

**REAL ESTATE MORTGAGE, ASSIGNMENT OF
LEASES AND RENTS AND SECURITY
AGREEMENT/FIXTURES FILING**

Document Number

***The above recording information verifies
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Shabani Investments LLC ("Mortgagor") mortgages, grants, conveys and warrants to The Community Development Authority of the City of Whitewater, Wisconsin, a body politic created by the City of Whitewater, Wisconsin, a Wisconsin municipal corporation located in Walworth and Jefferson Counties, Wisconsin (The Community Development Authority of the City of Whitewater, Wisconsin being hereinafter referred to as "Mortgagee"), in consideration of the sum of \$50,000.00 being loaned by Mortgagee to Mortgagor in accordance with the terms and provisions of a certain Façade Loan Agreement with respect to the property located at 136 West Main Street in the City of Whitewater, Walworth County, Wisconsin between Mortgagor and Mortgagee bearing even date herewith (said Façade Loan Agreement with respect to the premises located at 136 West Main Street, City of Whitewater, Walworth County, Wisconsin being hereinafter referred to as the "Loan Agreement"), which loan, pursuant to the Loan Agreement, is evidenced by a Promissory Note from Mortgagor to Mortgagee bearing even date herewith in the principal sum of \$50,000.00 (the "Note"), to secure payment of and performance of the obligations of Mortgagor to Mortgagee under the Loan Agreement, this Mortgage, the Note, and any extensions, renewals and modifications of any of the foregoing and any refinancing thereof (the obligations of Mortgagor to Mortgagee under the Loan Agreement, this Mortgage, the Note and any extensions, renewals and modifications thereof, and any refinancings thereof, being hereinafter referred to as the "Obligation"), the following property, together with all rights and interests appurtenant thereto in law or in equity, all present and future leases, rents, issue and profits arising therefrom, including insurance proceeds and condemnation awards, and all structures, improvements and fixtures located thereon, in the City of Whitewater, County of Walworth, State of Wisconsin ("Property"), to-wit:

RETURN TO:

Community Development Authority
P.O. Box 178
Whitewater, WI 53190

/OT 00003

(Parcel Identification Number)

This is not homestead property.

This is not a purchase money mortgage.

A part of Lot 1 in Block 1 in the Village, now City, of Whitewater, Walworth County, State of Wisconsin, bounded and described as follows: Beginning on the S. line of said Lot being the N. line of Main Street, at a point 18 feet W. of the SE corner of said Lot, and running thence N. and parallel with the E. line of said Lot and on the W. line of said Lot formerly owned by one Strang 200 feet and thence N. to the S. line of North Street in said City; thence W. along the S. line of North Street, 40 feet more or less to the E. line of land conveyed to Fred A. McMillan and William J. Bray, by deed recorded in Volume 101 of Deeds on page 544, Walworth County Records; thence S. along the E. line of said lands conveyed to McMillan and Bray to a point on the N. line of said Main Street; thence E. along the N. line of said Main Street 40 feet more or less to the place of beginning. Also conveying the right-of-way to North Street. Excepting therefrom property conveyed to Werner J. Ketterhagen as recorded in Volume 486 of Deeds, page 61 as Document No. 473119 Walworth County Records.

1. MORTGAGOR'S COVENANTS.

a. **COVENANT OF TITLE.** Mortgagor warrants title to the Property, except restrictions and easements of record, if any, and further excepting the following (hereinafter each being referred to as the "Senior Mortgage"), to-wit: Loans from First Citizens State Bank (the "Senior Mortgage Lender") in the principal sums of \$780,000.00 on September 24, 2021 and \$52,000.00 on February 16, 2024 to provide funds for certain Improvements to the Property, which loans are secured by mortgages on the Property from Owner in favor of Senior Mortgage Lender and recorded in the Office of the Register of Deeds for Walworth County as Document Numbers 1047490 and 1091078, and which loans from the Senior Mortgage Lender are further secured by related assignments of leases and rents in favor of the Senior Mortgage Lender

bearing even date therewith (which loans to Owner by Senior Mortgage Lender and all extensions or renewals of, and refinancings of, but not increases in the principal amounts of, or re-advances of principal with respect to, said loans being hereinafter referred to as the "Senior Mortgage Indebtedness");

b. **FIXTURES.** Any property which has been affixed to the Property and is used in connection with it is intended to become a fixture. Mortgagor waives any right to remove such fixture from the Property which is subject to this Mortgage.

c. **TAXES.** Mortgagor promises to pay when due all taxes and assessments levied on the Property or upon Mortgagee's interest in it and to deliver to Mortgagee on demand receipts showing such payment.

d. **INSURANCE.** Mortgagor shall keep the improvements on the Property insured against loss or damage occasioned by fire, extended coverage perils and such other hazards as Mortgagee may require, without co-insurance, through insurers approved by Mortgagee, in the amount of the full replacement value of the improvements on the Property. Mortgagor shall pay the insurance premiums when due. The policies shall contain the standard mortgage clause in favor of Mortgagee, and evidence of all policies covering the Property shall be provided to Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. Unless Mortgagor and Mortgagee otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided Mortgagee deems the restoration or repair to be economically feasible.

e. **OTHER MORTGAGEES OR LIENS.** Mortgagor shall timely perform all of Mortgagor's obligations which may be or become secured at any time by a mortgage or other lien on the Property in favor of any third party. Failure of Mortgagor to timely perform any obligation under the preceding sentence shall be deemed to be a default under the terms of this Mortgage and the Obligation it secures, and, upon any such default or deemed default under the foregoing provisions of this sentence, the entire balance under the Obligation secured by this Mortgage shall become due and payable in full at the option of Mortgagee, without notice, which notice is hereby waived.

f. **OTHER COVENANTS.** Mortgagor covenants not to commit waste nor suffer waste to be committed on the Property, to keep the Property in good condition and repair, to keep the Property free from liens superior to the lien of this Mortgage other than the lien of the Senior Mortgage in favor of First Citizens State Bank securing Senior Mortgage Indebtedness as defined in subparagraph a. above and to comply with all laws, ordinances and regulations affecting the Property.

2. **DEFAULT AND REMEDIES.** Mortgagor agrees that time is of the essence with respect to payment of principal and interest when due, and in the performance of the terms, conditions and covenants contained herein or in the Obligation secured hereby. In the event of default, Mortgagee may, at its option, declare the whole amount of the unpaid principal and accrued interest due and payable, and collect it in a suit at law or by foreclosure of this Mortgage or by the exercise of any other remedy available at law or equity.

3. **NOTICE.** Unless otherwise provided in the Obligation secured by this Mortgage, prior to any acceleration (other than under subparagraph 1.e. above or under paragraph 9. below) Mortgagee shall notify Mortgagor in writing of the potential for a default, the action required to avoid a default, and a date which is not less than ninety (90) days subsequent to the date on which the payment was originally due or on which the failure originally occurred, and not less than sixty (60) days from the date of the notice, by which such action as may be required must be performed; in the event Mortgagor does not carry out such action as is required within the time specified in said notice, the entire indebtedness under the Obligation secured by this Mortgage shall become due and payable in full at the option of Mortgagee without further notice, which notice is hereby waived.

4. **EXPENSES AND ATTORNEY FEES.** In case of default, whether abated or not, all costs and expenses, including, but not limited to, reasonable attorney fees, to the extent not prohibited by law shall be added to the principal, become due as incurred, and in the event of foreclosure be included in the judgment.

5. **FORECLOSURE WITHOUT DEFICIENCY.** Mortgagor agrees to the provisions of Sections 846.101 and 846.103, Wis. Stats., as may apply to the Property and as may be amended, permitting Mortgagee in the event of foreclosure to waive the right to judgment for deficiency and hold the foreclosure sale within the time provided in such applicable Section.

6. **RECEIVER.** Upon default or during the pendency of any action to foreclose this Mortgage, Mortgagor consents to the appointment of a receiver of the Property, including homestead interest, to collect the rents, issues and profits of the Property during the

pendency of such an action, and such rents, issues and profits when so collected shall be held and applied as the court shall direct.

7. **WAIVER.** Mortgagee may waive any default without waiving any other subsequent or prior default by Mortgagor.

8. **MORTGAGEE MAY CURE DEFAULTS.** In the event of any default by Mortgagor of any kind under this Mortgage or any Obligation secured by this Mortgage, Mortgagee may cure the default and all sums paid by Mortgagee for such purpose shall immediately be repaid by Mortgagor with interest at the rate then in effect under the Obligation secured by this Mortgage and shall constitute a lien upon the Property.

9. **CONSENT REQUIRED FOR TRANSFER.** Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, option, long-term lease or in any other way) without the prior written consent of Mortgagee, unless either the indebtedness secured by this Mortgage is first paid in full or the interest conveyed is a mortgage or other security interest in the Property, subordinate to the lien of this Mortgage. The entire indebtedness under the Obligation secured by this Mortgage shall become due and payable in full at the option of Mortgagee without notice, which notice is hereby waived, upon any transfer, sale or conveyance made in violation of this paragraph. A violation of the provisions of this paragraph will be considered a default under the terms of this Mortgage and the Obligation it secures.

10. **ASSIGNMENT OF RENTS.** Mortgagor hereby transfers and assigns absolutely to Mortgagee, as additional security, all rents, issues and profits which become or remain due (under any form of agreement for use or occupancy of the Property or any portion thereof), or which were previously collected and remain subject to Mortgagor's control following any default under this Mortgage or the Obligation secured hereby and delivery of notice of exercise of this assignment by Mortgagee to the tenant or other user(s) of the Property in accordance with the provisions of Section 708.11, Wis. Stats., as may be amended. This assignment shall be enforceable with or without appointment of a receiver and regardless of Mortgagee's lack of possession of the Property.

11. **ENVIRONMENTAL PROVISION.** Mortgagor represents, warrants and covenants to Mortgagee that (a) during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property; (c) without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components ("PCBs") or underground storage tanks; (d) there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) Mortgagor in the past has been, at the present is and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Mortgagee from all loss, cost (including reasonable attorney fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Mortgagee in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

12. **SECURITY INTEREST ON FIXTURES.** To further secure the payment and performance of the Obligation, Mortgagor hereby grants to Mortgagee a security interest in:

CHOOSE ONE OF THE FOLLOWING OPTIONS; IF NEITHER IS CHOSEN, OPTION A SHALL APPLY:

X A. All fixtures and personal property owned by Mortgagor located on or related to the operations of the Property whether now owned or hereafter

acquired, which security interest is inferior only to the security interest of the Senior Mortgage Indebtedness and filing by First Citizens State Bank.

B. All property listed on the attached schedule.

This Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to those parts of the Property indicated above. Mortgagor authorizes Mortgagee to file such Uniform Commercial Code Financing Statements, continuations thereof and amendments thereto as Mortgagee may from time to time reasonably deem advisable to establish, perfect and continue perfected Mortgagee's security interest in and lien upon the above identified fixtures and personal property and proceeds thereof. This Mortgage constitutes a fixture filing and financing statement as those terms are used in the Uniform Commercial Code. This Mortgage is to be filed and recorded in the real estate records of the county in which the Property is located, and the following information is included: (1) each Mortgagor shall be deemed a "debtor"; (2) Mortgagee shall be deemed to be the "secured party" and shall have all of the rights of a secured party under the Uniform Commercial Code; (3) the address of the secured party is 312 West Whitewater Street, P.O. Box 688, Whitewater, WI 53190 (4) this Mortgage covers goods which are or are to become fixtures; (5) the name of the record owner of the land is the debtor; (5) the legal name and address of each debtor and the state of organization and the organizational identification number of each debtor are: Shabani Investments LLC (Wisconsin Entity ID No. S134142, 11337 E. County Road N, Whitewater, WI 53190.

13. **AUTHORIZATION FOR DISCLOSURE.** Each Mortgagor hereby authorizes and directs the holder of any mortgage or other lien against the Property to disclose to the CDA, from time to time as requested by the CDA, all information with regard to performance of Mortgagor's obligations under or secured by any such mortgage or agreement establishing such lien on the Property and the remaining balances of such obligations and to furnish the CDA with copies of any notice given to Mortgagor in relation to any such mortgage or other lien on the Property and the obligations secured thereby simultaneously with the giving of such notice to Mortgagor.

14. **SINGULAR; PLURAL.** As used herein, the singular shall include the plural and any gender shall include all genders.

15. **JOINT AND SEVERAL LIABILITY.** The covenants of this Mortgage set forth herein shall be deemed joint and several among Mortgagors, if more than one.

16. **INVALIDITY.** In the event any provision or portion of this instrument is held to be invalid or unenforceable, this shall not impair or preclude the enforcement of the remainder of the instrument.

Dated: June 14, 2024

SHABANI INVESTMENTS LLC

By [Signature]
Ilmi Shabani, Member

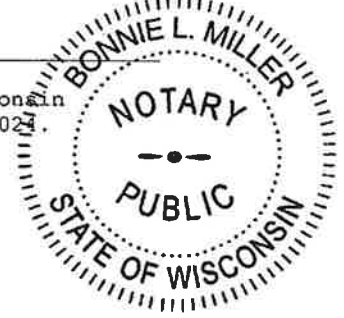
By [Signature]
Urim Shabani, Member

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF Walworth)

Personally came before me this 14th day of June, 2024 the above named Ilmi Shabani and Urim Shabani, to me known to be the persons who executed the foregoing instrument and acknowledged the same as the duly-authorized act and deed of Shabani Investments LLC, a Wisconsin member-managed limited liability company.

Bonnie L. Miller
Bonnie Miller, Notary Public
Walworth County, State of Wisconsin
My commission expires: 08/26/2024.



THIS INSTRUMENT DRAFTED BY:
James J. Wawrzyn
State Bar No. 1059563