASSIGNMENT OF LEASES.**

4.1. Mortgagor hereby absolutely, presently, and unconditionally conveys, transfers, and assigns to Mortgagee right, title, and interest of Mortgagor, now existing or hereafter arising, in and to the Leases and Rents. Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Mortgagor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not prior to accrual, the Rents. Mortgagor shall receive and hold such Rents in trust as a fund to be applied, and Mortgagor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance, and repair of the Property and the payment of interest, principal, and other sums becoming due under the Liabilities, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Mortgagor shall automatically, without notice or any other action by Mortgagee, terminate upon the occurrence of an Event of Default under the Mortgage or Loan Documents, and all Rents subsequently collected or received by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Mortgagee. Nothing contained in this Section 4.1, and no collection by Mortgagee of Rents, shall be construed as imposing on Mortgagee any of the obligations of lessor under the Leases.

4.2. Mortgagor shall timely perform all of its obligations under the Leases. Mortgagor represents and warrants that: (a) Mortgagor has title to and full right to assign presently, absolutely, and unconditionally the Leases and Rents; (b) no other assignment of any interest in any of the Leases or Rents has been made; (c) there are no leases or agreements to lease all or any portion of the Property now in effect except the Leases, true and complete copies of which have been furnished to Mortgagee or will be furnished to Mortgagee immediately upon execution, and no written or oral modifications have been or will be made thereto; (d) there is no existing default by Mortgagor or by any tenant under any of the Leases, nor has any event occurred which due to the passage of time, the giving or failure to give notice, or both, would constitute a default under any of the Leases and, to the best of Mortgagor's knowledge, no tenant has any defenses, set-offs, or counterclaims against Mortgagor; (e) the Leases are in full force and effect; and (f) Mortgagor has not accepted Rent under any Lease more than thirty (30) days in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted, or compromised.

4.3. Mortgagor shall not, without the prior written consent of Mortgagee: (a) enter into any lease of all or any portion of the Property; (b) amend, modify, terminate, or accept a surrender of any Lease; or (c) collect or accept rent from any tenant of the Property for a period of more than one month in advance. Any of the foregoing acts, if done without the prior written consent of Mortgagee/Assignee in each instance, which consent shall not be unreasonably withheld or delayed, shall be null and void.

5. **DECLARATION OF NO OFFSET.** Mortgagor represents to Mortgagee that Mortgagor has no knowledge of any offsets, counterclaims, or defenses to the Liabilities either at law or in equity. Mortgagor shall, within three (3) days upon request in person or within seven (7) days upon request by mail, furnish to Mortgagee or Mortgagee's designee, a written statement in a form satisfactory to Mortgagee stating the amount due under the Liabilities and whether there are offsets or defenses against the same, and if so, the nature and extent thereof.

6. **ENVIRONMENTAL MATTERS.**

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

amended so as to broaden any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment.

6.2. **Representations, Warranties and Covenants.** Mortgagor represents, warrants, covenants, and agrees as follows as of the date hereof:

- (a) Neither Mortgagor nor the Property or any occupant thereof is in violation of or subject to any existing, pending, or threatened investigation or inquiry by any governmental authority pertaining to any Environmental Law. Mortgagor shall not cause or permit the Property to be in violation of, or do anything which would subject the Property to any remedial obligations under, any Environmental Law, and shall promptly notify Mortgagee in writing of any existing, pending, or threatened investigation or inquiry by any governmental authority in connection with any Environmental Law. In addition, Mortgagor shall provide Mortgagee with copies of any and all material written communications with any governmental authority in connection with any Environmental Law, concurrently with Mortgagor's giving or receiving of same.
- (b) Mortgagor has taken all steps necessary to determine and has determined that there has been no release, spill, discharge, leak, disposal, or emission which violates any Environmental Laws (individually a "Release" and collectively, "Releases") of any Hazardous Material, Hazardous Substance or Hazardous Waste, including gasoline, petroleum products, explosives, toxic substances, solid wastes and radioactive materials (collectively, "Hazardous Substances") at, upon, under or within the Property. The use which Mortgagor or any other occupant of the Property makes or intends to make of the Property will not result in Release of any Hazardous Substances on or to the Property. During the term of this Mortgage, Mortgagor shall take all steps necessary to determine whether there has been a Release of any Hazardous Substances on or to the Property and if Mortgagor finds a Release has occurred, Mortgagor shall remove or remediate the same promptly upon discovery at its sole cost and expense.
- (c) The Property has never been used by the present or previous owners and/or operators nor will be used in the future to refine, produce, store, handle, transfer, process, transport, generate, manufacture, heat, treat, recycle, or dispose of Hazardous Substances which violates any Environmental Laws.
- (d) The Property: (i) is being and has been operated in compliance with all Environmental Laws, and all permits required thereunder have been obtained and complied with in all respects; and (ii) does not have any Hazardous Substances present excepting small quantities of petroleum and chemical products, in proper storage containers, that are necessary for the construction or operation of the commercial business of Mortgagor and its tenants, and the usual waste products therefrom ("Permitted Substances").
- (e) Mortgagor will and will cause its tenants to operate the Property in compliance with all Environmental Laws and, other than Permitted Substances, will not place or permit to be placed any Hazardous Substances on the Property, except in compliance with applicable environmental laws.
- (f) No lien has been attached to or threatened to be imposed upon the Property, and there is no basis for the imposition of any such lien based on any governmental action under Environmental Laws. Neither Mortgagor nor any other person has been, is or will be involved in operations at the Property which could lead to the imposition of environmental liability on Mortgagor, or on any subsequent or former owner of the Property, or the creation of an environmental lien on the Property. In the event that any such lien is filed, Mortgagor shall, within (30) days from the date that the Mortgagor is given notice of such lien (or within such shorter period of time as is appropriate in the event that steps have commenced to have the Property sold), either: (i) pay the claim and remove the lien from the Property; or (ii) furnish a cash deposit, bond or other security satisfactory in form and substance to Mortgagee in an amount sufficient to discharge the claim out of which the lien arises.

6.3. **Right of Entry, Inspection, and Cure.** Mortgagee shall have the right to conduct or have conducted by its agents or contractors such environmental inspections, audits, and tests as Mortgagee shall deem necessary or advisable from time to time at the sole cost and expense of Mortgagor; provided, however, that Mortgagor shall not be obligated to bear the expense of such environmental inspections, audits, and tests so long as (a) no Event of Default

exists, and (b) Mortgagee has no cause to believe in its sole reasonable judgment that there has been a Release or threatened Release of Hazardous Substances at the Property or that Mortgagor or the Property is in violation of any Environmental Law. The cost of such inspections, audits, and tests, if chargeable to Mortgagor as aforesaid, shall be added to the Liabilities and shall be secured by this Mortgage. Mortgagor shall, and shall cause each tenant of the Property to, cooperate with such inspection efforts; such cooperation shall include, without limitation, supplying all information requested concerning the operations conducted and Hazardous Substances located at the Property.

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

7.1. Non-payment when due of any sum required to be paid to the Mortgagee under any of the Loan Documents;

7.2. A breach of any covenant contained in Sections 2.3, 2.4, 2.7, 2.12, or 2.13 hereof and the continuance of such breach for a period of fifteen (15) days after written notice thereof to Mortgagor;

7.3. A breach by Mortgagor of any other term, covenant, condition, obligation, or agreement under this Mortgage, and the continuance of such breach for a period of fifteen (15) days after written notice thereof to Mortgagor;

7.4. An Event of Default under any of the other Loan Documents and the continuance of such breach beyond any applicable cure periods;

7.5. Any representation or warranty made by Mortgagor or by any Guarantor in any Loan Document or to induce Mortgagee to enter into the transactions contemplated hereunder shall prove to be false, incorrect, or misleading in any material respect as of the date made;

7.6. The filing by or against Mortgagor or any Guarantor of a petition seeking relief, or the granting of relief, under the Federal Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by the Mortgagor or any Guarantor; the appointment of a custodian, receiver, liquidator, or trustee for Mortgagor or any Guarantor or for any of the property of Mortgagor or such Guarantor, or any action by Mortgagor or any Guarantor to effect any of the foregoing; or if the Mortgagor or any Guarantor becomes insolvent (however defined) or is not paying its debts generally as they become due. Notwithstanding the above, Mortgagor or any Guarantor shall have sixty (60) days in which to dismiss any involuntary bankruptcy proceeding filed against it;

7.7. The death, dissolution, liquidation, merger, consolidation, or reorganization of Mortgagor or any Guarantor, or the institution of any proceeding to effect any of the foregoing;

7.8. A default under any other obligation by Mortgagor or any Guarantor in favor of Mortgagee, or under any document securing or evidencing such obligation, whether or not such obligation is secured by the Property and the continuance of such breach for a period of fifteen (15) days after written notice thereof to Mortgagor;

7.9. The filing, entry, or issuance of any judgment, execution, garnishment, attachment, distraint, or lien against Mortgagor or any Guarantor or their property in excess of \$25,000.00 which is not covered by insurance, subject to the provisions of Section 2.7 hereof, if applicable;

7.10. A default under any other obligations secured by the Property or any part thereof and the continuance of such breach for a period of fifteen (15) days after written notice thereof to Mortgagor; or

7.11. The Mortgagor or any other obligor or guarantor of any of the Liabilities, shall at any time deliver or cause to be delivered to the Mortgagee a notice pursuant to 42 Pa. C.S.A. §8143 (or any successor or similar law, rule or regulation) electing to limit the indebtedness secured by this Mortgage.

With regard to the notice and cure periods herein, Mortgagee shall not be obligated to give any notice more than one (1) time during any calendar year.

8. **REMEDIES.** If an Event of Default occurs, Mortgagee may take any of the following actions:

8.1. **Acceleration.** Mortgagee may declare the entire amount of the Liabilities immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Mortgagee may charge and collect interest from the date of default on the unpaid balance of the Liabilities at the Default Rate set forth in the Note.

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

8.3. **Foreclosure.** Mortgagee may institute any one or more actions of mortgage foreclosure, judicial or non-judicial, against all or any part of the Property, or take such other action at law, equity, or by contract for the enforcement of this Mortgage and realization on the security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Liabilities. The unpaid balance of any judgment shall bear interest as provided in the Note, but in no event less than the greater of (a) the statutory rate provided for judgments, or (b) the Default Rate. Without limiting the foregoing, Mortgagee may foreclose this Mortgage and exercise its rights as a secured party for all or any portion of the Liabilities which are then due and payable, subject to the continuing lien of this Mortgage for the balance not then due and payable. In case of any sale of the Property by judicial proceedings, the Property may be sold in one parcel or in such parcels, manner, or order as Mortgagee in its sole discretion may elect. Mortgagor, for itself and anyone claiming by, through, or under it, hereby agrees that Mortgagee shall in no manner, in law or in equity, be limited, except as herein provided, in the exercise of its rights in the Property or in any other security hereunder or otherwise appertaining to the Liabilities or any other obligation secured by this Mortgage, whether by any statute, rule, or precedent which may otherwise require said security to be marshalled in any manner and Mortgagor, for itself and others as aforesaid, hereby expressly waives and releases any right to or benefit thereof. The failure to make any tenant a defendant to a foreclosure proceeding shall not be asserted by Mortgagor as a defense in any proceeding instituted by Mortgagee to collect the Liabilities or any deficiency remaining unpaid after a foreclosure sale of the Property.

- (a) Mortgagee may postpone such sale from time to time giving notice of such postponement in the same manner in which any original notice of sale was given or by an announcement or proclamation made to the persons assembled at the time and place previously appointed and noticed for such sale or postponed sale, and on the date of such sale or the date to which such sale may have been postponed, the Mortgagee may sell the Mortgaged Premises to the highest bidder. Mortgagee or the older or holders of said Notes or their agents may bid and purchase at such sale. Mortgagee, in conducting the sale, may act either in person or through the agency of an auctioneer and may establish as one of conditions of such sale that all bids and payments for said Property be made in cash.
- (b) Upon such sale, Mortgagee shall make, execute and, after due payment is made, deliver to the purchaser or purchasers a deed or deeds for the Property or part thereof sold and shall apply the proceeds of the sale, first, to all of the expenses of such sale including the reasonable expenses of this Mortgage or the Mortgagee and the fees and costs of any attorneys for this Mortgage, the Mortgagee, or the Mortgagee, all of which shall accrue and become due from and after any Event of Default, together with any sums which the Mortgagee shall have paid for procuring any abstract, auctioneer's fees, or commission, certificate or report of title to the Property and, second, to all sums or amounts due under the Notes or agreed or provided to be paid by

Mortgagor herein or in any other of the Loan Documents. The remainder of such proceeds, if any, shall be paid to Mortgagor or the Mortgagor's successors or assigns.

- (c) In the event of a sale of the Property or any part thereof and the execution of a deed or deeds therefore under this Mortgage, any recital therein of the occurrence of an Event of Default or of the giving or recording of any notice or demand by the Mortgagee regarding such sale shall be conclusive proof thereof, and the receipt by the Mortgagee of the purchase money recited therein shall fully discharge the purchaser from any obligation for the proper application of the proceeds of sale in accordance with this Mortgage.

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

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

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

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

8.8. **Costs, Expenses, and Counsel Fees.** Mortgagor shall pay all expenses incurred by Mortgagee incident to the preparation, execution, delivery, and/or recording of this Mortgage and any other document or instrument delivered by Mortgagor in connection with this Mortgage, including, without limitation, Mortgagee's attorney fees. Mortgagor shall also promptly pay to Mortgagee all expenses and costs, including reasonable attorneys' fees, incurred by Mortgagee or otherwise associated with the collection of any of the indebtedness secured hereby or to enforce the performance of the terms, conditions, provisions, agreements, and covenants contained herein or in any other document or instrument delivered by or on behalf of Mortgagor in connection with this Mortgage, whether or not suit is instituted, or incurred by Mortgagee in connection with any action, proceeding, litigation, or claim instituted or asserted by or against Mortgagee or in which the Mortgagee becomes engaged, wherein it becomes necessary, in the opinion of Mortgagee, to enforce, defend, or uphold the lien of this Mortgage or the validity or effectiveness of any assignment of any claim, award, payment, insurance recovery, or any other right or property conveyed, encumbered, or assigned by Mortgagor to Mortgagee hereunder, or the priority of any of the same or otherwise. All such expenses, costs, and attorneys' fees,

together with interest thereon at the rate set forth in the Note in the event of a default thereunder, shall be deemed to be part of the principal indebtedness evidenced by the Note and secured by this Mortgage

8.9. **Certain Waivers.** Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, redemption, extension, homestead or exemption laws, or any so-called moratorium laws, now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

9. INDEMNIFICATION.

9.1. Mortgagor hereby indemnifies and agrees to protect, defend and hold harmless the Mortgagee, any entity which "controls" the Mortgagee, within the meaning of Section 15 of the Securities Act of 1933, as amended, or is under common control with the Mortgagee, and any member, officer, director, official, agent, employee or attorney of the Mortgagee, and their respective heirs, administrators, executors, successors and assigns (collectively, hereinafter referred to as the "Indemnified Parties"), from and against any and all losses, damages, expenses or liabilities of any kind or nature and from any suits, claims or demands, including reasonable attorneys' fees incurred in investigating or defending such claim, suffered by any of them and caused by, relating to, arising out of, resulting from, or in any way connected with the Loan Documents or the transactions contemplated therein (unless determined by a final judgment of a court of competent jurisdiction to have been caused solely by the gross negligence or willful misconduct of the Indemnified Parties) including, without limitation: (i) disputes with any architect, general contractor, subcontractor, materialman or supplier, or on account of any act or omission to act by the Mortgagee in connection with the Property; (ii) losses, damages (including consequential damages), expenses or liabilities sustained by the Mortgagee in connection with any environmental inspection, monitoring, sampling or cleanup of the Property required or mandated by any Applicable Environmental Law; (iii) any untrue statement of a material fact contained in information submitted to the Mortgagee by the Mortgagor or the omission of any material fact necessary to be stated therein in order to make such statement not misleading or incomplete; (iv) the failure of the Mortgagor to perform any obligations herein required to be performed by the Mortgagor and (v) the ownership, construction, occupancy, operation, use, or maintenance of the Property.

9.2. In case any action shall be brought against the Mortgagee or any other Indemnified Party in respect to which indemnity may be sought against the Mortgagor, the Mortgagee or such other Indemnified party shall promptly notify the Mortgagor and the Mortgagor shall assume the defense thereof, including the employment of counsel selected by the Mortgagor and satisfactory to the Mortgagee, the payment of all costs and expenses, and the right to negotiate and consent to settlement. The failure of the Mortgagee to so notify the Mortgagor shall not relieve the Mortgagor of any liability it may have under the foregoing indemnification provisions or from any liability which it may otherwise have to the Mortgagee or any of the other Indemnified Parties provided, however, that the Mortgagor shall not be liable for any incremental or increased liability due solely to the Mortgagee's failure to so notify the Mortgagor. The Mortgagee shall have the right, at its sole option at any time, to employ separate counsel in any such action and to participate in the defense thereof at any time. The employment of separate counsel by the Mortgagee shall be at the Mortgagor's sole cost and expense if, in the Mortgagee's reasonable judgment, Mortgagor's counsel is performing inadequately. The Mortgagor shall not be liable for any settlement of any such action effected without its consent, but if settled with the Mortgagor's consent, or if there be a final judgment for the claimant in any such action, the Mortgagor agrees to indemnify and save harmless the Mortgagee from and against any loss or liability by reason of such settlement or judgment.

9.3. The provisions of this Section 9 shall survive the repayment of the Liabilities and the release or discharge of this Mortgage.

10. MISCELLANEOUS.

10.1. **Notices.** All notices and communications under this Mortgage shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid),

to the addresses listed in this Mortgage. Notice shall be deemed to have been given and received: (a) if by hand delivery, upon delivery; (b) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (c) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

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

10.3. Continuing Enforcement of Mortgage. If, after receipt of any payment of all or any part of the Liabilities, the Mortgagee is compelled or agrees, for settlement purposes, to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then this Mortgage, the Note, and the other Loan Documents shall continue in full force and effect, and the Mortgagor shall be liable for, and shall indemnify, defend and hold harmless the Mortgagee with respect to the full amount so surrendered. The provisions of this Section 10.3 shall survive the cancellation or discharge of this Mortgage and shall remain effective notwithstanding the payment of the Liabilities, the cancellation of the Notes, the release of any security interest, lien or encumbrance securing the Liabilities or any other action which the Mortgagee may have taken in reliance upon its receipt of such payment.

10.4. No Implied Waiver. Mortgagee shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by the Mortgagee, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event. No delay by Mortgagee in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Mortgagee of any particular provision of this Mortgage shall be deemed effective unless in writing signed by Mortgagee. All such rights and remedies provided for herein or which Mortgagee or the holder of the Note may have otherwise, at law or in equity (including, without limitation, any right to sue on the Note and to foreclose this Mortgage through judicial or non-judicial proceedings as applicable), shall be distinct, separate, and cumulative and may be exercised singly or serially (in any order) or concurrently, and as often as the occasion therefor arises. No action by Mortgagee under the provisions of this Mortgage shall impair any acceleration or sale or foreclosure right or remedy available to Mortgagee under this Mortgage. Acceleration of the Indebtedness Hereby Secured, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of the Liabilities.

10.5. Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Mortgage shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible. In the event of the passage, after the date of this Mortgage, of any law changing in any way the laws now in force for the taxation of mortgages or debts secured thereby, for state or local purposes, or the manner of the operation of any such taxes, so as to affect the interest of the Mortgagee or impose upon the Mortgagee the obligation to pay the whole or any part of any taxes, assessments, charges or liens (hereinafter referred to as the "Charges") herein required to be paid by the Mortgagor, then the Mortgagor shall pay the full amount of the Charges; provided that is payment by the Mortgagor of any charges would be unlawful or usurious, the Mortgagee may, at the Mortgagee's option: (i) declare the liabilities to be immediately due and payable; or (ii) pay that portion of the Charges as renders the Liabilities unlawful or usurious, in which event the Mortgagor shall concurrently therewith pay the remaining lawful and nonusurious portion said Charges. In the event that any provision in this Mortgage shall be inconsistent with any provision of the statutes or common law of the State of Indiana governing the foreclosure of this Mortgage (collectively, the "Foreclosure Laws"), the provisions of the Foreclosure Laws 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 Foreclosure Laws.

10.6. **Binding Effect.** This Mortgage and each and every covenant, agreement, and other provision hereof shall be binding upon Mortgagor and its successors and assigns including, without limitation, each and every from time to time record owner of the fee title to the Property or any other person having an interest therein and shall inure to the benefit of Mortgagee and its successors and assigns; provided, however, that this Mortgage cannot be assigned by Mortgagor without the prior written consent of Mortgagee, and any such assignment or attempted assignment by Mortgagor shall be void and of no effect with respect to Mortgagee. Wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note whether so expressed or not, and each such from time to time holder of the Note shall have and enjoy all of the rights, privileges, powers, options, and benefits afforded hereby and hereafter and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if each such from time to time holder is herein by name specifically granted such rights, privileges, powers, options, benefits and is herein by name designated as Mortgagee. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators, and executors of any natural person who is a party to this Mortgage. In this Mortgage, whenever the context so requires, the masculine, feminine or neuter genders shall include the other genders, the singular number includes the plural and the plural the singular, and the term "person" shall include any individual, partnership, corporation, trustee or unincorporated association. If more than one person has executed this Mortgage as Mortgagor, the term "Mortgagor" shall include all such persons and the obligations of all such persons shall be joint and several.

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

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

10.9. **Governing Law and Venue.** This Mortgage has been delivered to and accepted by the Mortgagee and will be deemed to be made in the State where the Mortgagee's office indicated above is located. THIS MORTGAGE WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE MORTGAGEE'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES, EXCEPT THAT THE LAWS OF THE STATE WHERE THE APPLICABLE PROPERTY IS LOCATED (IF DIFFERENT FROM THE STATE WHERE SUCH OFFICE OF THE MORTGAGEE IS LOCATED) SHALL GOVERN THE CREATION, PERFECTION, AND FORECLOSURE OF THE LIENS CREATED HEREUNDER ON THE APPLICABLE PROPERTY OR ANY INTEREST THEREIN. Mortgagor hereby irrevocably consents to the exclusive jurisdiction of any state or federal court for the county or judicial district where Mortgagee's office indicated above is located, provided that nothing contained in this Mortgage will prevent Mortgagee from bringing any action, enforcing any award or judgment, or exercising any rights against the Mortgagor individually, against any security or against any property of the Mortgagor within any other county, state, or other foreign or domestic jurisdiction. Mortgagee and Mortgagor agree that the venue provided above is the most convenient forum for both the Mortgagee and the Mortgagor. The Mortgagor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Mortgage.

10.10. **Waiver of Jury Trial.** MORTGAGOR AND MORTGAGEE AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY MORTGAGEE OR MORTGAGOR, ON OR WITH RESPECT TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. MORTGAGEE AND MORTGAGOR EACH HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND INTELLIGENTLY, AND WITH THE ADVICE OF THEIR RESPECTIVE COUNSEL, WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING. FURTHER, MORTGAGOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION, OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. MORTGAGOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS MORTGAGE AND THAT MORTGAGEE WOULD NOT EXTEND CREDIT TO MORTGAGOR IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS MORTGAGE.

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

10.12. **Cross Default and Cross Collateralization.** This Mortgage shall be cross collateralized with any and all other mortgages or security instruments executed now, or hereafter, by Mortgagor or any of Mortgagor's affiliated entities, including, but not limited to, any Guarantor ("Collateral Mortgage"). A default under this Mortgage shall be deemed a default under any Collateral Mortgage and a default under any Collateral Mortgage shall be deemed a default under this Mortgage.

10.13. **Non-Merger.** In the event Mortgagee shall acquire title to the Property by conveyance from Mortgagor or as a result of foreclosure, this Mortgage shall not merge in the fee estate of the Property but shall remain and continue as an existing and enforceable lien for the Liabilities secured hereby until the same shall be released of record by Mortgagee in writing.

10.14. **Subrogation.** To the extent permitted by applicable law, if any or all of the proceeds secured hereby have been used to extinguish, extend, or renew any indebtedness heretofore existing against the Property, then, to the extent of such funds so used, the Liabilities and this Mortgage shall be subrogated to all of the rights, claims, liens, titles, and interests heretofore existing against the Property to secure the indebtedness so extinguished, extended, or renewed, and the former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien created herein as cumulative security for the repayment of the Liabilities.

Mortgagor acknowledges it has read and understood all provisions of this Mortgage, including the confession of judgment and waiver of jury trial, and been advised by counsel as necessary or appropriate.

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

DATED Effective July 31, 2020
August 26 AM

Alan Investments III, LLC

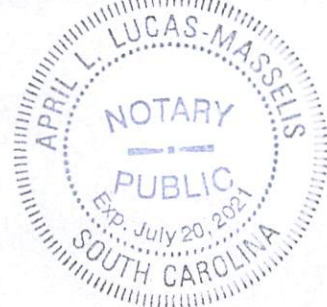



Todd Merson, Authorized Signatory

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

ON THIS, the 26 ^{AM} day of August, 2020, before me, the undersigned officer, personally appeared Todd Merson and acknowledged that he/she has executed the foregoing instrument by signing his/her name as a duly authorized officer/member of Alan Investments III, LLC for the purposes therein contained, and desired the same might be recorded as such, according to law.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.





April L. Lucas-Masselis, Notary Public
My commission expires: 07/20/2021



Ryan Carr
Witness Printed Name

[Handwritten signature]

Jamie Johnson
Witness Printed Name

[Handwritten signature]

State of _____
County of _____

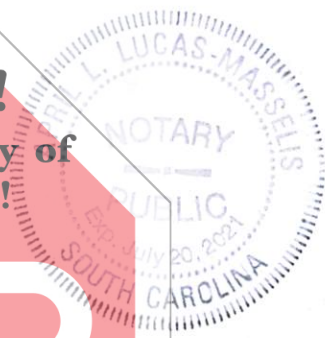
The foregoing instrument was acknowledged before me this 26th day of August, 2020, by Ryan Carr and Jamie Johnson who (produced DL) as identification () are personally known to me or () have

[Handwritten signature]
NOTARY PUBLIC
Printed Name: April Lucas Massey

My Commission Expires: 7/20/2021

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THIS INSTRUMENT WAS PREPARED BY:

**DLP Lending Fund, LLC
95 Highland Avenue, Suite 300
Bethlehem, PA 18017**

Record and Return To:
Boston National Title Agency, LLC
400 Rouser Road, Suite 101
Coraopolis, PA 15108

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NOT OFFICIAL!**

**This Document is the property of
the Lake County Recorder!**

STOP



DEF8029384 - LOAN 6 - M

SCHEDULE A

LEGAL DESCRIPTION

The land hereinafter referred to is situated in the City of Lake Station, County of Lake, State of IN, and is described as follows:

Lot Numbered 7 and 8, Block 31 as shown on the recorded plat of Second Subdivision of Gary, Recorded in Plat Book 7, Page 25, in the Office of the Recorder of Lake County, Indiana.

PROPERTY: 1713 E 28th Ave., Lake Station IN 46405-2009

PARCEL/ID: 45-09-18-483-002.000-021

Ref Code: K2D3-017

