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Illinois Anti-Predatory Lending Database Program



Doc#: 1009141093 Fee: \$104.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/01/2010 03:10 PM Pg: 1 of 35

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 08-16-200-013-0000**

Address:

Street: 95 W. Algonquin Rd.

Street line 2:

City: Arlington Heights

State: IL

ZIP Code: 60005

Lender: The Bank of Bermuda Limited

Borrower: SB Arlington Funding Company, Inc.

Loan / Mortgage Amount: \$65,900,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 777/0 et seq. because it is commercial property.

Certificate number: 7777E146-DF20-445A-AE7A-225B52889E52

Execution date: 03/19/2010

Property of Cook County Clerk's Office

9 of 12
JUL 21 03:10 PM

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**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166-0193
Attention: David J. Furman, Esq.

RETURN TO:

Wanda Roberts
Chicago Title
830 E Main St FL 16
Richmond, VA 22219

Property of
Copyright © 2010
Office

8489691 03/11/10

9/8/12

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING (THIRD LIEN)**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (THIRD LIEN) (as the same may be amended, restated, extended, supplemented or otherwise modified from time to time, this "Instrument"), is made as of the 19th day of March, 2010, by SB ARLINGTON FUNDING COMPANY, INC., a Delaware corporation, having an address at c/o Global Securitization Services, LLC, 68 South Service Road, Suite 120, Melville, NY 11747 ("Borrower"), and for the benefit of THE BANK OF BERMUDA LIMITED, a local company incorporated under the laws of Bermuda with registration #2109, having an address at 6 Front Street, Hamilton HM 11, Bermuda (together with its successors and assigns, "Lender"). Capitalized terms used herein but not otherwise defined shall have the respective meanings assigned to such terms in the Loan Agreement (as hereinafter defined).

WITNESSETH:

To secure the payment of a loan (the "Loan") in the maximum principal sum of \$65,900,000, lawful money of the United States of America, made from the Lender to Borrower and the Related Borrowers (as defined below) pursuant to the terms and conditions of a certain Mezzanine Loan and Security Agreement, dated as of the date hereof (as amended, modified, supplemented or restated, the "Loan Agreement"), among Borrower, the other borrowers party thereto (each a "Related Borrower" and, collectively, the "Related Borrowers"), and Lender, which Loan is evidenced by that certain Promissory Note in the maximum principal amount of \$65,900,000 made by Borrower and each Related Borrower to the order of Lender, dated as of the date hereof (as the same may be consolidated, severed, split, modified, amended, restated or extended from time to time, the "Note"), which Note has a scheduled maturity date, if not sooner paid, accelerated or extended pursuant to the terms of the Loan Agreement, of March 31, 2013,

Original copies of this document MUST NOT BE brought into Bermuda. Significant Bermuda Stamp Duty will become payable if an original copy of this document is brought into Bermuda.

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and all other sums now or hereafter due hereunder, or otherwise due under the Mezzanine Loan Documents (the principal amount of the Loan, together with interest thereon and all sums due hereunder and under the Loan Agreement, the Note and the other Mezzanine Loan Documents being collectively called the "Debt"), and all of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Debt) made or undertaken by Borrower to Lender as set forth in the Mezzanine Loan Documents (as hereinafter defined).

This Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Mezzanine Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Instrument (the Loan Agreement, the Note, this Instrument and all other documents evidencing or securing the Obligations delivered in connection with the making of the Loan are hereinafter referred to collectively as the "Mezzanine Loan Documents").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Borrower has mortgaged, warranted, given, granted a security interest in, bargained, sold, conveyed, confirmed, pledged and assigned, and does hereby mortgage, warrant, give, grant a security interest in, bargain, sell, convey, confirm, pledge and assign unto Lender, Borrower's present and future fee simple interest in and to the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Borrower now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises and the Improvements, together with the following property, rights, interests and estates being hereinafter described, are collectively referred to herein as the "Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Property, and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the

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Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements, and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Borrower in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code") superior in lien to the lien of this Instrument;

(c) all leases, tenancies, licenses, subleases, assignments and/or other rental or occupancy agreements (including, without limitation, any and all guarantees and supporting obligations of and security deposit and letter of credit rights relating to any of the foregoing) heretofore or hereafter entered including, without limitation, the Related Project Company Lease, into affecting the use, enjoyment or occupancy of the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (collectively, the "Leases"), together with all rights, powers, privileges, options and other benefits of lessor under the Leases, including, without limitation, the immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, condemnation awards, insurance proceeds, moneys and security payable or receivable under the Leases or pursuant to any of the provisions thereof, whether as rent or otherwise, the right of the lessor to perform all other necessary or appropriate acts with respect to such Leases as agent and attorney in fact for Borrower, and the right to make all waivers and agreements, to give and receive notices, consents and releases, to take such action upon the happening of an event of default under any Lease, including the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision of any Lease or by any law, and to do any and all other things whatsoever which Borrower is or may become entitled to do under any such Lease together with all accounts receivable, contract rights, franchises, interests, estates or other claims, both at law or in equity, relating to the Property, to the extent not included in rent earnings and income under any of the Leases, including the right to receive and collect any sums payable to Borrower thereunder and all deposits or other security or advance payments made by Borrower with respect to any of the services related to the Property or the operation thereof, and together with all rents, rent equivalents (including room revenues, if applicable), moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature and from any and all sources arising from or attributable to the Premises and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (the "Rents"), and together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

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(d) all of Borrower's right, title and interest in, to and under any and all reserve, deposit or escrow accounts (the "Accounts") made pursuant to any of the Mezzanine Loan Documents, together with all income, profits, benefits, investment property and advantages arising therefrom, and together with all rights, powers, privileges, options and other benefits of Borrower under the Accounts, and together with the right to do any and all other things whatsoever which Borrower is or may become entitled to do under the Accounts;

(e) all trade names, software, trademarks, trademark applications, trademark licenses, servicemarks, logos, copyrights, copyright applications, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(f) any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Property as a result of: (1) the exercise of the right of eminent domain or action in lieu thereof; or (2) the alteration of the grade of any street; or (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Property, to the extent of all amounts which may be secured by this Instrument at the date of receipt of any such award or payment by Borrower, or Lender, and of the reasonable counsel fees, costs and disbursements incurred by Borrower, or Lender in connection with the collection of such award or payment;

(g) the right, in accordance with the terms and conditions hereof, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of the Lender in the Property or any part thereof, other than any action or proceeding between Borrower and Lender as adverse parties;

(h) all accounts, sub-accounts, escrows, reserves, documents, instruments, chattel paper, monetary obligations, claims, deposits, investment property and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all books, records, plans, specifications, designs, drawings, permits, consents, licenses, franchises, management agreements, contracts, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Property), approvals, actions, refunds or real estate taxes and assessments (and any other governmental impositions related to the Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Property, or the use, operation, management, improvement, alteration, repair, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon;

(i) all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Property or any part thereof including, without limitation, all of Borrower's right, title and interest in and to the Related Project Company Lease, the Basic Rent Note (as defined in the Related Project Company Lease), the Understanding to Sell (as defined in the Related Project Company Lease) and the Understanding to Purchase (as defined in the Related Project Company Lease);

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(j) certain rights which Borrower now has or may hereafter acquire, to be indemnified and/or held harmless from any liability, loss, damage, cost or expense (including, without limitation, attorneys' fees and disbursements) relating to the Property or any part thereof;

(k) all right, title, and interest of Borrower in (i) the property and interests in property described on Exhibit B attached hereto and incorporated herein by reference, (ii) all other personal property now or hereafter owned by Borrower that is now or hereafter located on or used in connection with the Premises or the Improvements, (iii) all other rights and interests of Borrower now or hereafter held in personal property that is now or hereafter located on or used in connection with the Premises or the Improvements, (iv) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Borrower, and (v) all proceeds thereof (such personal property and proceeds are referred to herein collectively as the "Personal Property") and all other Collateral (as hereinafter defined);

(l) all interest rate swaps, caps, collars or other hedging transactions which are entered into by the Borrower (including, without limitation, the Hedge) and all payments and proceeds derived by Borrower therefrom;

(m) all rights of Borrower under any covenants, conditions, and restrictions affecting the Premises, the Improvements, or any master planned community of which the Premises and the Improvements are a part, whether now existing or hereafter arising, including, without limitation, all voting rights, declarant's rights, developer rights, and similar rights arising under any such covenants, conditions, and restrictions (collectively, the "CC&R's"), provided, Borrower shall retain the right to exercise its privileges under the CC&R's (subject in all respects to the terms of the Loan Agreement) until the occurrence and during the continuance of an Event of Default; and

(n) any and all proceeds, substitutions, accessories and products of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Property and all parts, rights, members and appurtenances thereof, unto and to the use and benefit of Lender, and the successors and assigns of Lender, in fee simple forever to secure the following (the "Obligations"):

- (a) repayment of indebtedness under the Note in the total principal amount of \$65,900,000, or so much thereof as may have been advanced from time to time, with interest thereon, and all "Obligations" at the time and manner provided in the Loan Agreement, the Note and the other Mezzanine Loan Documents;
- (b) payment of all sums advanced or expended by Lender pursuant to the terms of this Instrument and the Mezzanine Loan Documents to protect the Property, with interest thereon at the Default Rate as specified in, and in accordance with, the Loan Agreement;

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- (c) payment of all other sums, with interest thereon, that may hereafter be loaned to Borrower or its successors or assigns, by Lender, or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Instrument;
- (d) performance of every obligation of Borrower contained in the Mezzanine Loan Documents;
- (e) payment of all monetary obligations of Borrower under the Hedge;
- (f) performance of every obligation of Borrower contained in any agreement, document, or instrument now or hereafter executed by Borrower reciting that the obligations thereunder are secured by this Instrument, including, without limitation, all other obligations, agreements or indebtedness between Borrower and any affiliate of Lender; and
- (g) compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Property is bound or may be affected.

THIS INSTRUMENT is intended to constitute a security agreement under the Uniform Commercial Code and is given to secure the obligations of Borrower pursuant to the Loan Agreement, the Note and the other Mezzanine Loan Documents. This Instrument shall secure any and all renewals, extensions, modifications and amendments of the Obligations secured hereby and any other and further indebtedness of any amount which may hereafter be owed by Borrower to Lender;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt and shall pay all other sums due under the Loan Agreement or any other Mezzanine Loan Document, these presents and the mortgage and other security hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or reconveyance.

The following provisions shall also constitute an integral part of this Instrument:

1. Warranty of Title. Borrower hereby covenants, represents and warrants that it has good, marketable and insurable title to the Property that it is the record owner of the Premises and possesses a fee simple estate in the Premises and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for the Permitted Encumbrances. Borrower shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

2. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Borrower shall pay the Debt at the time and in the manner provided in the Note and the Loan Agreement. Borrower will duly and punctually perform all of the covenants, conditions and

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agreements relating to Borrower contained in the Note, the Loan Agreement, this Instrument and the other Mezzanine Loan Documents in accordance with the provisions thereof.

3. Insurance. (a) Borrower, at its sole cost and expense, shall maintain or cause to be maintained insurance with respect to the Property for the mutual benefit of Borrower, the Related Project Company and Lender as required by Section 5.4 of the Loan Agreement.

(b) If the Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (an "Insured Casualty"), Borrower shall give immediate notice thereof to Lender as provided in the Loan Agreement. Subject to the terms of Section 5.5 of the Loan Agreement, Borrower shall promptly repair, replace or rebuild the Property in accordance with the terms of the Loan Agreement, and all amounts paid with respect to such Insured Casualty under all insurance policies maintained by Borrower shall be governed by the terms and conditions of Section 5.5 of the Loan Agreement. The expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and shall be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

4. Payment of Impositions and Other Charges. Subject to Permitted Contests and the provisions of the Loan Agreement, Borrower shall pay, or cause to be paid, all Impositions now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable. Borrower shall promptly pay for, or cause payment of, all utility services provided to the Property or that may become a Lien against the Property for gas, electricity, water, sewer, or other services furnished to the Property.

5. Actions Affecting Property. Borrower shall appear and cause its Related Project Company to appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; and shall pay all reasonable costs and expenses (including, without limitation, costs of evidence of title, litigation, and reasonable attorneys' fees) in any such action or proceeding in which Lender may appear.

6. Condemnation. Upon Borrower obtaining knowledge thereof, Borrower shall promptly give Lender written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Property or any part thereof in accordance with Section 5.5(B) of the Loan Agreement. Subject to the terms of the Loan Agreement, Lender is hereby irrevocably appointed as Borrower's attorney in fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment for said condemnation or eminent domain and to make any compromise or settlement in connection with such proceeding. Subject to the terms of the Loan Agreement, Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding which is payable to Borrower to be paid in accordance with the terms of the Loan Agreement. The application of any such award or payment shall be governed by the applicable provisions of the Loan Agreement.

7. Maintenance of Property. Borrower shall cause the Property to be operated and maintained in accordance with Section 5.5(A) of the Loan Agreement.

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8. Use of Property. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof, nor shall Borrower initiate, join in, acquiesce in, or consent to any zoning change or zoning matter affecting the Property, which in any of the foregoing cases could reasonably be expected to result in a Material Adverse Effect. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Lender, which consent shall not be unreasonably withheld. Borrower shall not permit or suffer to occur any physical waste on or to the Property or to any portion thereof (ordinary wear and tear excepted) and shall not take any steps whatsoever to convert the Property, or any portion thereof, to a condominium or cooperative form of management. Borrower will not install or permit to be installed on the Premises any underground storage tank or above-ground storage tank in violation of the Environmental Laws.

9. Transfer or Encumbrance of the Property. (a) Except as expressly permitted under Article XI of the Loan Agreement, Borrower shall not cause or suffer to occur or exist, any Transfer, without the prior written consent of Lender which consent may be withheld in Lender's sole and absolute discretion.

(b) The occurrence of any Transfer in violation of the Loan Agreement shall constitute an Event of Default hereunder, whereupon Lender, at its option, without being required to demonstrate any actual impairment of its security or any increased risk of default hereunder, without prior demand or notice, may declare all or any part of the Debt immediately due and payable.

(c) Lender's consent to any Transfer of the Property or any interest in Borrower shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any attempted or purported Transfer of the Property or of any direct or indirect interest in Borrower, if made in contravention of this Section 9 or Article XI of the Loan Agreement, shall be null and void and of no force and effect.

10. Taxes on Security; Documentary Stamps; Intangibles Tax.

(a) Subject to Permitted Contests, if at any time the United States or America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Instrument, or impose any other tax or charge on the same, or which imposes a tax, either directly or indirectly, on the Obligations or Lender's interest in the Premises, Borrower will pay for the same, with interest and penalties thereon, if any. Borrower hereby agrees that, in the event that it is determined that additional documentary stamp tax or intangible tax is due hereon or any mortgage or promissory note executed in connection herewith (including, without limitation, the Note), Borrower shall indemnify and hold harmless Lender for all such documentary stamp tax and/or intangible tax, including all penalties and interest assessed or charged in connection therewith. Borrower shall pay same within ten (10) days after demand of payment from Lender and the payment of such sums shall be secured by this Instrument.

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(b) Borrower shall hold harmless and indemnify Lender and its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Instrument.

(c) If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender (unless such tax is paid or otherwise covered by the Borrower) or unenforceable or provide the basis for a defense of usury then Lender may, at its option declare the Debt immediately due and payable or require Borrower to pay or reimburse Lender for payment of the lawful or non-usurious portion thereof, if any.

11. No Credits on Account of the Debt. Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Impositions assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Instrument or the Debt. If such claim, credit or deduction shall be required by law and not paid by Borrower, Lender shall have the option, by written notice, to declare the Debt immediately due and payable.

12. Performance of Other Agreements. Borrower shall duly and punctually observe and perform, or cause to be observed and performed, each and every material term, provision, condition, and covenant to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument (including all instruments comprising the Permitted Encumbrances) affecting or pertaining to the Property, and will not suffer or permit any event of default (after giving effect to any applicable notice requirements and cure periods) to exist under any of the foregoing.

13. Reporting Requirements. Borrower agrees to immediately notify Lender of the insolvency or bankruptcy filing of Borrower.

14. Recording of Instrument, Etc. Upon the execution and delivery of this Instrument and thereafter, from time to time, Borrower will cause this Instrument, and any security instrument creating a lien, security title or security interest or evidencing the lien and security title hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien, security title or security interest hereof upon, and the interest of Lender in, the Property; provided, however, that the filing, registration or recording of each such instrument is in accordance with the framework of the approved *Shari'ah*-compliant structure of the *Shari'ah* Supervisory Board of HSBC Amanah.

15. Defaults and Events of Default. Any Event of Default shall constitute an "Event of Default" for purposes of the provisions of this Instrument.

16. Remedies. Upon the occurrence and during the continuance of any Event of Default, Lender may, at Lender's option, without releasing Borrower from any obligation, do any one or more of the following:

(a) Right to Perform Borrower's Covenants. Without limiting Lender's other rights hereunder or under the other Mezzanine Loan Documents, if Borrower has failed to keep

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or perform any covenant whatsoever contained in this Instrument, Lender may, but shall not be obligated to do so, perform or attempt to perform said covenant; and any payment made or expense incurred in the performance or attempted performance of any such covenant, together with any sum expended by Lender that is chargeable to Borrower or subject to reimbursement by Borrower under the Mezzanine Loan Documents, shall be and become a part of the Debt. Borrower shall, promptly upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and reasonable attorneys' fees) together with interest thereon from the date of such expenditures at the Default Rate until paid.

(b) Right of Entry. Lender may, by lawful means, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower, its Related Project Company, and their respective agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, or any part thereof, and take exclusive possession of the Property and of all books, records, and accounts relating thereto and Borrower agrees to surrender and cause its Related Project Company to surrender possession of the Premises and of such books, records and accounts to Lender upon demand, and thereupon Lender may exercise without interference from Borrower or its Related Project Company any and all rights which Borrower or its Related Project Company has with respect to the management, possession, operation, protection, or preservation of the Property, including, without limitation, (i) the right to rent the same for the account of Borrower and to deduct from such Rents all costs, expenses (including reasonable attorneys' fees), and liabilities of every character incurred by the Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property and to apply the remainder of such Rents on the Debt in such manner and priority as Lender may elect, (ii) right to use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; (iii) right to complete any construction on the Premises in such manner and form as Lender deems advisable; (iv) right to make alterations, additions, renewals, replacements and improvements to or on the Premises; (v) right to exercise all rights and powers of Borrower with respect to the Premises, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Premises and every part thereof; (vi) if Borrower is in physical possession and occupation of the Property, require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Premises as may be occupied by Borrower; and (vii) require Borrower to vacate and surrender possession of the Premises and cause its Related Project Company to vacate and surrender possession of the Premises to Lender or to such receiver and, in default thereof, Borrower and its Related Project Company may be evicted by summary proceedings or otherwise. All such costs, expenses, and liabilities incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Rate as specified in, and in accordance with, the Loan Agreement, all of which shall constitute a portion of the Debt. If Lender elects to enter the Property as provided for herein, Lender may invoke any and all legal remedies to dispossess

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Borrower, including, without limitation, specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by the Lender pursuant to this subsection, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing, operating, caring for, or repairing the Property or any portion thereof unless such loss is caused solely by the fraud, willful misconduct or gross negligence of Lender, its agents, employees, or officers, nor shall Lender be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder unless Lender has actually entered or took possession of the Property, foreclosed on the Property, or accepted a deed in lieu of foreclosure. Nothing in this subsection shall impose any duty, obligation, or responsibility upon any Indemnitee for the control, care, management, leasing, or repair of the Property or any portion thereof, nor for the carrying out of any of the terms and conditions of any such Lease prior to actual entry and possession of the Property by the Lender a result of the transfer of title to the Property to any Indemnitee by foreclosure, deed-in-lieu thereof, exercise of power of sale. Borrower hereby assents to, ratifies, and confirms any and all actions of the Lender with respect to the Property taken under this subsection. Without limiting Section 23 hereof, Borrower hereby agrees to indemnify and hold harmless Lender for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including reasonable legal fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with Lender's exercise of rights and remedies hereunder; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the indebtedness secured hereby and shall be secured by any and all other instruments securing said indebtedness, except for any of the foregoing solely resulting from Lender's, or Lender's agents, employees, or officers, gross negligence, bad faith or willful misconduct.

(c) Right to Accelerate. Lender may, without any presentment, protest, notice or demand of any kind, declare the entire unpaid balance or any part of the Debt immediately due and payable.

(d) Lender's Judicial Remedies. Lender may proceed by suit or suits, at law or in equity, to enforce the payment of the Debt and the performance and discharge of the Obligations to foreclose the liens and security interests and security titles of this Instrument as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Lender under this Instrument or the other Mezzanine Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Lender.

(e) Lender's Right to Appointment of Receiver. Lender, as a matter of right and (i) without regard to the sufficiency of the security for repayment of the Debt and without notice to Borrower, (ii) without any showing of insolvency, fraud, or mismanagement on the part of Borrower, (iii) without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, and (iv) without regard to the then value of the Property, shall be entitled to the appointment of a receiver or receivers for the protection, possession, control, management and operation of the Property, including (without limitation),

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the power to collect the Rents, enforce this Instrument and, in case of a sale and deficiency, during the full statutory period of redemption (if any), whether there be a redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collection of such Rents. Borrower hereby irrevocably consents to the appointment of a receiver or receivers upon the occurrence and during the continuance of an Event of Default. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(f) Additional Remedies. Lender may, in addition to the exercise of any or all of the remedies specified in this Section 16:

(i) sell for cash or upon credit the Premises or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(ii) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Mezzanine Loan Documents;

(iii) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Instrument or the other Mezzanine Loan Documents;

(iv) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Instrument or any other Mezzanine Loan Document to the payment of the following items in any order in its discretion:

- a. Impositions;
- b. Insurance premiums;
- c. Interest on the unpaid principal balance of the Note, including any amounts due and payable under the Hedge, if applicable;
- d. Amortization of the unpaid principal balance of the Note; and
- e. All other sums payable pursuant to the Note, the Loan Agreement, this Instrument and the other Mezzanine Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Instrument;

(g) Other Rights, etc. It is agreed that the risk of loss or damage to the Premises is on Borrower, and Lender shall have no liability whatsoever for decline in value of

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the Premises, for failure to maintain any policies of insurance (except solely to the extent that Lender would have any liability for violation of any of its obligations, if any, to disburse proceeds of insurance pursuant to the Mezzanine Loan Agreement), or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Premises or collateral not in Lender's possession.

(h) Discontinuance of Remedies. If Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Mezzanine Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Debt, the Mezzanine Loan Documents, the Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

(i) Remedies Cumulative. All rights, remedies, and recourses of Lender granted in the Note, this Instrument, the Loan Agreement and the other Mezzanine Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative; (ii) may be pursued separately, successively, or concurrently against Borrower or any other person or entity, the Property, or any one or more of them, at such time and in such order as Lender may determine in its sole discretion; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Instrument, the Loan Agreement or the other Mezzanine Loan Documents, or otherwise available at law or in equity; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Property prior to Lender bringing suit to recover the Debt; and (vi) in the event Lender elects to bring suit on the Debt and obtains a judgment against Borrower prior to exercising any remedies in relation to the Property, all liens and security interests, including the lien of this Instrument, shall remain in full force and effect and may be exercised thereafter at Lender's option.

(j) Election of Remedies. Lender may release, regardless of consideration, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Instrument or the other Mezzanine Loan Documents or affecting the obligations of Borrower or any other party to pay the Debt. For payment of the Debt, Lender may resort to any collateral securing the payment of the Debt in such order and manner as Lender may elect in its sole discretion. No collateral taken by Lender shall in any manner impair or affect the lien or security interests given pursuant to the Mezzanine Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(k) Bankruptcy Acknowledgment. If the Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, or in the event of the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against Borrower then Lender shall immediately become entitled, in addition to all other relief to which Lender may be entitled under this Instrument, to obtain (i) an

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order from any bankruptcy court or other appropriate court granting immediate relief from the automatic stay pursuant to §362 of the Bankruptcy Code so as to permit Lender to pursue its rights and remedies against Borrower as provided under this Instrument and all other rights and remedies of Lender at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting Borrower's use of all "cash collateral" as defined under §363 of the Bankruptcy Code. Borrower shall not assert or request any other party to assert that the automatic stay under §362 of the Bankruptcy Code operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Instrument, or any other rights that Lender has, whether now or hereafter acquired, against any guarantor of the Debt. Borrower shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to §105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Instrument against any guarantor of the Debt. Any bankruptcy petition or other action taken by Borrower to stay, condition, or inhibit Lender from exercising its remedies are hereby admitted by Borrower to be in bad faith and Borrower further admits that Lender would have just cause for relief from the automatic stay in order to take such actions authorized under state law.

(l) Application of Proceeds. While any Event of Default exists, the proceeds from any sale, lease, or other disposition of all or any portion of the Property, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Rents collected by Lender, its agents or nominee, from the Property, or Excess Funds, or sums received pursuant to Section 6 hereof, or proceeds from insurance which Lender elects to apply to the Debt pursuant to Section 3 hereof, may be applied by Lender to the Debt in such order, priority and proportions as Lender in its sole discretion shall determine, subject to the rights of the Senior Lender under the Senior Loan Documents and Senior Mezzanine Lender under the Senior Mezzanine Loan Documents in accordance with the terms of the Intercreditor Agreement.

17. Security Agreement.

(a) This Instrument is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. Borrower, by executing and delivering this Instrument, has granted and hereby grants to Lender, as security for the Obligations, a security interest in and to all of the Personal Property. Borrower and Lender agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Improvements" herein are, or are to become, fixtures on the Premises; (ii) this Instrument, upon recording in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 90334 and 90502 of the UCC; (iii) the addresses of the Borrower and Lender, as "Debtor" and "Secured Party", respectively, are as set forth in the Preamble of this Instrument; and (iv) a carbon, photographic, or other reproduction of this Instrument, or of any financing statement relating thereto, shall be sufficient for filing purposes. Borrower hereby authorizes and agrees to execute (if applicable) and deliver to Lender, in form and substance reasonably satisfactory to Lender such financing statements, such fixture filings and such further assurances as Lender may from time to time consider necessary to create, perfect, and preserve Lender's security interest herein granted, so long as the execution and delivery of such financing statements, fixture filings and

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such further assurances are in accordance with the framework of the approved *Shari'ah*-compliant structure of the *Shari'ah* Supervisory Board of HSBC Amanah, and any such costs or expenses shall be paid by Borrower. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Instrument. Borrower hereby approves and authorizes the filing or recording of all the financing statements and fixture filings to be recorded in favor of Lender on or about the date hereof in connection with the closing of the Loan. Borrower shall appear and defend in any action or proceeding which affects or purports to affect the Property and any interest or right therein, whether such proceeding affects title or any other rights in the Property (and in conjunction therewith, Borrower shall fully cooperate with Lender in the event Lender is a party to such action or proceeding unless Borrower and Lender are adverse parties).

(b) Representations, Warranties and Covenants of Borrower. Borrower hereby represents, warrants and covenants as follows (which representations, warranties and covenants shall survive creation of any indebtedness of Borrower to Lender and any extension of credit thereunder as follows):

(i) The Personal Property is not used or bought for personal, family or household purposes

(ii) The tangible portion of the Personal Property will be kept on or at the Premises or Improvements or at the offices of any property manager or asset manager and Borrower will not, without the prior written consent of Lender, remove or permit its Related Project Company to remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Borrower or its Related Project Company, as applicable, with similar items of greater value

(iii) Borrower's principal place of business is set forth in the preamble hereto. Neither Borrower nor its Related Project Company does business under any trade name except as previously disclosed in writing to Lender. Borrower will promptly notify Lender in writing of any change in its (and with respect to its Related Project Company cause the Related Project Company to notify it of any change in its) place of business or the adoption or change of any organizational name, trade name or fictitious business name, and will upon request of Lender, authorize any additional financing statements or execute any other certificates necessary to reflect the adoption or change in trade name or fictitious business name. Borrower will also promptly notify Lender (x) of any change of Borrower's or its Related Project Company's organizational identification number or (y) if Borrower or its Related Project Company does not now have an organizational identification number and later obtains one, of such organizational identification number.

(iv) Borrower shall promptly notify Lender of any claim against any material Personal Property adverse to the interest of Lender therein.

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18. Remedies Upon an Event of Default.

(a) In addition to the remedies provided in Section 16 hereof, during the continuance of an Event of Default hereunder, Lender may, at its option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Borrower and all others claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower with respect to the Personal Property or any part thereof. In the event Lender demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Instrument, Borrower will and will cause its Related Project Company to promptly turn over and deliver possession thereof to Lender;

(ii) Without notice to or demand upon Borrower, make such payments and do such acts as Lender may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorneys fees) incurred in connection therewith;

(iii) Require Borrower from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and deliver promptly such Personal Property to Lender, or any agent or representative designated by Lender. Lender, and its agents and representatives, shall have the right to enter upon any or all of Premises or Borrower's other premises or property to exercise Lender's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Lender by this Instrument, any other Mezzanine Loan Document, or by law, either concurrently or in such order as Lender may determine;

(v) Sell or cause to be sold in such order as Lender may determine, as a whole or in such parcels as Lender may determine, the Personal Property and the remainder of the Property;

(vi) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Lender may determine. Lender may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code or any other applicable law.

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(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be made in accordance with the Loan Agreement. If Lender fails to comply with this Section 18 in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Uniform Commercial Code (or under the Uniform Commercial Code, enforced from time to time, in any other state to the extent the same is the applicable law).

(c) The proceeds of any sale under Section 18(a)(vi) shall be applied as follows:

(i) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and attorneys' fees) and the discharge of all Impositions, Liens, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens subject to which such sale shall have been made);

(ii) To the payment of the Obligations in such order as Lender shall determine; and

(iii) The surplus, if any, shall be paid to the Borrower or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(d) Lender shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Lender from pursuing any further remedy that it may have. Except as required under applicable law, any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Borrower until full payment of any deficiency has been made in cash.

(e) Lender may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Personal Property and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Personal Property.

(f) Lender may sell the Personal Property without giving any warranties as to such property, and may specifically disclaim any warranties of title, merchantability, fitness for a particular purpose or the like, and this procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Personal Property. Borrower acknowledges that a private sale of the Personal Property may result in less proceeds than a public sale.

(g) Borrower acknowledges that the Personal Property may be sold at a loss to Borrower and that, in such event, Lender shall have no liability or responsibility to Borrower for such loss.

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Lender shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Lender from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Borrower until full payment of any deficiency has been made in cash.

19. Actions and Proceedings. Upon the occurrence and during the continuance of an Event of Default, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt and the performance of the Obligations.

20. Waiver of Setoff and Counterclaim, Marshalling, Automatic or Supplemental Stay, Indemnification, Etc. (a) All amounts due under this Instrument, the Note and the other Mezzanine Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Borrower hereby waives the right to assert a setoff, counterclaim or deduction in any action or proceeding in which Lender is a participant, or arising out of or in any way connected with this Instrument, the Note, any of the other Mezzanine Loan Documents, the Obligations or the Debt.

(b) Borrower hereby expressly, irrevocably, and unconditionally waives and releases, to the extent permitted by law (i) the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling, sale in the inverse order of alienation, or any other right to direct in any manner the order or sale of any of the Property in the event of any sale hereunder of the Property or any part thereof or any interest therein; (ii) any and all rights of redemption from sale under any order or decree of foreclosure of this Instrument on behalf of Borrower and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Instrument and on behalf of all persons to the extent permitted by applicable law; and (iii) all benefits that might accrue to Borrower by virtue of any present or future law exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment. Lender shall not be under any obligation to marshal any assets in favor of any Person or against or in payment of any or all of the Obligations.

(c) Borrower waives any and all right to claim or recover against Lender, its successors and assigns, their directors, officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against by Borrower or required to be insured against by this Instrument

(d) All sums payable by Borrower pursuant to this Instrument shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Mezzanine Loan Documents), demand, counterclaim, setoff, deduction or defense and without

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abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lender, or any action taken with respect to this Instrument by any trustee or receiver of Lender, or by any court, in any such proceeding; (v) any claim that Borrower has or might have against Lender; (vi) or any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower. "**Person**" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

21. **Illinois Mortgage Foreclosure Law.** In the event that any provision in this Instrument shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ULCS 5/15-1101 et seq.) (herein called the "**Act**"), the provision of the Act shall take precedence over the provision of this Instrument, but shall not invalidate or render unenforceable any other provision of this Instrument that can be construed in a manner consistent with the Act.

22. **Recovery of Sums Required to Be Paid.** Lender shall have the right from time to time upon the occurrence and during the continuance of an Event of Default to take action to recover any sum or sums which constitute a part of the Debt as the same become due and payable, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

23. **Handicapped Access.**

(a) Borrower agrees that the Property shall at all times comply in all material respects with applicable requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access applicable to the Property and all rules, regulations, and lawful orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, as the same may be amended, modified or supplemented from time to time (collectively, "**Access Laws**").

(b) Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violation or threatened violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws, but only to the extent that Borrower is obligated to give notice of such complaints, proceedings or investigations, pursuant to the applicable requirements of the Loan Agreement.

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24. Indemnification. Section 13.2 of the Loan Agreement by this reference is hereby incorporated herein with the same force and effect as if set forth herein.

25. Notices. Any notice, demand, statement, request or consent made hereunder shall be in writing, addressed to the intended recipient at its address set forth in the Loan Agreement, and shall be made and deemed given in accordance with the terms of Section 13.5 of the Loan Agreement.

26. Authority. (a) Borrower (and the undersigned representative of Borrower, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Instrument, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Property pursuant to the terms hereof and to keep and observe all of the terms of this Instrument on Borrower's part to be performed; and (b) Borrower represents and warrants that Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations.

27. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Instrument or any other Mezzanine Loan Document specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which (i) Lender is required by applicable law to give notice or (ii) Borrower is not, pursuant to applicable law, permitted to waive the giving of notice.

28. Reasonableness of Lender; Discretion of Lender. In any instance where any consent, approval, determination or other action by Lender is, pursuant to the Mezzanine Loan Documents or applicable law, required to be done reasonably or required not to be unreasonably withheld, Borrower shall bear the burden of proof of showing that the same was not reasonable. In all cases Lender shall conclusively be deemed to be acting reasonably when implementing any standard or requirement of any applicable Rating Agency, or in refusing or delaying any consent due to the existence of any Event of Default. In no event shall references herein or in the other Mezzanine Loan Documents to the "existence" or "continuance" of an Event of Default imply that any Event of Default, or any Default, once maturing into an Event of Default due to the expiration of any applicable cure period or by operation of the Loan Agreement in the event no cure period is provided hereunder, shall cease to be an Event of Default in the absence of a written waiver of such Event of Default by the Lender.

29. Remedies of Borrower. In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under the Loan Agreement or the other Mezzanine Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

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30. **Non Waiver.** The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Instrument or otherwise enforce any of the provisions hereof or of the Note or other Mezzanine Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Obligations or any portion thereof, other than a release due to payment in full of the Obligations, except Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release, or (c) except to the extent of the written amendment, modification or supplement of or to the Mezzanine Loan Documents, any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Instrument, or the other Mezzanine Loan Documents. While any Event of Default exists, Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect and Lender may take action to recover the Debt, or any portion thereof, or to enforce all or any portion of the Obligations without prejudice to the right of Lender thereafter to foreclose this Instrument. The rights and remedies of Lender under this Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

31. **Liability.** If Borrower and/or Lender consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. Subject to the provisions hereof requiring Lender's consent to any transfer of the Property, this Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

32. **Inapplicable Provisions.** If any term, covenant or condition of this Instrument is held to be invalid, illegal or unenforceable in any respect, this Instrument shall be construed without such provision.

33. **Headings, Etc.** The headings and captions of various Sections of this Instrument are for convenience of reference only and are not to be construed as defining or limiting in any way, the scope or intent of the provisions hereof.

34. **Counterparts.** This Instrument may be executed in any number of counterparts each of which shall be deemed to be an original but all of which when taken together shall constitute one agreement.

35. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein until such time as the Property is released from the lien of this Instrument in accordance with Sections 52 and 56 of this Instrument," the word "Lender" shall mean "Lender and any

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successors or assigns in such capacity," the word "Debt" shall mean "the Note and any other evidence of indebtedness secured by this Instrument," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Property" shall include any portion of the Property and any interest therein and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees, including, but not limited to, fees at the pre trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property and Collateral and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

36. Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Debt, or any part hereof.

37. Assignments. Lender shall have the right to assign or transfer its rights under this Instrument and the other Mezzanine Loan Documents in accordance with the terms of the Loan Agreement. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Instrument and the other Mezzanine Loan Documents.

38. Survival of Obligations; Survival of Warranties and Representations. Each and all of the covenants, obligations, representations and warranties of Borrower shall survive the execution and delivery of the Mezzanine Loan Documents and the transfer or assignment of this Instrument (including, without limitation, any transfer of the Instrument by Lender of any of its rights, title and interest in and to the Property to any party, whether or not affiliated with Lender).

39. Covenants Running with the Land. All covenants, conditions, warranties, representations and other obligations contained in this Instrument and the other Mezzanine Loan Documents are intended by Borrower and Lender to be, and shall be construed as, covenants running with the Property until the lien of this Instrument has been fully released by Lender, pursuant to the terms hereof.

40. Governing Law. **THIS INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THE STATE OF NEW YORK AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THIS INSTRUMENT AND THE ASSIGNMENT OF LEASES SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, EXCEPT THAT THE SECURITY INTERESTS IN ACCOUNT COLLATERAL SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK OR THE STATE WHERE THE SAME IS HELD, AT THE OPTION OF LENDER.**

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41. Time of Essence. Time is of the essence as to all of the terms, covenants and condition of this Instrument and the other Mezzanine Loan Documents.

42. No Third-Party Beneficiaries. The provisions of this Instrument and the other Mezzanine Loan Documents are for the benefit of Borrower and Lender and shall not inure to the benefit of any third party (other than any successor or assignee of Lender or permitted assignee of Borrower). This Instrument and the other Mezzanine Loan Documents shall not be construed as creating any rights, claims or causes of action against Lender or any of its officers, directors, agents or employees in favor of any party other than Borrower.

43. Relationship of Parties. The relationship of Lender and Borrower is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with the Borrower, and no term or condition of any of the Mezzanine Loan Documents shall be construed to be other than that of debtor and creditor. Borrower represents and acknowledges that neither the Mezzanine Loan Documents nor any course of dealing between the parties creates any partnership or joint venture between Borrower and Lender or any other person, nor does it provide for any shared appreciation rights or other equity participation interest.

44. Successors and Assigns. This Instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

45. Investigations. Any and all representations, warranties, covenants and agreements made in this Instrument (and/or in other Mezzanine Loan Documents) shall survive any investigation or inspection made by or on behalf of Lender.

46. Assignment of Leases. (a) Borrower acknowledges and confirms that it has executed and delivered to Lender the Assignment of Leases and Rents: Project Company Lease and General Leases and Assignment of Assignment of Leases and Rents: End User Lease (Third Lien) (as the same may be amended, restated, extended, supplemented or otherwise modified from time to time, the "Assignment of Leases"), intending that such instrument create a present and absolute assignment to Lender of the Leases and Rents subject to the license granted therein, which license is revocable upon the occurrence and during the continuation of an Event of Default. While any Event of Default exists, Lender shall be entitled to exercise any or all of the remedies provided in the Assignment of Leases and in this Instrument, including, without limitation, the right to have a receiver appointed. Subject to the rights to Senior Lender and Senior Mezzanine Lender, Borrower hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Lender upon written demand by Lender (which may be made at any time during the continuance of an Event of Default), without further consent of Borrower; provided, however, that Borrower shall have the right to collect such Rents so long as an Event of Default shall not have occurred and be continuing hereunder or under the other Mezzanine Loan Documents and otherwise subject to and in accordance with the Assignment of Leases. The assignment of the Rents of the Property in this Section 46 is intended to be an absolute assignment from Borrower to Lender and not merely the passing of a security interest.

(b) So long as any part of the Debt and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Property shall not merge, but shall

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remain separate and distinct, notwithstanding the union of such estates either in Borrower or Lender, any lessee or any third party by purchase or otherwise.

47. Waiver of Right to Trial by Jury. EACH OF BORROWER AND LENDER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH OF BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF LENDER AND BORROWER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY LENDER AND BORROWER.

48. Expenses and Attorneys' Fees. Borrower agrees promptly to pay all fees, costs and expenses incurred by Lender as provided in and subject to Section 13.1 of the Loan Agreement.

49. Amendments and Waivers. Except as otherwise provided herein, no amendment, modification, termination or waiver of any provision of this Instrument, the Note or any other Mezzanine Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by Lender and any other party to be charged. Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances, unless such notice is required by the terms of the Loan Agreement or by applicable law.

50. Limitation of Recourse. The obligations of Borrower hereunder are subject to limitations on recourse as provided in Section 13.29 of the Loan Agreement.

51. Copy of Instrument. BORROWER REPRESENTS AND WARRANTS THAT IT HAS RECEIVED A TRUE COPY OF THIS INSTRUMENT WITHOUT CHARGE.

52. Satisfaction of Instrument. Upon payment of the Debt and discharge of the Obligations in full or as otherwise provided in Section 56 below, Lender, at Borrower's sole cost and upon Borrower's request, shall execute and deliver to Borrower a satisfaction or reconveyance of Instrument, duly acknowledged and in recordable form, financing statement amendments terminating any financing statements filed by Lender relating to the Property, and such other documents or instruments as may be reasonably required to release the lien of the Mezzanine Loan Documents from the Property.

53. Commercial Loan. Borrower hereby certifies that the Loan is for business and commercial use and is not for personal, family or household purposes. Substantially all of the

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proceeds of the Loan are being used to acquire or improve or protect or refinance an interest in real property (as that term is defined in United States Treasury Regulations §1.860G-2(a)(4)). Borrower shall use the proceeds of the Loan only for the purposes set forth in the Mezzanine Loan Documents and consistent with all applicable laws, statutes, rules and regulations. No portion of the proceeds of the Loan shall be used by Borrower in any manner that might cause the borrowing or the application of such proceeds to violate Regulation G, Regulation U, Regulation T or Regulation X or any other regulation of the Board of Governors of the Federal Reserve System.

54. No Residential Units. There are no residential units in the Property. To Borrower's knowledge, no person occupies any part of the Property for dwelling purposes.

55. Cross-Default and Cross-Collateralization. Borrower acknowledges that the Lender has made the Loan to Borrower and the Related Borrowers upon the security of the collective interests of Borrower and Related Borrowers in the Property and the Related Properties (the Property and all Related Properties are sometimes herein collectively referred to as the "Properties" or the "Portfolio Properties", and each individually, an "Individual Property" or a "Portfolio Property"), and in reliance upon the aggregate value of the Properties taken together being of greater value as collateral security than the sum of each Individual Property taken separately. Borrower agrees that the Loan and the Mezzanine Loan Documents are and shall all be cross-collateralized and cross-defaulted with each other so that (i) a Default or Event of Default, respectively, under this Instrument, any Related Mortgage or any of the other Mezzanine Loan Documents shall constitute a Default or Event of Default, respectively, under all of the Mezzanine Loan Documents and (ii) each of this Instrument and each other Third Mortgage given by the Related Borrowers for the benefit of Lender (such other Third Mortgages, the "Related Mortgages" and together with this Instrument, collectively, the "Mortgages") shall constitute security for the Note as if a single blanket lien were placed on all of the Properties as security for the Note. Whenever Lender has a power, right, or remedy hereunder or under the Loan Agreement or applicable law or equity, Lender may exercise such power, right or remedy in order to effectively enforce the cross-collateralization created hereby for the benefit of Lender.

To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower including the Property, and of the Related Borrowers and the Related Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of this Instrument or the Related Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Mezzanine Loan Documents to a sale of the Properties for the collection of the secured indebtedness without any prior or different resort for collection or of the right of Lender to the payment of the secured indebtedness out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of all or any of this Instrument or the Related Mortgages, any equitable right otherwise available to Borrower which would require the separate sale of the Properties or require Lender to exhaust its remedies against any Individual Property or combination of Properties; and further in the event of such foreclosure, Borrower does hereby expressly consent to and authorize, at the option of

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Lender, the foreclosure and sale either separately or together of any combination of the Properties.

At Lender's option, Lender may cause or agree to the release of any one or more of the Related Properties as collateral for the Loan and, in such event, the Loan shall no longer be cross-collateralized and cross-defaulted with such Related Property so released, but shall remain cross-collateralized and cross-defaulted as to the remaining Related Properties and, upon such release, this Instrument shall no longer secure such Related Property.

56. Release From Cross-Collateralization. Other than as set forth in Section 52, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release of this Instrument as security for the Note, the Loan Agreement or any other Mezzanine Loan Document, provided, however, that Borrower shall have the right and option to obtain the release of the Property from the lien of this Instrument and the other Mezzanine Loan Documents if the conditions set forth in Section 11.3 of the Loan Agreement are satisfied in full in connection with an Approved Release of this Property.

57. Supremacy of Loan Agreement. If any term, condition or provision of this Instrument shall be inconsistent with any term, condition or provision of the Loan Agreement, then the Loan Agreement shall control.

58. Lien Status. Borrower shall preserve and protect the lien and security interest status of this Instrument and the other Mezzanine Loan Documents. If any Lien other than the Permitted Encumbrances is asserted against any Property or any part thereof or interest therein, Borrower shall promptly and in no event longer than ten (10) Business Days, and at its cost and expense, (a) give Lender a detailed written notice of such Lien (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Loan Agreement (including, without limitation, the requirement of providing a bond or other security satisfactory to Lender). If Borrower shall fail to remove and discharge or cause to be removed or discharged any such Lien or claim thereof, then, in addition to any other right or remedy of Lender, Lender may exercise its rights and remedies as provided in and subject to Section 16 hereof and Borrower shall pay to Lender an amount equal to the costs and expenses incurred by Lender in connection therewith as provided in Section 16 hereof.

59. Fixture Filing. This Instrument shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code against all of the Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Borrower) and Secured Party (Lender) as set forth in the first paragraph of this Instrument. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

60. No Mortgagee in Possession. Neither the enforcement of any of the remedies under Section 16, the security interests under Section 17, the assignment of the Leases and Rents under Section 45, nor any other remedies afforded to Lender under the Mezzanine Loan Documents, at law or in equity shall cause Lender to be deemed or construed to be a mortgagee

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in possession of the Property, unless and until Lender takes actual possession of the Property, to obligate Lender to lease any Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

61. Attorney-in-Fact. Borrower hereby irrevocably appoints Lender and its successors and assigns, as its attorney in fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Lender deems appropriate to prevent a deterioration in Lender's interest, if Borrower shall fail to do so within five (5) Business Days after written request by Lender, (b) upon the issuance of a deed pursuant to the foreclosure of this Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Equipment, personalty, fixtures, plans and property agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Lender's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Borrower hereunder; however: (1) Lender shall not under any circumstances be obligated to perform any obligation of Borrower; (2) any sums advanced by Lender in such performance shall be added to and included in the Debt and shall bear interest at the Default Rate; (3) Lender as such attorney in fact shall only be accountable for such funds as are actually received by Lender; and (4) Lender shall not be liable to Borrower or any other person or entity for any failure to take any action which it is empowered to take under this Section.

62. Rights of Senior Lenders. So long as the Senior Loan is outstanding, Lender acknowledges that its rights under this Instrument are subject and subordinate to the rights of Senior Lender under the Senior Loan Documents in accordance with the terms of the Intercreditor Agreement. So long as the Senior Mezzanine Loan is outstanding, Lender acknowledges that its rights under this Instrument are subject and subordinate to the rights of Senior Mezzanine Lender under the Senior Mezzanine Loan Documents in accordance with the terms of the Intercreditor Agreement. Capitalized terms used in this section, but not defined in this Instrument shall have the respective meanings set forth in the Mezzanine Loan Agreement, as in effect on the date hereof.

63. Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

66. Further Assurances. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds,

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conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Premises and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Instrument or for filing, registering or recording this Instrument, or for complying with all applicable laws, so long as the execution and/or delivery of such documents, instruments, agreements, or the performance of such acts are in accordance with the framework of the approved Shari'ah-compliant structure. Subsequent to the occurrence and during the continuance of an Event of Default, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to the Mezzanine Loan Documents and this Instrument, including without limitation such rights and remedies available to Lender pursuant to this Section 66. To the extent not prohibited by applicable law, Borrower hereby ratifies all acts Lender has lawfully done in the past, after the date of execution of this Instrument, or shall lawfully do or cause to be done in the future by virtue of such power of attorney. Notwithstanding the foregoing, nothing contained herein shall obligate Borrower to execute or acknowledge any document or agreement which increases or modifies the terms of the Loan.

[SIGNATURE PAGES FOLLOW]

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EXHIBIT A

LEGAL DESCRIPTION

ARLINGTON HEIGHTS, IL

PARCEL 1:

LOT 3

(EXCEPTING THEREFROM THAT PART OF LOT 3 DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE SOUTHEASTERLY ALONG A 2541.29 FOOT RADIUS CURVE, BEING ALSO THE NORTHERLY LINE OF SAID LOT 3, THE CENTER OF CIRCLE OF SAID CURVE BEARS ON AN ASSUMED BEARING OF NORTH 47 DEGREES 58 MINUTES 18 SECONDS EAST FROM SAID POINT, CENTRAL ANGLE 2 DEGREES 12 MINUTES 20 SECONDS, 97.82 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTHEASTERLY ALONG SAID CURVE CONCAVE TO THE NORTHEAST RADIUS 2541.29 FEET, CENTRAL ANGLE 11 DEGREES 26 MINUTES 54 SECONDS, 507.78 FEET TO A POINT OF REVERSE CURVATURE; THENCE SOUTHERLY ALONG A 30.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST, CENTRAL ANGLE 55 DEGREES 04 MINUTES 09 SECONDS, 28.83 FEET TO A POINT ON A 2551.07 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS NORTH 35 DEGREES 00 MINUTE 05 SECONDS EAST FROM SAID POINT; THENCE NORTHWESTERLY ALONG SAID CURVE, RADIUS 2551.07 FEET, CENTRAL ANGLE 8 DEGREES 26 MINUTES 03 SECONDS, 375.52 FEET TO A POINT ON A 2546.12 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS NORTH 42 DEGREES 14 MINUTES 05 SECONDS EAST FROM SAID POINT; THENCE NORTHWESTERLY ALONG SAID CURVE, RADIUS 2546.12 FEET, CENTRAL ANGLE 2 DEGREES 18 MINUTES 00 SECONDS, 102.21 FEET; THENCE NORTH 40 DEGREES 00 MINUTES 33 SECONDS WEST 56.36 FEET TO THE POINT OF BEGINNING) IN ARLINGTON PLACE SUBDIVISION, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE RECIPROCAL EASEMENT AGREEMENT BY AND BETWEEN URBS-SCHMITT AND KEPPEL INCORPORATED, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 3, 1979 AND KNOWN AS TRUST NUMBER 47058 AND OTHERS, DATED AUGUST 2, 1979 AND RECORDED OCTOBER 1, 1979 AS DOCUMENT 25171074 AND FILED OCTOBER 1, 1979 AS DOCUMENT LR 3121973 AND AS AMENDED BY INSTRUMENT RECORDED JUNE 4, 1981 AS DOCUMENT 25893428 AND FILED AS DOCUMENT LR 3218008 FOR

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INGRESS AND EGRESS IN PART OF ARLINGTON PLACE SUBDIVISION AND TEULACH'S SUBDIVISION AS DELINEATED IN SAID AGREEMENT, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY AMENDED AND RESTATED EASEMENT AND OPERATING AGREEMENT AND GRANT OF EASEMENTS BY AND AMONG AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT NUMBER 45170, AND AS TRUSTEE UNDER TRUST AGREEMENT NUMBER 52304, SAID AGREEMENT BEING DATED FEBRUARY 1, 1983 AND RECORDED MARCH 7, 1983 AS DOCUMENT 26527048 AND FILED MARCH 7, 1983 AS DOCUMENT LR. 3296792, OVER, UPON AND ACROSS LOT 1 FOR THE PURPOSE OF USING AND GAINING ACCESS TO A SURFACE WATER DETENTION/RETENTION POND LOCATED IMMEDIATELY EAST OF THE WESTERNMOST LINE OF LOT 1 IN ARLINGTON PLACE SUBDIVISION AFORESAID, AS SHOWN ON DRAWING ATTACHED AS EXHIBIT "A" TO EASEMENT AND OPERATING AGREEMENT DATED DECEMBER 1, 1979 AND RECORDED JANUARY 4, 1980 AS DOCUMENT 25306989 AND FILED JANUARY 4, 1980 AS DOCUMENT LR. 3139276 AND ALSO OVER, UPON AND ACROSS LOT 2 IN ARLINGTON PLACE SUBDIVISION AFORESAID FOR THE PURPOSE OF GAINING ACCESS TO SAID POND LOCATED ON SAID LOT 1 AS SHOWN ON DRAWING ATTACHED AS EXHIBIT "A" TO THE AFORESAID AMENDED AND RESTATED EASEMENT AND OPERATING AGREEMENT AND GRANT OF EASEMENTS IDENTIFIED ABOVE, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT OF EASEMENT DATED FEBRUARY 1, 1983 AND RECORDED MARCH 7, 1983 AS DOCUMENT 26527049 AND FILED MARCH 7, 1983 AS DOCUMENT LR. 3296793 BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT NUMBER 47058, AND AS TRUSTEE UNDER TRUST AGREEMENT NUMBER 52304, OVER, UPON AND ACROSS THAT PART OF LOT 2 IN ARLINGTON PLACE SUBDIVISION AFORESAID AS DEPICTED ON EXHIBIT "A", FOR CONSTRUCTING, RUNNING, MAINTAINING AND REPAIRING SANITARY SEWER LINES AND PIPES, IN COOK COUNTY, ILLINOIS.

ALSO COMMONLY KNOWN AS 95 WEST ALGONQUIN ROAD, ARLINGTON HEIGHTS, COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER 08-16-200-103-0000.

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EXHIBIT B

DESCRIPTION OF PERSONAL PROPERTY

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, and construction materials and software embedded in any of the foregoing) in which Borrower now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Premises or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Borrower in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Premises, Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Premises, the Improvements or any other part of the Property, or which may be received or receivable by Borrower from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Borrower's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants of the Premises or Improvements, rights to receive capital contributions or subscriptions from Borrower's partners or shareholders, amounts payable on account of the sale of partnership interests in Borrower or the capital stock of Borrower, accounts and other accounts receivable, deposit accounts maintained with Lender and its affiliates, including, but not limited to, sums deposited in the Accounts, chattel paper (whether tangible or electronic) notes, drafts, contract rights, instruments, general intangibles, as presently or hereafter in effect, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property (and related software) and rights relating to the Premises, the Improvements, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof, including, without limitation, all governmental and non governmental permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Premises or Improvements, all names under or by which the Premises or Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks, servicemarks, logos and copyrights, relating in any way to the Premises or the Improvements, and all good will and software in any way relating to the Premises or the Improvements;

(e) All as-extracted collateral produced from or allocated to the Premises, including, without limitation, oil, gas, and other hydrocarbons and other minerals.

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(f) Borrower's rights under all insurance policies covering the Premises (including, but not limited to, title insurance policies), the Improvements, the Personal Property, and the other parts of the Property and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(g) All reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Premises;

(h) All water stock relating to the Premises;

(i) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Premises, the Improvements, the Personal Property, or any other part of the Property, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Premises, the Improvements, the Personal Property, or any other part of the Property, or for any loss or diminution in value of the Premises, the Improvements, the Personal Property, or any other part of the Property;

(j) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Premises and all studies, data, and drawings related thereto; and also all contracts and agreements of the Borrower relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Premises;

(k) All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles, and interests referred to in this Exhibit B or elsewhere in the Instrument;

(l) All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter requires relating to the properties, rights, titles and interest referred to in this Instrument;

(m) All proceeds from sale or disposition of any of the aforesaid collateral and all supporting obligations ancillary thereto or arising in any way in connection therewith;

(n) All Borrower's rights in proceeds of the Loan evidenced by the Note;

(o) All of Borrower's rights in any and all warranties and guaranties with respect to any goods, materials, supplies, chattels, fixtures, equipment, machinery, building materials, and work in progress attached to or placed in or on any part of the Premises, or used in connection with any construction on the Premises;

(p) All of Borrower's rights to and under any purchase agreements, including, without limitation, any deposits paid to Borrower pursuant to such purchase agreements;

(q) All of Borrower's rights in all plans, specifications, plats, agreements, assessments, reports, and surveys related to the Premises; and

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(r) All of Borrower's rights and interests under the Hedge, including all rights to the payment of money from Lender (or its affiliate) under the Hedge and all accounts, deposit accounts and general intangibles, including payment intangibles, under the Hedge, if any.

As used in this Exhibit B the terms "Loan Agreement", "Obligations", "Note", "Property", "Premises", "Improvements", and "Personal Property" shall have the meanings set forth in the Instrument to which this Exhibit B is attached.

Property of Cook County Clerk's Office