

AGREEMENT FOR DEED IN LIEU OF FORECLOSURE

This **AGREEMENT FOR DEED IN LIEU OF FORECLOSURE** (this "Agreement") is dated September __, 2023, and executed by and between **ABC BANK SUBSIDIARY, LLC**, a Delaware limited liability company as agent ("Agent"), on behalf of the lenders (the "Lenders") from time to time a party to that certain Amended and Restated Credit Agreement dated as of November 26, 2019, more particularly described on Schedule I attached hereto (as amended, restated, supplemented, or otherwise modified from time to time, the "Loan Agreement"), **GREENACRE DEVELOPMENT, LLC**, a Texas limited liability company (the "Borrower"), and **JOHN SMITH**, an individual (the "Guarantor").

SECTION 1. RECITALS.

1.1 Borrower, Agent, and Lender have executed and entered into the Loan Agreement and the other documents (the "Loan Document") evidencing and securing that certain loan in the original principal amount of \$10,500,000.00 (the "Loan"), and all liens and security interests securing the Loan are herein collectively called the "Liens") made by Lenders to Borrower, including without limitation the documents listed on the schedule of loan documents attached hereto and incorporated herein by reference for all purposes (collectively, the "Loan Documents"), and the Loan is further supported by the Guaranty executed by Guarantor in favor of Agent (the indebtedness secured by said Guaranty is hereby referred to as the "Guaranteed Obligations").

1.2 Borrower holds record and beneficial title to the Property (as herein defined); and

1.3 Borrower acquired the Property by warranty deed recorded in the Real Property Records, El Paso County, Texas, and has continuously owned and operated the Property since it was acquired.

1.4 The term "Trigger Event" as used herein shall refer to any default by Borrower or Guarantor under the terms of the Letter Agreement dated August 31, 2023 (the "Letter Agreement"), by and between Borrower, Guarantor and Agent, any additional Event of Default under the Loan Documents or any assertion or claim by Borrower or Guarantor that the terms of the Letter Agreement, any of the Loan Documents or this Agreement are in any way unenforceable.

1.5 In consideration of the mutual covenants and agreements contained herein and Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Borrower and Guarantor hereby agree as follows.

SECTION 2. CONVEYANCE TO AGENT.

2.1 Agreement to Convey. Borrower, at the Closing (as herein defined) hereof, agrees to escrow with Agent, on behalf of Lenders, documents conveying to Agent or its assigns, on behalf of Lenders, free and clear of any right of redemption or other right of Borrower, or

anyone claiming through Borrower (the "Conveyance"), the following (individually and collectively herein, as the context shall suggest or require, called the "Property"):

(a) Good and marketable title in fee simple to the tracts or parcels of land covered by the Deed of Trust from Borrower to Agent, on behalf of Lenders (as described in more detail on Exhibit "B" attached hereto and incorporated herein by reference) together with all rights and interests appurtenant thereto, including all of Borrower's right, title, and interest in and to adjacent easements, streets, alleys, rights-of-way and any adjacent strips or gores of real estate ("Land"), all improvements now or hereafter located on the Land ("Improvements"), and all rights, titles, and interests appurtenant to the Land and Improvements;

(b) All tangible personal property ("Personalty") of any kind owned by Borrower and attached to or used in connection with the ownership, maintenance, or operation of the Land or Improvements;

(c) All leases, franchises, licenses, occupancy agreements, or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to, the Improvements or Land ("Leases"), and all prepaid rents and deposits, security or otherwise ("Deposits"), made by tenants ("Tenants") holding under the Leases;

(d) Any and all of Borrower's right, title and interest in any and all of the following which relate to the Land or Improvements, to the extent assignable: (i) contracts or agreements, such as maintenance, construction, materials, service, or utility contracts ("Property Agreements"), to the extent Agent, on behalf of Lenders elects to take an assignment thereof, (ii) warranties, guaranties, indemnities and claims, (iii) licenses, permits, or similar documents, (iv) trade names, marks, and other identifying material, (v) plans, drawings, specifications, surveys, engineering reports, and other technical descriptions, (vi) insurance contracts or policies, to the extent Agent elects to take an assignment thereof, and (vii) other property (real, personal or mixed) owned or held by Borrower which relates, in any way, to the design, construction, ownership, use, leasing, maintenance, service, or operation of the Land, Improvements, Leases, Deposits, or Personalty; and

(e) Any and all tax, insurance, and other deposits or funds held in escrow, or otherwise, by Agent under the terms of the Loan Documents.

2.2 Conveyancing Documents. Good and marketable title to the Property shall be conveyed and assigned to Agent, or its assigns, for the benefit of the Lenders, pursuant to the General Warranty Deed (the "Deed") in the form of Exhibit "A" attached hereto, and the Bill of Sale and General Assignment (the "Bill of Sale") in the form of Exhibit "C" attached hereto (all of the documents executed and delivered at Closing evidencing the conveyance of the Property to Agent, on behalf of Lenders, shall be herein collectively called the "Conveyance Documents") and such Conveyance Documents shall be held in escrow by Agent, on behalf of Lenders, until Agent's election in its sole discretion (and without any advance notice to or action by Borrower,

Guarantor or any other person but with notice given by Agent to Borrower promptly thereafter) to release such Conveyance Documents from escrow due to the occurrence of a Trigger Event.

2.3 Absolute Conveyance. Borrower and Guarantor acknowledge and agree that if Agent so elects in its sole discretion (and without any advance notice to or action by Borrower, Guarantor or any other person but with notice given by Agent to Borrower promptly thereafter) upon the occurrence of a Trigger Event (i) the Conveyance of the Property to Agent or its assigns according to the terms and conditions of this Agreement shall be an immediate and absolute conveyance of all of the right, title and interest in and to the Property and is not intended as a deed of trust, mortgage, trust conveyance, or other security agreement of any nature whatsoever, and (ii) after a Trigger Event, Borrower and Guarantor shall have no further interest (including specifically, but without implied limitation, any rights of redemption) or claims in and to the Property or to the rents, issues or profits and other proceeds that may be derived therefrom, of any kind whatsoever.

2.4 Merger Not Intended. Borrower, Agent and Guarantor acknowledge and agree that:

(a) The Conveyance Documents, and the conveyances to be made thereby, are being executed, delivered, and accepted in lieu of foreclosure, but that the same shall not be interpreted and construed the same as a foreclosure of the Liens, rather as an absolute conveyance to Agent or its assigns of all right, title and interest in the Property, including, without limitation, any equity or rights of redemption of Borrower or any other party therein or thereto;

(b) The Liens, including without limitation those created by the Deed of Trust, shall not be released or relinquished in any manner or respect whatsoever, by the transactions contemplated in this Agreement, but rather shall remain valid and continuous and in full force and effect, unless and until released by written instrument executed and filed for record in the office of the Real Property Records of El Paso County, Texas;

(c) There shall not be a merger of the Liens with the title of Agent to the Property by virtue of the conveyance evidenced by the Conveyance Documents, and the Liens on one hand and title to the Property on the other, shall remain separate and distinct estates.

(d) Agent's title to the Property pursuant to the Deed will not merge with the Liens and for purposes of priority as between (i) intervening or inferior liens and encumbrances, if any, on or against the Property, and (ii) the Liens, all rights of Agent to exercise its remedies of foreclosure by private power of sale or by judicial foreclosure are expressly preserved and for purposes of limitation and any other applicable time bar defense, the Liens are expressly extended as evidenced by this Agreement; and

(e) The priority of the Liens is intended to be and shall remain in full force and effect and nothing herein or in any instruments executed in connection herewith shall be construed to subordinate the priority of the Liens to any other liens or encumbrances.

Also available as part of the eCourse

[2023 William W. Gibson, Jr. Mortgage Lending and Servicing eConference](#)

First appeared as part of the conference materials for the
57th Annual William W. Gibson, Jr. Mortgage Lending Institute session
"Foreclosures and Deeds in Lieu"