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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption

17

201312858

884266

Report Mortgage Fraud  
800-532-8785



Doc#: 1316322030 Fee: \$90.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/12/2013 09:07 AM Pg: 1 of 27

The property identified as: **PIN:** 02-25-100-021-0000

**Address:**

**Street:** 3400 W. EUCLID AVENUE

**Street line 2:**

**City:** ARLINGTON HEIGHTS

**State:** IL

**ZIP Code:** 60005

**Lender:** SUNGATE CAPITAL FUNDING 1, LLC

**Borrower:** ARLINGTON DOWNS RESIDENTIAL II, LLC

**Loan / Mortgage Amount:** \$12,100,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/70 et seq. because it is commercial property.

**Certificate number:** CA73B5FD-A6DB-4A47-89D9-CA82FD2BD1E4

**Execution date:** 05/15/2013

BOX 333-CP

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201312858

17: 8840266

This instrument was prepared by and  
after recording should be returned to

Cynthia Jared, Esq.  
Reed Smith LLP  
10 S. Wacker Drive  
Suite 4000  
Chicago, IL 60606

**MORTGAGE, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**  
ARLINGTON DOWNS RESIDENTIAL II

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**") is dated for reference purposes only as of May 15, 2013, by ARLINGTON DOWNS RESIDENTIAL II, LLC, an Illinois limited liability company ("**Grantor**"), whose address is 760 W. Main Street, Suite 140, Barrington, Illinois 60010, in favor of SunGate Capital Funding 1, LLC, a Florida limited liability company, whose address is 3300 University Blvd., Suite 218, Winter Park, FL 32792 ("**Lender**").

**1. Grant and Secured Obligations.**

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 hereof, Grantor hereby irrevocably and unconditionally grants, remises, releases, hypothecates, bargains, sells, conveys, assigns, mortgages and warrants to Lender, all estate, right, title and interest which Grantor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "**Property**"):

(a) The real property located in the County of Cook, State of Illinois, as described in Exhibit A, together with all existing and future easements and rights affording access to it (the "**Land**"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Land (the "**Improvements**" and together with the Land, the "**Premises**"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits,

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air rights, development rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, ditches and ditch rights, reservoir and reservoir rights, and any premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises; together with

(d) All existing and future leases (including any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code (the "**Bankruptcy Code**") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Premises), subleases, subtenancies, licenses, occupancy agreements and concessions relating to the use and enjoyment of all or any part of the Premises, and any and all guaranties and other agreements relating to or made in connection with any of such leases ("**Leases**"); together with

(e) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises; together with

(f) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the Law to be real property for purposes of this Mortgage, and any manufacturer's warranties with respect thereto; together with

(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises; together with

(h) All of Grantor's interest in and to all operating accounts, the Loan funds, whether disbursed or not, all reserves set forth in the Budget, and any other bank accounts of Grantor; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money deposits and sales deposits) or deposited by Grantor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Lender), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises generally, and any builder's or manufacturer's warranties with respect thereto; together with

(j) All insurance policies and proceeds pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation

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awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) Any interest rate agreements and Grantor's right to receive amounts payable under any Interest Rate Agreements; together with

(l) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory, but only to the extent pertaining to the property described above ("**Books and Records**"); together with

(m) All accounts, contract rights and rights to payments arising out of the operation of the Land or the Improvements, including, but not limited to, payments for the operation or use of the Land or the Improvements, for goods sold or leased on the Land or the Improvements, for food or beverages sold on the Land or the Improvements, for any entertainment offered on the Land or the Improvements, for services rendered, whether or not earned by performance, for the rental, sale or use of any equipment or from vending machines, all payments from any consumer credit/charge card organization, whether or not now or existing or hereinafter credited or owed, and all proceeds of the foregoing, whether cash or non-cash; together with

(n) All purchase and sale agreements for the Land and any Improvements thereon, or any portion thereof; together with

(o) All "**Equipment**" as that term is defined in the Illinois Uniform Commercial Code as presently or hereafter in effect; together with

(p) All "**Goods**" as that term is defined in the Illinois Uniform Commercial Code as presently or hereafter in effect; together with

(q) All "**Accounts**" as that term is defined in the Illinois Uniform Commercial Code as presently or hereafter in effect; together with

(r) All proceeds of, additions, accessions, and accretions to, substitutions and replacements for, and changes in any of the property described above.

## 1.2 Secured Obligations.

(a) Grantor makes the grant, conveyance, and mortgage set forth in Section 1.1 hereof, and grants the security interest and lien set forth in Section 3 hereof for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Lender may choose:

(i) Payment and performance of all obligations of Arlington Downs Residential Mezz, LLC, an Illinois limited liability company ("**Borrower**") under that certain Mezzanine Loan Agreement between Borrower, as borrower, and Lender, as lender, dated for reference purposes

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only as of May 15, 2013, as the same may be amended, restated or modified (the "Loan Agreement"), which Loan Agreement is incorporated herein by reference, as if fully set forth herein; and

(ii) Payment of all obligations at any time owing under the Note (as defined in the Loan Agreement) payable by Borrower as maker in the maximum principal of Twelve Million One Hundred Twenty Thousand Dollars (\$12,100,000) to the order of Lender, as the same may be amended, restated, modified, extended or renewed (the "Note"), which Note is incorporated herein by reference as if fully set forth herein. The principal balance of the Note bears interest at an interest rate or a default rate described therein and has a maturity date of November 24, 2015, as may be extended to May 24, 2016 upon satisfaction of certain conditions precedent set forth in the Note; and

(iii) Payment and performance of all obligations of Grantor under this Mortgage and the Limited Guaranty executed by Grantor in favor of Lender; and

(iv) Payment of all Protective Advances, fees due and payable to Lender and all costs and expenses incurred by Lender pursuant to the Loan Agreement or any other Loan Document (as defined in the Loan Agreement), including any provision hereof; and

(v) Payment and performance of all other Secured Obligations (as defined in the Loan Agreement) and all other amounts, advances, reimbursements, fees, and other obligations that Borrower, Grantor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender in connection with the Loan, the indebtedness or the Loan Documents; and

(vi) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the foregoing; and

(vii) Interest on all of the foregoing to the extent it accrues under this Mortgage or any other Loan Document, including, without limitation, interest accruing after an Event of Default, acceleration and/or judgment at the Default Rate and all interest, fees and other costs that, but for the commencement of any insolvency proceeding, would have accrued.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations, the Note, the Loan Agreement and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include provisions (if any) in the Note or the Loan Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

The Secured Obligations shall be paid without demand (except as expressly set forth in the Loan Agreement), counterclaim, offset, deduction, reduction or defense. Grantor waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction, reduction or defense.

NOTWITHSTANDING THAT THE LOAN AGREEMENT, THE NOTE, THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS ARE DATED FOR REFERENCE PURPOSES ONLY AS OF MAY 15, 2013, THE TRANSACTIONS CONTEMPLATED IN THIS MORTGAGE AND IN THE OTHER LOAN DOCUMENTS CLOSED ON MAY 24, 2013 (THE "CLOSING DATE") AND SUCH LOAN AGREEMENT, NOTE, AND OTHER LOAN DOCUMENTS SHALL BE DEEMED EFFECTIVE ON THE CLOSING DATE.

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## 2. Assignment of Rents.

2.1 Assignment. Grantor hereby irrevocably, absolutely, presently and unconditionally assigns to Lender all rents, leases, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Lender hereby confers upon Grantor a license to collect and retain the Rents as they become due and payable, so long as no Event of Default (defined below) shall exist and be continuing. If an Event of Default has occurred and is continuing, Lender shall have the right, which it may choose to exercise in its sole discretion, to terminate this license without notice to or demand upon Grantor, and without regard to the adequacy of Lender's security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the license granted to Grantor under Section 2.2 hereof, Lender has the right, power and authority to collect any and all Rents. Grantor hereby appoints Lender its attorney-in-fact to perform any and all of the following acts, if and at the times when Lender in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Grantor or in the name of Lender for any and all rents.

To the extent permitted by applicable Law, Lender and Grantor agree that the mere recordation of the assignment granted herein entitles Lender immediately to collect and receive Rents upon the occurrence of an Event of Default, without first taking any acts of enforcement under applicable Law, such as, but not limited to, providing notice to Grantor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Lender's right to the Rents does not depend on whether or not Lender takes possession of the Property as permitted the terms of this Mortgage or any other Loan Document. To the extent permitted by applicable Law, in Lender's sole discretion, Lender may choose to collect Rents either with or without taking possession of the Property. Lender shall apply all Rents collected by it in the manner provided herein. If an Event of Default occurs while Lender is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Lender and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity. Notwithstanding the foregoing absolute assignment of Rents, Lender shall not be deemed to have received such Rents unless and until such Rents have been actually paid to Lender for application to payment (in whole or in part) of the Secured Obligations.

2.4 Lender Not Responsible. Under no circumstances shall Lender have any duty to produce Rents from the Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Premises, unless Lender agrees in writing to the contrary, Lender is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or



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(b) Responsible for performing any of the obligations of the lessor under any Lease; or

(c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or

(d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.5 Leasing. Grantor shall not accept any deposit or prepayment of Rents under the Leases for any rental period exceeding one (1) month without Lender's prior written consent. Grantor shall not lease the Property or any part thereof, except strictly in accordance with the Loan Agreement.

### 3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Mortgage to create a lien upon and security interest in the Property, and an absolute assignment of the Rents, all in favor of Lender. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable Law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property Grantor, as debtor, hereby grants Lender, as secured party, a lien upon and security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Mortgage constitutes a security agreement under the Uniform Commercial Code of the State in which the Property is located, covering all such Property and Rents.

3.2 Financing Statements. Grantor hereby consents to the filing of one or more financing statements and such other documents as Lender may from time to time require to perfect or continue the perfection of Lender's security interest in any Property or Rents. As provided in this Mortgage and the other Loan Documents, Grantor shall pay all fees and costs that Lender may incur in filing such documents in public offices and in obtaining such record searches as Lender may reasonably require. In case Grantor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Grantor hereby appoints Lender as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

### 4. Fixture Filing.

4.1 This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the State in which the Property is located, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Grantor, as debtor, and Lender, as secured party, are as set forth in the preambles of this Mortgage.

### 5. Rights and Duties of the Parties.

5.1 Incorporation; Non-Recourse.

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(a) The Loan Agreement and the Note are hereby incorporated by reference as if fully set forth herein. Without limiting the generality of the foregoing sentence, (a) all capitalized terms used in this Mortgage but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement, (b) all rules of construction and interpretation set forth in the Loan Agreement shall be deemed incorporated herein by reference and made applicable to this Mortgage, Grantor and each and every Loan Document to which the Grantor is a party, and (c) all releases, acknowledgements and waivers set forth in the Loan Agreement, including without limitation the provisions of Section 21 (a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (l), (n), (o), and (p) and Section 22 are incorporated herein by reference and made applicable to Grantor and Lender as if fully set forth herein.

(b) Limitation on Recourse. Notwithstanding anything to the contrary set forth in this Section 5.1 or any other provision of this Mortgage, except as expressly set forth in the Limited Guaranty, which shall not be deemed to be limited or amended hereby, Grantor shall have or duty or obligation, personally, for: (i) the payment of principal or interest under the Note or the Loan Agreement, or (ii) the payment and performance of any obligation or liability under this Mortgage, all such recourse being limited to Grantor's interest in the Property.

## 5.2 Representations and Warranties. Grantor represents and warrants that:

(a) Grantor lawfully possesses and holds fee simple title to all of the Premises, subject to the encumbrances set forth on Exhibit B attached hereto (the "**Permitted Encumbrances**");

(b) Grantor has or will have good title to all Property other than the Premises, subject to the Permitted Encumbrances;

(c) Grantor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;

(d) This Mortgage creates a first and prior lien on the Property which is personal property;

(e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and Improvements;

(f) Grantor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

(g) Grantor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified above.

## 5.3 Prohibition on Transfers.

(a) Grantor shall not, without the prior written consent of Lender, which consent may be withheld in Lender's sole and exclusive discretion:

(i) directly or indirectly sell, contract to sell, assign, transfer, convey, or dispose of the Property, or any portion thereof or any interest or estate therein, (legal,



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equitable, beneficial, possessory or otherwise) including: (1) any conveyance into trust; (2) any conveyance, sale or assignment of the beneficial interest in any trust holding title to the Property; (3) any conveyance, sale or assignment of the issued and outstanding capital stock (where Grantor is a corporation), partnership interest (where Grantor is a partnership), membership interest (where Grantor is a limited liability company) or any other equity or ownership interest in Grantor; or (4) permit or contract or agree to do any of the foregoing;

(ii) subject or permit the Property, or any portion thereof or interest therein (whether legal, equitable, beneficial, possessory or otherwise) or estate in any thereof (including the right to receive the Rents, proceeds, and profits therefrom) directly or indirectly, to any mortgage, deed of trust, lien, claim, security interest, right, collateral assignment or other encumbrance (whether senior or junior to, or on a parity with this Mortgage or any other Loan Document);

(iii) subject or permit the beneficial interest under any trust holding title to the Property, or any portion thereof or interest therein (whether legal, equitable, beneficial, possessory or otherwise) or estate in any thereof (or permit the same to be subjected), directly or indirectly, to any mortgage, deed of trust, lien, claim, security interest, right, collateral assignment, or other encumbrance (whether senior or junior to, or on a parity with this Mortgage or any other Loan Document);

(iv) lease the Property, or any portion thereof;

(v) cause or permit (by operation of law or otherwise) any Rents, Leases, or other contracts relating to the Property to be assigned to any party nor borrow against, pledge or further assign any Rents due under any Lease; or

(vi) cause or permit any Encumbrance, including without limitation, any easement, covenant, declaration or restriction encumbering the Property or any portion thereof or consent to the annexation of the Property to any municipality.

(b) The covenants set forth in this Section 5.3 are a material inducement to Lender to make the Loan to Borrower and any breach of such covenants shall be an immediate Event of Default, permitting Lender to accelerate the Secured Obligations, without prior notice or any opportunity to cure.

5.4 Covenants Running with the Land. All covenants and obligations contained in this Mortgage (including those covenants incorporated by reference from the Loan Agreement and other Loan Documents) are intended by Grantor and Lender to be, and shall be construed as, covenants running with the Land. As used herein, "**Grantor**" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of the Property (or any portion thereof). All Persons who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; provided that no such party shall be entitled to any rights hereunder or thereunder without the prior written consent of Lender.

5.5 Taxes and Assessments. Grantor shall pay when due any and all insurance premiums, taxes, assessments, water, sewer and other utility charges, impact fees and encumbrances on the Property and any other amounts payable for the cost of improvements to the Property; provided that

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Grantor may contest any such tax, assessment charge, fee or encumbrance upon satisfaction of and in compliance with the conditions for a Permitted Contest set forth in the Loan Agreement.

5.6 Liens, Charges and Encumbrances. Grantor shall immediately discharge any lien on the Property which Lender has not consented to in writing in accordance with the terms of the Loan Agreement; provided that Grantor may contest any such lien upon satisfaction of and in compliance with the conditions for a Permitted Contest set forth in the Loan Agreement.

5.7 Damages and Insurance and Condemnation Proceeds.

(a) Grantor shall maintain insurance on the Property in compliance with the requirements of the Loan Agreement or such other policies of insurance as Lender shall reasonably require. Grantor shall give Lender notice within five (5) Business Days after obtaining any knowledge of any casualty or threatened condemnation proceeding.

(b) In the event of any casualty or condemnation of the Property (or any portion thereof), unless Lender elects (in Lender's sole discretion) to permit Grantor to use proceeds or awards to repair or restore the Property (or any portion thereof), all proceeds shall be paid to Lender for application to payment (in whole or in part) of the Secured Obligations.

(c) Pursuant to the requirements of the Illinois Collateral Protection Act, 815 ILCS 180/1 et seq., Grantor is hereby notified as follows: Unless Grantor provides Lender with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Lender may purchase insurance at Grantor's expense to protect the interest of Lender in the Property. This insurance may, but need not, protect Grantor's interests. The coverage Lender purchases may not pay any claim that Grantor makes or any claim that is made against Grantor in connection with the Property. Grantor may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Grantor has obtained insurance as required by Lender, the Loan Agreement or any of the other Loan Documents. If Lender purchases insurance for the Property, Grantor will be responsible for the costs of such insurance, including interest or any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of any such insurance may be added to the obligations secured hereby. The costs of the insurance may be more than the cost of insurance that Grantor may be able to obtain on its own.

5.8 Maintenance and Preservation of Property.

(a) Grantor shall keep the Property in good condition and repair.

(b) Grantor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, construct any improvements upon the Premises, or initiate or allow any change or variance in any zoning or other use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Lender's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Grantor shall promptly and completely: (i) take such actions as shall be necessary or reasonable to prevent waste and depreciation, and (ii) repair and/or restore the Property in a good and workmanlike manner in

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accordance with sound building practices; provided that Grantor shall have no duty to repair or restore the Property unless Grantor has made condemnation or insurance proceeds available.

(d) Grantor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable Laws or orders of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Premises. Grantor shall not bring or keep any article on the Premises or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Grantor on the Property or any part of it under the Loan Agreement.

(e) Grantor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste which arises out of Hazardous Material.

5.9 Releases, Extensions, Modifications and Additional Security. From time to time, Lender may perform any of the following acts without incurring any liability or giving notice to any person and without releasing any Person obligated on any Loan Document:

- (a) Release any person liable for payment of any Secured Obligation;
- (b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;
- (c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;
- (d) Alter, substitute or release any property securing the Secured Obligations;
- (e) Consent to the making of any plat or map of the Property or any part of it;
- (f) Join in granting any easement or creating any restriction affecting the Property;
- (g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or
- (h) Release the Property or any part of it.

5.10 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Grantor under the terms of this Mortgage and the other Loan Documents have been paid in full, Lender shall release this Mortgage, the lien created thereby, and all notes and instruments evidencing the Secured Obligations; provided that nothing contained herein shall be deemed to limit Lender's obligations under Section 7.22. Grantor shall pay any costs of preparation and recordation of any such release.

5.11 Compensation, Exculpation, Indemnification.

(a) Grantor agrees to pay or reimburse all of Lender's reasonable out-of-pocket costs and expenses for any services that Lender is required, or entitled under the Loan Agreement, to

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render in connection with this Mortgage, including Lender's providing a statement of the Secured Obligations or providing the release pursuant to the terms hereof. Grantor shall also pay or reimburse all of Lender's costs and expenses which may be incurred in rendering any such services. Grantor further agrees to pay or reimburse Lender for all costs, expenses and other advances which may be incurred or made by Lender in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Lender under this Mortgage, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including reasonable attorneys' fees and other reasonable legal costs, costs of any Foreclosure Sale (as defined below) and any cost of evidence of title. Such costs and expenses shall be paid by Grantor even if incurred after the entry of one or more judgments. If Lender chooses to dispose of Property through more than one Foreclosure Sale, Grantor shall pay all costs, expenses or other advances that may be incurred or made by Lender in each of such Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Lender under this Mortgage or the Note or the other Loan Documents, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Lender with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Lender may deem reasonably necessary in connection with such foreclosure or enforcement of such other remedies or to evidence to bidders at any foreclosure sale the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature in this subsection mentioned, and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney (including the costs and fees of paralegals) employed by Lender in any litigation or proceeding affecting this Mortgage, the Note, the other Loan Documents or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Grantor, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

(b) None of Lender or any other Lender Party shall be directly or indirectly liable to Grantor or any other Person as a consequence of any of the following:

(i) Lender's exercise of or failure to exercise any rights, remedies or powers granted to Lender in this Mortgage;

(ii) Lender's failure or refusal to perform or discharge any obligation or liability of Grantor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Grantor or any third party resulting from Lender's failure to lease the Property, or from any other act or omission of Lender in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Lender.

Grantor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Lender.

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(c) Grantor agrees to indemnify Lender and each Lender Party (as defined in the Loan Agreement) against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which they may suffer or incur:

(i) In performing any act required or permitted by this Mortgage or any of the other Loan Documents or by law, unless the same is caused by the willful misconduct or bad faith of Lender occurring after Lender takes actual possession of the Property pursuant to a foreclosure of this Mortgage or a sale hereunder or under a deed in lieu of foreclosure hereof;

(ii) Because of any failure of Grantor to perform any of its obligations under this Mortgage; or

(iii) Because of any alleged obligation of or undertaking by Lender to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Document, unless such obligation or undertaking first arises after Lender takes actual possession of the Property pursuant to a foreclosure of this Mortgage or a sale hereunder or under a deed in lieu of foreclosure hereof.

THIS AGREEMENT BY GRANTOR TO INDEMNIFY LENDER AND EACH OTHER LENDER PARTY SHALL SURVIVE THE RELEASE AND CANCELLATION OF ANY OR ALL OF THE SECURED OBLIGATIONS AND THE FULL OR PARTIAL RELEASE OF THIS MORTGAGE.

(d) Grantor shall pay all obligations to pay money arising under this Section 5.11 immediately upon demand by Lender. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

5.12 Defense and Notice of Claims and Actions. At Grantor's sole expense, Grantor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Lender created under it, against all adverse claims. Grantor shall give Lender prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.13 Subrogation. Lender shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Lender in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

5.14 Site Visits, Observation and Testing. Lender and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, or the conducting of any other subsurface tests on any part of the Property, including so called Phase I environmental site assessments. Lender has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Lender or their agents or representatives shall impose any liability on any of Lender, its agents or representatives. In no event shall any site visit, observation or testing by Lender, its agents or representatives be a representation that Hazardous Material are or are not present in, on or under the Property, or that there has been or shall be compliance with any Law, regulation or ordinance pertaining to Hazardous Material or any other



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applicable Law. Neither Grantor nor any other party is entitled to rely on any site visit, observation or testing by Lender, or its agents or representatives. None of Lender or its agents or representatives owes any duty of care to protect Grantor or any other party against, or to inform Grantor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Lender shall give Grantor reasonable notice before entering the Property. Lender shall make reasonable efforts to avoid interfering with Grantor's use of the Property in exercising any rights provided in this Section 5.14.

5.15 Notice of Change. Grantor shall give Lender prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business, or its state of organization or formation; (b) the location of any of the Property, including the Books and Records; and (c) Grantor's name or business structure. Unless otherwise approved by Lender in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Grantor's place of business or chief executive office if Grantor has more than one place of business.

## 6. Default and Remedies.

6.1 Events of Default. Grantor will be in default under this Mortgage upon the occurrence of any one or more of the following events (some or all collectively, "**Events of Default**," any one singly, an "**Event of Default**").

- (a) Any default occurs under Section 5.3 or Section 5.7(a) hereof;
- (b) Grantor fails to comply with any other covenant set forth in this Mortgage within thirty (30) days after notice thereof;
- (c) Any representation or warranty of Grantor is untrue or inaccurate in any material respect; and/or
- (d) An "**Event of Default**" occurs under the Loan Agreement or any other Loan Document.

6.2 Remedies. At any time after an Event of Default, Lender shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Lender under any other Loan Document, at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

- (a) Acceleration. Lender may declare any or all of the Secured Obligations to be due and payable immediately.
- (b) Receiver. Lender shall, as a matter of right, without notice and without giving bond to Grantor or anyone claiming by, under or through Grantor, and without regard for the solvency or insolvency of Grantor or the then value of the Property or any other collateral for the Secured Obligations, to the extent permitted by applicable Law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Grantor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable Law, all



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other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Lender would have, upon entering and taking possession of the Property under subsection (c) below.

(c) Entry; Collection. Lender, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Lender may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Grantor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling Leases on such terms and conditions as Lender may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Lender, including collecting any rents; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Lender so requests, Grantor shall assemble all of the Property that has been removed from the Premises and make all of it available to Lender at the site of the Premises. Grantor hereby irrevocably constitutes and appoints Lender as Grantor's attorney-in-fact, to perform such acts and execute such documents as Lender in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Grantor's name on any instruments.

(d) Cure; Protection of Security; Waste. Lender may cure any breach or default of Grantor, and if it chooses to do so in connection with any such cure, Lender may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage, including, without limitation, completing construction of the improvements at the Property contemplated by the Loan Agreement. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Lender under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Lender's sole judgment is or may be senior in priority to this Mortgage, such judgment of Lender or to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Lender. Lender may take any of the actions permitted under this subsection either with or without giving notice to any person. Any amounts expended by Lender under this subsection shall be secured by this Mortgage. Grantor's failure to pay taxes, assessments or other charges of encumbrances, upon the Property or any part thereof, shall constitute waste (although the meaning of the term "waste" shall not necessarily be limited to such nonpayment), and shall entitle Lender to all remedies provided for herein.

(e) Uniform Commercial Code Remedies. Lender may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code in the State in which the Property is located.

(f) Foreclosure; Lawsuits. Lender shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable Law. Lender or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Lender's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Lender may proceed by a suit or suits in law or

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equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the rights provided in Section 6.2(a) hereof, upon, or at any time after the filing of a complaint to foreclose this Mortgage, Lender shall be entitled to the appointment of a receiver of the Property by the court in which such complaint is filed, and Grantor hereby consents to such appointment.

(g) Other Remedies. Lender may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Grantor or any other person or entity in favor of Lender in connection with the Secured Obligations or any part thereof, without prejudice to the right of Lender thereafter to enforce any appropriate remedy against Grantor hereunder or under any other Loan Document. Grantor's failure to pay taxes, assessments or other charges of encumbrances, upon the Property or any part thereof, shall constitute waste (although the meaning of the term "waste" shall not necessarily be limited to such nonpayment), and shall entitle Lender to all remedies provided for herein. Lender shall have the right to pursue all remedies afforded to a mortgagee under applicable Law, and shall have the benefit of all of the provisions of such applicable Law, including all amendments thereto which may become effective from time to time after the date hereof.

(h) Sale of Personal Property. Lender, as required by applicable Law, shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable Law.

(i) For purposes of this power of sale, Lender, as required by applicable Law, may elect to treat as personal property any Property which is intangible or which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Lender, as required by applicable Law, may dispose of any personal property, in any manner permitted by Article 9 of the Uniform Commercial Code of the State in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable Law.

(ii) In connection with any sale or other disposition of such Property, Grantor agrees that the following procedures shall constitute a commercially reasonable sale: Lender shall mail written notice of the sale to Grantor not later than thirty (30) days prior to such sale. Lender will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Lender will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Lender shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(i) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, as required by applicable Law, Lender may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or

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dispositions; or in any other manner Lender may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale**," and any two or more, "**Foreclosure Sales**").

If Lender chooses to have more than one Foreclosure Sale, Lender at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Lender may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.3 Credit Bids. At any Foreclosure Sale, any person, including Lender, may bid for and acquire the Property or any part of the Property to the extent permitted by then applicable Law. In the case of any sale of the Property or any other collateral (or any portion thereof) pursuant to any judgment or decree of any court, at public auction, private sale or otherwise, Lender may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the indebtedness evidenced by the Note (or any portion thereof) and any claims for the Secured Obligations (or any portion thereof) in order that there may be credited as paid on the purchase price an amount of the debt (or a portion thereof). Any amount of the Secured Obligations not so credited shall be a deficiency payable by Borrower and/or Grantor (as Guarantor) to Lender in accordance with the Loan Documents and applicable Law.

6.4 Application of Foreclosure Sale Proceeds. Lender shall apply the proceeds of any Foreclosure Sale in the following manner:

- (a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Grantor is obligated to reimburse Lender under the provisions hereof;
- (b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Lender under the terms of this Mortgage which then remain unpaid;
- (c) Third, to pay all other Secured Obligations in any order and proportions as Lender in its sole discretion may choose; and
- (d) Fourth, to remit the remainder, if any, to the person or persons entitled to it, pursuant to applicable law.

6.5 Application of Rents and Other Sums. Lender shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Lender may receive or collect hereunder, in the following manner:

- (a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Lender or any receiver;
- (b) Second, to pay all other Secured Obligations in any order and proportions as Lender in its sole discretion may choose; and
- (c) Third, to remit the remainder, if any, to the person or persons entitled to it, pursuant to applicable law.

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Lender shall have no liability for any funds which it does not actually receive.

## 7. Miscellaneous Provisions.

7.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Documents also grant further rights to Lender and contain further agreements and affirmative and negative covenants by Grantor which apply to this Mortgage and to the Property.

### 7.2 No Waiver or Cure.

(a) Each waiver by Lender must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Lender to take action on account of any default of Grantor. Consent by Lender to any act or omission by Grantor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Lender's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Lender or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Lender of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(i) Lender, its agent or a receiver takes possession of all or any part of the Property in the manner provided in this Mortgage.

(ii) Lender collects and applies Rents as permitted under the provisions hereof, either with or without taking possession of all or any part of the Property.

(iii) Lender receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Lender under the provisions hereof.

(iv) Lender makes a site visit, observes the Property and/or conducts tests as permitted under the provisions hereof or any other Loan Document.

(v) Lender receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Lender or any receiver invokes any right or remedy provided under this Mortgage or any other Loan Document.

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## 7.3 Powers of Lender.

(a) If Lender performs any act which it is empowered or authorized to perform under this Mortgage or any other Loan Document, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Grantor shall not be released or changed if Lender grant(s) any successor in interest to Grantor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Lender shall not be required to comply with any demand by the original Grantor that Lender refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Lender may take any of the actions permitted under this Mortgage or any other Loan Document and exercise any right or remedy hereunder or thereunder regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time, Lender may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Lender may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 Merger. No merger shall occur as a result of Lender's acquiring any other estate in or any other lien on the Property unless Lender consents to a merger in writing.

7.5 Joint and Several Liability. If Grantor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Grantor's obligations under this Mortgage.

7.6 Applicable Law. This Mortgage shall be governed by the law of the State in which the Property is located.

7.7 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 7.7 does not waive or limit the provisions of Section 5.3 hereof.

## 7.8 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.



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(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

7.9 Text Intentionally Omitted.

7.10 Waiver of Statutory Rights. To the extent permitted by Law, Grantor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption Laws, or any so-called "**Moratorium Laws,**" now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Laws. Grantor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. To the extent permitted by applicable Law, Grantor hereby waives any and all rights of reinstatement and/or redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Grantor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to 735 ILCS 5/15 - 1601(b), 735 ILCS 5/15 1602, and/or 735 ILCS 5/15 1603 and the provisions of all other applicable Law.

7.11 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Lender may, at its option, declare all Secured Obligations immediately due and payable.

7.12 Notices. Any notice, demand, request or other communication which any party hereto may be required to give hereunder, or may desire to give hereunder shall be delivered and deemed delivered only if delivered in accordance with the Loan Agreement addressed to Lender as provided in the Loan Agreement and to Grantor as follows:

Grantor:

Arlington Downs Residential II, LLC  
760 W. Main Street, Suite 140  
Barrington, IL 60010  
Attention: Richard Cavanaugh

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

A courtesy copy of any notice by Lender to Grantor shall also be delivered to Borrower and its counsel in accordance with the provisions of the Loan Agreement.

7.13 Future Advances. The principal balance of the Note shall be disbursed from time to time in accordance with the provisions of the Loan Agreement. This Mortgage shall secure, in addition to the Secured Obligations, future advances and obligations of Grantor and/or Borrower to Lender and advances by Lender to Grantor and/or Borrower up to two times the maximum principal amount of the Note to the same extent as if the future advances and obligations were made on the date of this Mortgage. For the purposes hereof, all obligations of Grantor to Lender under any indebtedness or obligation contained therein or evidenced thereby shall be considered a future obligation of Grantor secured hereby. In any and all events, the maximum amount of indebtedness and obligations of



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Grantor secured hereby shall not exceed two times the principal amount of the Note. Nothing in this Section 7.13 or in any other provision of this Mortgage shall be deemed either: (a) an obligation on the part of Lender to make any future advances other than in accordance with the terms and provisions of the Loan Documents, or (b) an agreement on the part of Lender to increase the amount of the loan evidenced by the Note or the aggregate principal amount of the Note, to any amount in excess of Twelve Million One Hundred Twenty Dollars (\$12,120,000) in the aggregate.

7.14 Lender's Lien for Service Charge and Expenses. At all times, regardless of whether any proceeds of the Loan has been disbursed, this Mortgage secures (in addition to any proceeds of the Loan disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Lender. For purposes hereof, all obligations of Grantor to Lender under all Interest Rate Agreements and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Grantor secured hereby.

7.15 Inconsistencies. In the event of any inconsistency between this Mortgage and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

7.16 Business Loan. Grantor acknowledges and agrees that: (a) the proceeds of the loan evidenced by the Note will be used in conformance with subparagraph (l)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended, 815 ILCS 205/4(l)(1); (b) the indebtedness secured hereby constitutes a business loan which comes within the purview of subparagraph (1)(c) of said Section 4; (c) the loan evidenced by the Note is an exempt transaction under the Truth-in-Lending Act, 15 U.S.C. Sec 1601 et seq.; and (d) the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201) or residential real estate (as defined in 735 ILCS 5/15-1219).

7.17 The Foreclosure Act. Grantor and Lender shall have the benefit of all of the provisions of the Illinois Foreclosure Act (735 ILCS 5/15, et seq.) (the "**Foreclosure Act**"), including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Foreclosure Act which is specifically referred to herein is repealed, Lender shall have the benefit of such provision as most recently existed prior to such repeal, as though the same were incorporated herein by express reference.

7.18 Construction Mortgage. This Mortgage is a construction mortgage and it secures a loan incurred to, *inter alia*, finance the site development of property adjacent to the Premises, including site improvements that will benefit the Premises.

7.19 The Credit Agreements Act. This Mortgage shall not be amended, modified or supplemented without the written agreement of Grantor and Lender at the time of such amendment, modification or supplement. Grantor expressly agrees that for purposes of this Mortgage and each and every other Loan Document: (a) this Mortgage and each and every other Loan Document shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1, et seq. (the "**Credit Agreements Act**"); (b) the Credit Agreements Act applies to this transaction, including, but not limited to, the execution of the Mortgage and each and every other Loan Document; and (c) any action on or in

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any way related to this Mortgage and each and every other Loan Document shall be governed by the Credit Agreements Act.

7.20 Representation. Grantor hereby represents that it has been represented by competent counsel of its choice in the negotiation and execution of this Mortgage and other Loan Documents, that it has read and fully understood the terms hereof, that Grantor and its counsel have been afforded an opportunity to review, negotiate and modify the terms of this Mortgage and that Grantor intends to be bound hereby. In accordance with the foregoing, the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Mortgage.

7.21 Release of Property and Mortgage. Notwithstanding the outstanding amounts owing under the Secured Obligations and specifically Section 5.10 hereof, provided no Event of Default shall have occurred and be continuing, Lender shall upon payment to Lender by Grantor of the sum of TWO MILLION THREE HUNDRED SEVENTY THOUSAND AND 00/100 DOLLARS (\$2,370,000.00) plus any accrued but unpaid interest on said amount, release the lien of this Mortgage and the Limited Guaranty and Grantor shall have no further liability under this Mortgage Instrument or with respect to the Secured Obligations; Grantor shall pay any costs of preparation and recordation of any such release; provided that payments from Borrower, payments made by the purchaser in any foreclosure proceeding, or payments from any source other than a payment by Grantor shall not be deemed to be a payment pursuant to this Section 7.21.

7.22 Recapture Agreement. Lender acknowledges and agrees in accordance with the provisions herein, that notwithstanding anything herein to the contrary, Grantor shall have the right to enter into that certain Recapture Agreement in form and substance heretofore approved by Lender (the "**Recapture Agreement**"), which Recapture Agreement constitutes a lien against the Property; provided that notwithstanding the order of recording of the Recapture Agreement and this Mortgage, the Recapture Agreement shall be subordinate to the lien of this Mortgage.

7.23 WAIVER OF TRIAL BY JURY. GRANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF GRANTOR OR MORTGAGEE. GRANTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. GRANTOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS MORTGAGE AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

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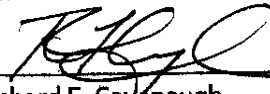
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IN WITNESS WHEREOF, Grantor has executed this Mortgage as of the date first above written

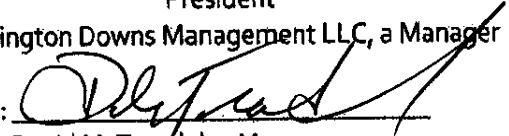
**"GRANTOR"**

**ARLINGTON DOWNS RESIDENTIAL II, LLC**  
an Illinois limited liability company

BY: Stoneleigh Manager SCAD II, LLC, a Manager  
By: Stoneleigh Companies, LLC,  
Its: Manager

By:   
Richard F. Cavenaugh  
President

BY: Arlington Downs Management LLC, a Manager

By:   
David M. Trandel, a Manager

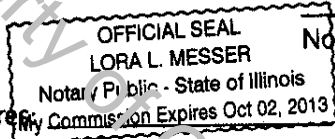
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STATE OF IL )  
 ) SS:  
COUNTY OF Lake )

Before me, a Notary Public in and for said County and State, personally appeared **David M. Trandel**, known to be a Manager of Arlington Downs Management LLC, one of the Managers of **ARLINGTON DOWNS RESIDENTIAL II, LLC**, an Illinois limited liability company, and acknowledged the execution of the foregoing for and on behalf of said limited liability company for and on behalf of said limited liability company for and on behalf of said limited liability company.

Witness my hand and Notarial Seal, this 16 day of May, 2013.



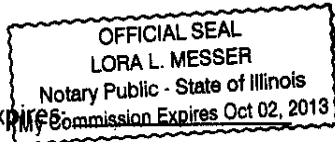
Notary Public - Signature

My Commission Expires  
(seal)

STATE OF IL )  
 ) SS:  
COUNTY OF Lake )

Before me, a Notary Public in and for said County and State, personally appeared **Richard F. Cavanaugh**, known to be the President of Stoneleigh Companies, LLC, a Florida limited liability company, the Manager of Stoneleigh Manager SCAD II, LLC, a Florida limited liability company, one of the Managers of **ARLINGTON DOWNS RESIDENTIAL II, LLC**, an Illinois limited liability company, and acknowledged the execution of the foregoing for and on behalf of said limited liability company for and on behalf of said limited liability company for and on behalf of said limited liability company.

Witness my hand and Notarial Seal, this 16 day of May, 2013.



Notary Public - Signature

My Commission Expires  
(seal)

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## EXHIBIT A

### Legal Description of Lot 3

LOT 3 IN ARLINGTON DOWNS BEING A PLANNED UNIT DEVELOPMENT OF LOTS 11, 17 AND 18 IN ARLINGTON PARK OFFICE CENTRE, BEING A SUBDIVISION OF PART OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 25 AND PART OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 26, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 3, 2013 AS DOCUMENT 1300334039, IN COOK COUNTY, ILLINOIS.

Pin 02-25-100-021-0000  
02-25-100-026-0000

Property of Cook County Clerk's Office

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## EXHIBIT B

### PERMITTED EXCEPTIONS

- Easement for public utilities over the east 10 feet of the land as shown on the Plat of Arlington Park Office Centre Subdivision aforesaid recorded May 23, 1980 as Document 25466742 and as shown on the Plat of Arlington Downs Subdivision recorded January 3, 2013 as Document 1300334039.
- A 25 foot building line as shown on the Plat of Arlington Park Office Centre Subdivision recorded May 23, 1980 as Document 25466742 and as shown on the Plat of Arlington Downs Subdivision recorded January 3, 2013 as Document 1300334039, over the east line of Lot 3.
- Terms, provisions and conditions contained in the Declaration of Covenants, Conditions and Restrictions for Arlington Park Office Centre dated June 6, 1980 and recorded June 6, 1980 as Document 25479286, as amended by First Amendment recorded as Document 27310484 made by American National Bank and Trust Company of Chicago under Trust Agreement dated November 29, 1978 known as Trust Number 45276, Magnum Land Corporation and the First National Bank of Chicago relating to Land Use Criteria Space, Allocations and Dimensional Standards; Architectural and Aesthetic Standards; Implementation of Plans and Construction.

NOTE: Assignment and Assumption Agreement dated July 7, 1981 and recorded July 8, 1981 as Document 25930872 made by and between American National Bank and Trust Company of Chicago, a national banking association, as Trustee under Trust Agreement dated November 29, 1978 and known as Trust Number 45276, Magnum Land Corporation and MVA Venture, an Illinois partnership.

- Ordinance Amending the Zoning Ordinance of the Village of Arlington Heights Granting a Rezoning to a B-2 General Business District, Preliminary Approval of an Amendment to a Planned Unit Development, Preliminary Approval of a Plat of Subdivision, Approval of Four Special Use Permits, Three Conceptual Approvals and a Land Use Variation and Granting Certain Variations from Chapter 28 of the Arlington Heights Municipal Code recorded March 22, 2012 as Document Number 1208229038.
- Ordinance Amending the Comprehensive Plan of the Village of Arlington Heights recorded March 22, 2012 as Document 1208229029.



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- Wireless Communication Easement and Assignment Agreement made by Arlington Devco, LLC, Foresite Management, Inc., and T10 Unison Site Management, LLC recorded July 30, 2012 as Document Number 1221210141.
- Ordinance Granting Final Approval of a Planned Unit Development recorded July 10, 2012 as Document Number 1219239046.
- Village of Arlington Heights Resolution Approving a Final Plat of Subdivision for Arlington Downs Subdivision recorded January 3, 2013 as Document 1300334040.
- Terms, provision and conditions relating to that certain Temporary Construction Easement made by Arlington Devco, LLC, recorded 6-12-13 as Document Number #2 1316322015
- Terms, provision and conditions relating to that certain Declaration of Easements, Covenants and Restrictions made by Arlington Devco, LLC, recorded 6-12-13 as Document Number #1 1316322014

#1