

## AFFIDAVIT OF NON-OCCUPANCY

Now comes \_\_\_\_\_, a(n) \_\_\_\_\_ (the "Company" or "Borrower"),  
by and through its (Sole) Member(s) and/or Manager(s), \_\_\_\_\_, who after being duly  
sworn, states as follows:

1. Age, Citizenship and Residency. (a) \_\_\_\_\_ is/are at least 18 years old, (b) \_\_\_\_\_ is/are  
(a) citizen(s) of \_\_\_\_\_, and (c) of \_\_\_\_\_ is/are (a) resident(s)  
\_\_\_\_\_.
2. Personal Knowledge. \_\_\_\_\_ has/have personal knowledge to the matters contained in this  
Affidavit.
3. Member(s) and/or Manager(s) of the Company. (a) \_\_\_\_\_ is/are a/the (Sole) Member(s)  
and/or Manager(s) of the Company, and (b) \_\_\_\_\_ is/are fully familiar with the  
business of the Company.
4. Company. The Company is \_\_\_\_\_ which is, and at all times shall be, duly organized,  
validly existing, and in good standing under and by virtue of the laws of \_\_\_\_\_.  
The Company has an address for purposes of notices and legal process at \_\_\_\_\_.  
Unless the Company has designated otherwise in writing, the principal office is the office at which  
the Company keeps its books and records. The Company will notify Lender prior to any change in  
the location of the Company's state of organization or any change in the Company's name. The  
Company shall do all things necessary to preserve and to keep in full force and effect the  
Company's existence, rights, and privileges, and shall comply with all regulations, rules,  
ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or  
court applicable to the Company and the Company's business activities.
5. Loan. Borrower is the sole owner of certain real property situated in \_\_\_\_\_,  
and more commonly known as \_\_\_\_\_ (individually and collectively, the "Property").  
Borrower is conveying the Property to \_\_\_\_\_, a \_\_\_\_\_ (the "Lender"),  
having an address for purposes of notices and legal process of \_\_\_\_\_, as security  
for a certain commercial loan (the "Loan") being obtained by Borrower from Lender in the original  
principal amount of \_\_\_\_\_. The Loan is evidenced by, amongst other loan documents, that  
(a) certain promissory note (the "Note") dated \_\_\_\_\_ and executed by Borrower  
in favor of Lender in the original principal amount of \_\_\_\_\_, and (b) certain mortgage,  
assignment of leases and rents, fixture filing, and security agreement (the "Mortgage") dated  
<\_\_\_\_\_) and executed by Borrower in favor of Lender as security for the Note [the  
Note, the Mortgage, and all other documents, instruments and agreements executed in connection  
with the Loan, collectively, are referred to herein as the "Loan Documents"].
6. Non-Occupancy. For as long as the Loan is outstanding, the Property shall remain unoccupied and  
free from any tenancies, leases or other possessory interest. Lender has stressed to the Borrower  
the importance of knowing whether the Borrower occupies or intends to occupy the Property as  
Borrower's principal place of business. Borrower certifies and represents to Lender that  
Borrower's principal place of business is \_\_\_\_\_. Accordingly, Borrower has no  
intention of ever making the Property securing the commercial loan as Borrower's principal place  
of business or residence.

7. From and after the date of this Affidavit, Borrower shall indemnify, defend, and hold harmless Lender and all of Lender's members, managers, partners, officers, servicers, agents, attorneys, employees, predecessors-in-interest and assignees from any and all liability for, and against and from any and all losses or damages from and against any and all claims asserted or liability established arising from the falsity of any part of this Affidavit.
8. Authority. The Company's execution of this Affidavit is duly authorized by its (Sole) Member(s) and/or Manager(s), . The Company is legally authorized to transact business in . The Company's certificate of formation has never been suspended or revoked. The Company has not been enjoined or restrained from doing business in , nor has any legal action been taken against the Company for said purpose. There has been no adverse change in the Company's financial condition as of the date of this Affidavit.
9. Approval by the Company. The Company, by and through its (Sole) Member(s) and/or Manager(s) , has executed this Affidavit and the Loan Documents. By execution of this Affidavit, hereby bind(s) the Company and the Borrower to the matters set forth herein.
10. Reliance. Borrower makes this Affidavit to induce Lender to make the Loan and accept the grant of collateral securing the Loan, and to induce (the "Title Company") to issue its title insurance policy. Borrower is aware that Lender and the Title Company shall rely on the statements made in this Affidavit and on Borrower's truthfulness. A breach of any of the undertakings in this Affidavit shall be an additional Event of Default under the terms of the Loan Documents, subject to the applicable notice and cure periods contained therein.
11. Borrower declares under penalty of perjury under the laws of that the aforesaid statements are true and correct to the best of Borrower's information, knowledge and belief.

[END OF PAGE – SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Borrower, by and through the Borrower's authorized signatory, has executed and delivered this Affidavit of Non-Occupancy to the Lender on .

BORROWER:

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By:

Its: Authorized Signatory

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) ss.:  
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On the       day of       in the year       , before me, the undersigned, a Notary Public in and for said State, personally appeared       , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public