

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



1331245061

Doc#: 1331245061 Fee: \$78.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 11/08/2013 11:42 AM Pg: 1 of 21

Report Mortgage Fraud  
800-532-8765

The property identified as: PIN: 16-26-401-009-0000

**Address:**

Street: 3501 W 26TH STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60623

Lender: ENTERPRISE SUB-CDE I LLC

Borrower: D-REAL ESTATE 26TH STREET LLC

Loan / Mortgage Amount: \$2,800,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 7770 et seq. because the application was taken by an exempt entity.

Certificate number: F2573EA6-809A-4CA6-8A5C-011F2EDC74BC

Execution date: 10/19/2013

# UNOFFICIAL COPY

Prepared by and after recording

return to:

Jarrold H. Sharp, Esq.  
Thompson Coburn LLP  
One US Bank Plaza  
St. Louis, MO 63101

## ILLINOIS FUTURE ADVANCE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS ILLINOIS FUTURE ADVANCE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING SECURES FUTURE ADVANCES AND FUTURE OBLIGATIONS AND SHALL BE GOVERNED BY 735 ILCS § 5/15-1302, AS AMENDED FROM TIME TO TIME. THE TOTAL FACE AMOUNT OF THE PRESENT AND FUTURE ADVANCES AND OBLIGATIONS WHICH MAY BE SECURED HEREBY IS \$2,800,000 PLUS ANY ADDITIONAL AMOUNTS WHICH MAY BE SECURED HEREBY UNDER THE PROVISIONS OF 735 ILCS § 5/15-1302, AS AMENDED.

THIS MORTGAGE IS GOVERNED BY A CERTAIN INTERCREDITOR AGREEMENT (AS DEFINED IN THE CREDIT AGREEMENT (DEFINED BELOW))

THIS ILLINOIS FUTURE ADVANCE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (as the same may be modified, extended, renewed or restated from time to time, this "Mortgage"), dated as of October 21, 2013, is granted by D-REAL ESTATE 26<sup>TH</sup> STREET, LLC, an Illinois limited liability company ("Mortgagor"), having a mailing address of c/o Marque Medicos, 3501 West 26<sup>th</sup> Street, Chicago, Illinois 60623, to Enterprise Sub-CDE I, LLC, a Delaware limited liability company ("Mortgagee") having a mailing address of 150 North Meramec Avenue, St. Louis, Missouri 63105. The following recitals form the basis and are a material part of this Mortgage:

A. Marque Medicos, L.L.C., an Illinois limited liability company ("Borrower") has entered into a Credit Agreement (as the same may be modified, extended, renewed or restated from time to time, the "Credit Agreement"), dated as of the date hereof, pursuant to which Mortgagee has conditionally agreed to lend, and Borrower has agreed to borrow, \$2,800,000 (the "Loan Amount"). Capitalized terms used and not otherwise defined herein shall have the meaning provided in the Credit Agreement.

B. Mortgagor is party to the Guaranty guaranteeing to Mortgagee all of the Obligations of Borrower to Mortgagee. The parties intend that this Mortgage shall secure the payment and performance of the Obligations and all of Mortgagor's obligations under the Guaranty (the "Liabilities"). As used herein, the term "Obligations" shall mean, collectively, the Obligations (as defined in the Credit Agreement) and the Liabilities.

# UNOFFICIAL COPY

## CONVEYANCE

NOW, THEREFORE, as security for the Obligations, and in consideration thereof, and the sum of Ten Dollars (\$10.00) in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor by these presents does hereby grant, remise, release, alien, bargain, sell, mortgage, warrant, convey and confirm, assign, give, transfer, grant a continuing security interest in and set over unto Mortgagee, and to its successors and assigns, forever, the following described real estate, chattels, real property, personal property and other properties, interests and rights, whether now owned or hereafter acquired by Mortgagor (collectively, the "Mortgaged Property"):

A. Land. All the estate, right, title and interest of Mortgagor in, to and under, or derived from the plots, pieces and parcels of land situated in the City of Chicago, and the County of Cook, State of Illinois, more particularly described in Exhibit A hereto (the "Land") with the tenements, hereditaments, appurtenances and all the estates and rights of Mortgagor in and to the Land and all right, title and interest, if any, of Mortgagor in and to the streets, roads, sidewalks and alleys abutting the Land, and strips and gores within or adjoining the Land, whether private or public and whether vacated or to be vacated by Law or otherwise; the air space and right to use said air space above the Land and any transferable development or similar rights appurtenant thereto, all rights of ingress and egress by motor vehicle to parking facilities on or within the Land, all easements now or hereafter affecting or benefitting the Land, including, without limitation, all reciprocal easement agreements, royalties and all rights appertaining to the use and enjoyment of the Land, including alley, drainage, mineral, water, oil and gas rights.

B. Improvements. All buildings, improvements and structures at any time, now or hereafter, erected, situated or placed thereon (the "Improvements").

C. Fixtures. All fixtures and personal property now or at any time hereafter annexed, affixed or attached to said real estate and/or the buildings, improvements or structures thereon and all replacements, additions and substitutions thereof or thereto, including but not limited to, all apparatus, appliances, machinery, equipment and articles used to supply or provide, or in connection with, heat, gas, air conditioning, plumbing, water, lighting, power, elevator, sewerage, cleaning, refrigeration, cooling, ventilation and sprinkler systems, all fire prevention and extinguishing apparatus, all window shades, drapes, drapery equipment, carpeting, tile and floor coverings, all wall coverings, all security and access control apparatus, and all trees, plants and landscaping (the Land, together with the Improvements and Fixtures, is referred to herein as the "Premises").

D. Accounts; Contract Rights; Inventory; General Intangibles; Chattel Paper. All accounts, accounts receivable, lease payments, rental payments, royalties, issues, income, profits, lease rights, contract rights, documents, instruments and other forms of obligation including, without limitation, all development or other rights with respect to the foregoing and other rights to the payment of money including, without limitation, third party reimbursement obligations and all goods whose sale, lease, rental or other disposition by Mortgagor have given rise to accounts and have been returned to or repossessed or stopped in transit by Mortgagor (collectively, "Accounts"); all monies, reserves, deposits, certificates of deposit and deposit accounts and all interest or dividends thereon, securities, cash, and cash equivalents; all inventory of Mortgagor, wherever located, whether under lease, in transit, held by others for Mortgagor's account, covered by warehouse receipts, purchase orders and/or contracts, or in the possession of any lessees, renters, carriers, forwarding agents, truckers, warehousemen, vendors or other Persons, including, without limitation, all raw materials, work in process, finished goods, supplies, goods, incidentals, office supplies and packaging and shipping materials (collectively, "Inventory"); all general intangibles of any kind or nature whatsoever, including, without limitation, all patents, trademarks,

# UNOFFICIAL COPY

copyrights and other intellectual property, and all applications for, registrations of and licenses of the foregoing, and all computer software, product specifications, trade secrets, licenses, trade names, service marks, goodwill, tax refunds and rights to tax refunds; all chattel paper of any kind or nature whatsoever, including without limitation, all leases, rental agreements, installment sale agreements, conditional sale agreements, rights to acquire land or improvements, and other chattel paper relating to or arising out of the purchase, sale, rental, lease or other disposition of any of the Mortgaged Property.

E. Personal Property. All other personal property, whether now owned or hereafter acquired by Mortgagor, and used or intended to be used in the possession, occupation or enjoyment thereof, and all replacements, additions and substitutions thereof and thereto, including, but not limited to, the following (collectively, the "Personal Property"): all equipment, machinery, fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Mortgaged Property or any of the improvements now or hereafter located thereon, including without limitation any and all air conditioners, amplifiers, antennae, appliances, apparatus, awnings, basins, boilers, bookcases, booths, cabinets, carpets, chairs, cleaning and janitorial equipment and supplies, coolers, compactors, computers and computer equipment and wiring, conduit, copy machines, cups, curtains, desks, dies, dishes, dishwashers, doors, drapes, drapery equipment and apparatus, ducts, dynamos, elevators, engines, equipment, escalators, fans, fax machines, fittings, floor coverings, freezers, furnaces, furnishings, furniture, glasses, goods, hardware, heaters, humidifiers, incinerators, kitchen equipment and appliances, lights and lighting, machinery, microphones, monitors, motors, ovens, pans, pipes, plates, plumbing, pots, printers, pumps, radiators, ranges, refrigerators, risers, screens, security systems, shades, shelving, silverware, sound systems, speakers, sprinklers, stools, stoves, tile and floor coverings, tables, telephones, tools, ventilators, wall coverings, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, owned by Mortgagor and now or hereafter used for similar purposes in or in connection with the Mortgaged Property, all appliances, all shelving and storage apparatus, all construction goods and materials whether or not the same have been incorporated into the buildings or improvements thereon, and all tools, supplies and equipment used in connection with construction, repair, maintenance, janitorial or groundskeeping services thereon or therefor.

F. Claims; Books and Records. All right to take any action or file any papers or process in any court of competent jurisdiction, which may in the opinion of Mortgagee be necessary to preserve, protect, or enforce the rights or claims of Mortgagor in and to the Premises or the Personal Property or both, including the filing of any proof of claim in any insolvency proceeding under any state, federal or other laws and any rights, claims or awards accruing to or to be paid to Mortgagor, and all books, records, computer records, electronic data, reports, tests, surveys, plans, specifications, permits, conditional use permits, licenses, computer disks, ledger cards, programs and other computer materials, customer and supplier lists, invoices, orders and documents of any kind or nature relating to the foregoing or the development or operation thereof.

G. Leases. All leases, subleases, lettings and licenses of the Premises or any part thereof now or hereafter entered into, and all amendments, modifications, extensions, renewals, restatements and guarantees thereof (all of the foregoing hereinafter collectively referred to as the "Leases"), and all right, title and interest of Mortgagor thereunder, including cash and securities deposited thereunder (as down payments, security deposits or otherwise), the guarantees of third parties related to the obligations existing pursuant to such Leases, the right to receive and collect the rents, expense reimbursements, security deposits, income, proceeds, earnings, royalties, revenues, issues and profits payable thereunder and the rights to enforce, whether at law or in equity or by any other means, all provisions thereof (all of the foregoing hereinafter collectively referred to as the "Rents") and the right to apply the same to the payment and performance of the Obligations.

# UNOFFICIAL COPY

H. Accessions; After Acquired Property and Proceeds. All accessions to any of the foregoing and all substitutions, renewals, improvements and replacements of and additions thereto; all after-acquired property of the nature described above; all products and proceeds of any of the foregoing, including, without limitation, insurance proceeds, whether cash or noncash, immediate or remote, including without limitation, all income, accounts, contract rights, general intangibles, chattel paper, notes, drafts, acceptances, instruments and other rights to the payment of money arising out of the sale, rental, lease, exchange, or other disposition of any of the foregoing items.

TO HAVE AND TO HOLD the Mortgaged Property and every part thereof unto Mortgagee, its successors and assigns, forever, to secure the payment and performance of the Obligations; provided always that if the Obligations, whether presently existing or hereafter incurred, are repaid in accordance with the Loan Documents and Mortgagor reimburses Mortgagee any amounts it may have expended pursuant to the authorization of this Mortgage, including, without limitation, sums spent in payment of taxes, assessments, insurance, lease payments or other liens and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance shall be null and void; otherwise, it shall remain in full force and effect.

This Mortgage secures, in such order of priority as Mortgagee may elect, the payment, performance and observance of, collectively: (i) the Obligations; (ii) all of the Mortgagor's obligations under this Mortgage; and (iii) in addition to any other debts or obligations secured hereby, the unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums and costs incurred for the protection of the Mortgaged Property. Mortgagor and Mortgagee intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loan advances or extensions of credit made by Mortgagee after this Mortgage is filed for record. Such loan advances (together with the advances made on or before the date hereof) are and will be evidenced by the Credit Agreement and the other Loan Documents. The total amount of indebtedness that may be secured by this Mortgage may increase or decrease from time to time, but the total unpaid balance secured at any time by this Mortgage shall not exceed a maximum principal amount of \$2,800,000 plus interest thereon in accordance with the Credit Agreement and the other Loan Documents, and any disbursements made by Mortgagee for the payment of taxes, assessments, insurance premiums and costs incurred for the protection of the Mortgaged Property, with interest on such disbursements.

Mortgagor hereby represents, warrants, covenants and agrees as follows:

## ARTICLE I: REPRESENTATIONS, WARRANTIES AND COVENANTS

1.1 Representations and Warranties. Mortgagor hereby represents and warrants to Mortgagee as follows:

(a) Mortgagor is lawfully seized and possessed of a good and indefeasible title and estate in fee simple to the Mortgaged Property, that no other Person holds any interest of any nature in the Mortgaged Property other than pursuant to Permitted Liens, and Mortgagor will forever warrant and defend the title to the Mortgaged Property and every part thereof unto Mortgagee against the claims and demands of all persons whomsoever; provided, however, that the lien of this Mortgage shall automatically attach to and encumber any property, assets or rights which may be acquired by Mortgagor after the date hereof upon transfer of title thereto, all without the necessity of any further act or deed on the part of Mortgagor;

# UNOFFICIAL COPY

(b) The Mortgaged Property and every part thereof is free and clear of any and all liens, encumbrances and charges of every kind and character, including liens of general and special taxes and assessments, excepting taxes for the current year which are not yet due, excepting the lien of this Mortgage, and excepting any Permitted Liens;

(c) The Premises are not located in an area identified by the Secretary of Housing and Urban Development, or a successor thereto, as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968, or the Flood Disaster Protection Act of 1973, as amended, or any successor law.

1.2 Continuation of Representations and Warranties. Mortgagor hereby covenants, warrants and agrees that the representations and warranties made herein shall be and shall remain true and correct as of the date hereof and at all times thereafter so long as any part of the Obligations shall remain outstanding.

1.3 Covenants. Mortgagor hereby expressly covenants and agrees as follows:

(a) Payment and Performance of the Obligations. Mortgagor shall (i) duly repay the Loans and all interest thereon, as and when the same shall become due and payable, according to the provisions of the Loan Documents, and (ii) pay and perform all of the Obligations according to the provisions of the Loan Documents.

(b) Due on Sale or Encumbrance. Mortgagor will not, without the prior written consent of Mortgagee, transfer, convey or otherwise part with title to any of the Mortgaged Property, or any portion thereof or ownership interest therein, or create or permit or allow to exist or to be created any mortgage, deed of trust, pledge or other encumbrance on any of the Mortgaged Property, other than this Mortgage and the Permitted Liens. Except as may be expressly permitted in the Credit Agreement, Mortgagor will not suffer or permit any lien of any nature whatsoever to attach to any of the Mortgaged Property or to remain outstanding against the same or any part thereof. If any such lien shall be filed against the Mortgaged Property, Mortgagor shall promptly and at its sole expense have such lien or encumbrance removed and insured over by the title insurance company (the "Title Company") that has issued the lender's policy of title insurance to Mortgagee covering Mortgagee's interest in the Premises, unless otherwise specifically permitted in the Credit Agreement.

(c) Insurance.

(i) Mortgagor shall, at Mortgagor's sole cost and expense, obtain and maintain in force and effect at all times, such liability, property and other insurance with respect to the Mortgaged Property, as is required to be obtained and maintained under the Credit Agreement, and as Mortgagee may otherwise reasonably require to be obtained and maintained from time to time. Without in any way limiting the foregoing, Mortgagor agrees that in the event that all or any portion of the Mortgaged Property is located in a flood plain, Mortgagor shall obtain and maintain flood insurance coverage in an amount and otherwise in form and substance acceptable to Mortgagee.

(ii) All policies of insurance shall be issued by companies satisfactory to Mortgagee and shall be in such form and contain such other endorsements as Mortgagee shall require. All policies of insurance shall contain a lender's loss payable endorsement for the benefit of Mortgagee and a mortgagee clause approved by Mortgagee and showing Mortgagee as first mortgagee without contribution and as loss payee. Mortgagee shall be named as an additional insured on all such policies of insurance. Mortgagor shall furnish Mortgagee with an original evidence (ACORD 27 or equivalent) of all

# UNOFFICIAL COPY

required insurance and satisfactory evidence of premium payments and renewals at least thirty (30) days prior to the expiration of each such policy. Complete duplicate originals of such policies shall be provided from time to time upon request of Mortgagee. All such insurance policies shall contain a provision that the same will not be canceled or modified with respect to the Mortgaged Property without thirty (30) days prior written notice to Mortgagee.

(iii) All insurance moneys received on account of any loss or damage to the Mortgaged Property, after deducting therefrom the reasonable charges and expenses paid or incurred in connection with the collection and disbursement of said moneys, may be used and applied, at the option of Mortgagee, in its sole and absolute discretion, either for the purpose of paying the cost of repair, restoration or replacement of the Mortgaged Property damaged or destroyed, or applied to the prepayment, or partial prepayment, of the Obligations secured hereby in such order and manner as Mortgagee may elect. In the event of loss or damage to the Mortgaged Property, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Mortgagor hereby grants to Mortgagee full power and authority to make proof of loss under any and all insurance policies, either in the name of Mortgagor, or in the name of Mortgagee, and to adjust, settle, collect and receipt for all insurance, and to endorse for and in behalf and in the name of Mortgagor any check, draft or other instrument received therefor, and to collect the proceeds thereof, and also, if an Event of Default shall occur and be continuing hereunder, to collect and receipt for any unearned premiums and to apply same on the Obligations secured hereby in such order and manner as Mortgagee may elect. In the event of foreclosure sale, any and all insurance policies may be assigned without consent of Mortgagor, and Mortgagor authorizes the Mortgagee to assign said policies to the purchaser or purchasers at such foreclosure sale, or if Mortgagee so elects, such Mortgagee may collect any unearned premiums and apply the same on the Obligations secured hereby in such order and manner as Mortgagee may elect.

(iv) The following notice is given pursuant to the Illinois Collateral Protection Act (815 ILCS 180/1 et. seq. as the same may be amended or restated). As used herein, the terms "you" and "your" shall refer to Mortgagor and the terms "we" and "us" shall refer to Mortgagee. **UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY YOUR AGREEMENT WITH US, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTERESTS IN YOUR COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT YOUR INTERESTS. THE COVERAGE THAT WE PURCHASE MAY NOT PAY ANY CLAIM THAT YOU MAKE OR ANY CLAIM THAT IS MADE AGAINST YOU IN CONNECTION WITH THE COLLATERAL. YOU MAY LATER CANCEL ANY INSURANCE PURCHASED BY US, BUT ONLY AFTER PROVIDING US WITH EVIDENCE THAT YOU HAVE OBTAINED INSURANCE AS REQUIRED BY OUR AGREEMENT. IF WE PURCHASE INSURANCE FOR THE COLLATERAL, YOU WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES WE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO YOUR TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE YOU MAY BE ABLE TO OBTAIN ON YOUR OWN.**

(d) Repairs. Mortgagor will at all times (i) keep and maintain the Mortgaged Property and every part thereof in good order, repair and condition, (ii) make all necessary repairs, restorations, renewals, replacements, additions and improvements thereto, whether interior or exterior, structural or nonstructural, foreseen or unforeseen, or otherwise necessary to preserve the value of the Mortgaged Property, (iii) not cause or allow any waste to or of the Mortgaged Property, or any portion

# UNOFFICIAL COPY

thereof, to occur, and (iv) not cause or allow the Premises to be misused, wasted or deteriorated in any respect. In the event of fire or other casualty, or in the event of a condemnation of a portion of the Premises, Mortgagor shall repair and restore the Premises to its condition prior to such casualty or condemnation, to the extent possible, promptly and in a workmanlike manner. No part of the Improvements shall be removed, demolished or structurally or materially altered nor shall any new building, structure, facility or other improvement be constructed on the Land without Mortgagee's prior written consent in the case of each such removal, demolition, alteration or construction, except to the extent expressly provided in the Credit Agreement. Mortgagor will keep the Premises fully equipped and will replace all worn out or obsolete fixtures and Personal Property with fixtures or personal property comparable thereto when new. Mortgagor shall not, without Mortgagee's prior written consent, remove any Personal Property from the Land or the Improvements unless Mortgagor replaces the same with an article of equal or better usefulness and value when new, owned by Mortgagor free and clear of any lien or security interest (other than the Permitted Liens).

(e) Zoning; Title Matters. Mortgagor will not, without the prior written consent of Mortgagee, (i) initiate or support any zoning reclassification of the Premises, seek any variance under existing zoning ordinance applicable to the Premises or use or permit the use of the Premises in a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances, (ii) modify or amend any of the Permitted Liens, (iii) impose any restrictive covenants, easements, rights-of-way or encumbrances upon the Premises, execute or file any subdivision plat affecting the Premises or consent to the annexation of the Premises to any municipality, or (iv) permit or suffer the Premises to be used by the public or any Person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

(f) Compliance. Mortgagor will not use or suffer or permit to be used the Mortgaged Property or any part thereof in any manner inconsistent with the rights of Mortgagee hereunder, or in violation of the provisions of any Permitted Lien, Lease, insurance policy or any rules or regulations of insurance underwriters, and will comply with, and maintain, use and cause the Mortgaged Property to at all times be in compliance with all Laws, including without limitation, Environmental Laws, applicable to the Mortgaged Property or to the uses or purposes thereof.

(g) Condemnation. In the event the Mortgaged Property, or any part thereof, be taken through condemnation proceedings or by virtue of the exercise of the right of eminent domain or pursuant to governmental action, any and all amounts awarded in any such condemnation proceeding for the taking of the Mortgaged Property, or any part thereof, are hereby assigned to and shall be paid directly by the condemning authority to Mortgagee, and when received by Mortgagee, after deducting all reasonable charges and expenses paid or incurred in connection with the collection thereof, the same may be applied to the prepayment, or partial prepayment, of the Obligations in such order and manner as Mortgagee may elect, or, at the option of Mortgagee, the same may be applied in whole or in part to the replacement of that part of the Mortgaged Property not so taken, subject, however, to the satisfaction of such conditions as Mortgagee may impose with respect thereto. Mortgagor, promptly upon obtaining knowledge of any pending or threatened condemnation of the Premises, or of any eminent domain, or of any other proceedings arising out of injury or damage to or decrease in the value of the Premises, including a change in grade of any street, will notify Mortgagee of the threat or commencement thereof. Mortgagee shall have the right, but not the obligation, to participate in any such proceedings, and Mortgagor from time to time will execute and deliver to Mortgagee all instruments requested by Mortgagee or as may be required to permit such participation. Mortgagor, at Mortgagor's sole expense, shall diligently act to protect the interests of Mortgagor and Mortgagee in any such proceedings, shall deliver to Mortgagee copies of all papers served in connection therewith and shall consult and cooperate with Mortgagee, its attorneys and agents, in the carrying on and defense of any such proceedings;



# UNOFFICIAL COPY

provided that no settlement of any such proceeding shall be made by Mortgagor without Mortgagee's prior written consent.

(h) Casualty. In the event of casualty, Mortgagee shall make the insurance proceeds available to Mortgagor for repair and restoration of the Mortgaged Property only to the extent Mortgagee has agreed to do so under any of the Loan Documents.

(i) Taxes. Mortgagor hereby covenants and agrees to pay any and all general real estate taxes, special taxes and assessments, general assessments, subdivision or condominium assessments, liens and other charges that may be levied or assessed against the Mortgaged Property, or any part thereof, prior to the time the same shall become delinquent, and Mortgagor shall promptly provide Mortgagee with proof of payment thereof.

(j) Change in Taxation Laws. If, after the date hereof, any State, any Commonwealth or the United States of America imposes on Mortgagee (or any affiliate thereof) a new or increased tax on notes, bonds, reimbursement agreements or obligations secured by a mortgage or deed of trust on real estate, as a result of which Mortgagee may become chargeable with the payment of any such new or increased taxes, then Mortgagor covenants and agrees to pay Mortgagee the new or increased amount of such taxes to the extent allocable to the Obligations within thirty (30) days after written notice thereof; provided, however, that if Mortgagee shall be required by law to pay any such new or increased tax in advance of Mortgagor's payment thereof to Mortgagee, then all moneys so expended shall be due on demand, bear interest at the Default Rate and shall be secured hereby. In the event Mortgagor shall fail to pay or cause to be paid or to reimburse Mortgagee for advances as aforesaid to pay any such new or increased tax or taxes, or if by such law it should be illegal for Mortgagor to pay any such tax or taxes, then the Obligations shall, at the option of Mortgagee, become immediately due and payable without further notice, anything herein or in the Loan Documents to the contrary notwithstanding; provided, however, that Mortgagor shall not be required to pay any such tax in excess of an amount which when added to the interest paid by Mortgagor on the Loans would exceed the maximum lawful rate allowed in the State where the Land is located.

(k) Inspections. Mortgagee, and its agents, employees and contractors, are hereby authorized to enter, at any reasonable time, on or in any part of the Mortgaged Property for the purpose of inspecting the same, including, but not limited to, subsurface inspections, and for the purpose of performing any of the acts it is authorized to perform hereunder. To the extent that Mortgagor's books and records relating to the Mortgaged Property are located in a different location than the Land and Improvements, Mortgagee, and its agents, employees and contractors, are hereby authorized to enter, at any reasonable time, on or in any part of such other location for the purpose of inspecting the same.

(l) Title Disputes. Without limiting the generality of any provision of the Loan Documents, if the Mortgagee is made a defendant in any suit involving the title to any of the Mortgaged Property, or involving the validity or priority of the lien of this Mortgage, then, in each such event, Mortgagor shall reimburse Mortgagee for all attorneys' fees and expenses suffered or incurred by Mortgagee, as and when the same are suffered or incurred, and any such reimbursement obligation which is not paid upon demand shall bear interest at the Default Rate and shall be secured by this Mortgage.

(m) Cure Payments. If Mortgagor shall fail to pay any tax, assessment, lien or other charge levied or assessed against the Mortgaged Property, or any part thereof, or shall fail to keep and perform any of the covenants and conditions herein contained or in the other Loan Documents, then Mortgagee, shall have the right, but not the obligation, to (i) pay any such tax, assessment, lien or other charge, (ii) redeem such property from any sale or foreclosure for taxes or assessments or liens, (iii) effect

# UNOFFICIAL COPY

and pay for insurance required hereunder or under the other Loan Documents, (iv) perform or pay for any other of the Obligations, and (v) make such other disbursements as are necessary or advisable in the opinion of Mortgagee to cure any default of Mortgagor and/or Borrower hereunder or under the other Loan Documents, (vi) protect the lien, or the priority of the lien, of this Mortgage or the rights of Mortgagee hereunder, (vii) preserve the value of the Mortgaged Property, and (viii) take any action or expend any sum, or both, as may be necessary to protect against waste to or of the Mortgaged Property or any portion thereof. Any and all such sums of money advanced for such purposes by Mortgagee shall be deemed part of the Obligations, shall be secured by this Mortgage and the other Loan Documents and shall be payable on demand with interest accruing from the time so advanced at the Default Rate, and failure on the part of Mortgagor to repay the amounts so advanced on demand shall constitute an Event of Default hereunder; provided, however, nothing herein contained shall be construed as requiring Mortgagee to advance or expend money or take any action for any of the purposes aforesaid.

(i) Environmental. The Mortgaged Property is not being used, and shall not be used, for any purpose in violation of any applicable environmental, hazardous waste and substances, health or safety laws, rules or regulations, including, but not limited to, the Resource Conservation and Recovery Act, as amended ("RCRA"), the Toxic Substances Control Act, as amended ("TSCA"), the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Clean Air Act, as amended ("CAA"), and the Clean Water Act, as amended ("CWA"), regulations thereunder and corresponding state statutes and regulations. Mortgagor has all required permits, certificates, consents and approvals required under any applicable environmental, health or safety laws, rules or regulations. Mortgagor is and shall remain in compliance with all applicable environmental, health and safety laws, rules or regulations in connection with the use of the Mortgaged Property. Mortgagor shall immediately provide Mortgagee a copy of any administrative, civil or criminal complaint received by Mortgagor alleging (i) violations of environmental, health and safety statutes, ordinances or regulations, or (ii) bodily injury or property damage arising from Mortgagor's operations or Mortgagor's ownership of the Mortgaged Property.

(o) Negative Covenants. Until the Loans and all of the other Obligations are repaid in full, without the prior consent of Mortgagee, Mortgagor agrees as follows: (i) Mortgagor shall not, in one transaction or a series of related transactions, merge into or consolidate with any other entity, or sell all or substantially all of its assets; (ii) Mortgagor shall not change the state of its incorporation or organization; and (iii) Mortgagor shall not change its legal name.

(p) Control of Collateral. Mortgagor will cooperate with the Mortgagee in obtaining control with respect to any collateral consisting of any one or more of the following: deposit accounts; investment property; letter of credit rights; and electronic chattel paper.

1.4 Security Agreement. This instrument is intended to be a security agreement pursuant to the Uniform Commercial Code as currently in effect in the state in which the Land is located ("UCC") for any of the items specified as part of the Mortgaged Property which, under applicable law, may be subject to a security interest pursuant to the UCC, and Mortgagor hereby grants Mortgagee a security interest in said items, whether now owned or hereafter acquired, and including all products and proceeds of said items. Mortgagor irrevocably authorizes Mortgagee to file (i) one or more financing statements describing the Mortgaged Property in all jurisdictions in which such financing statements are or may be required to be filed to perfect the grant of the security interest in the Mortgaged Property, (ii) one or more continuation statements relating to such financing statements, and (iii) amendments of such financing statements as may be required by Mortgagee from time to time. Mortgagor hereby authorizes Mortgagee to file financing statements covering "all assets" or "all personal property" of Debtor as contemplated by Section 9-504 of the UCC. Any reproduction of this instrument or of any other security agreement or

# UNOFFICIAL COPY

financing statement shall be sufficient as a financing statement. This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the UCC with respect to the Mortgaged Property and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor and Mortgagee are set forth on the first page of this Mortgage. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Land is located. In addition, Mortgagor agrees to deliver to Mortgagee, upon Mortgagee's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this instrument, in such form as Mortgagee may reasonably require to perfect a security interest with respect to said items. Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Mortgagee may reasonably require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the UCC any other security interest in any of the Mortgaged Property, including replacements and additions thereto. Upon the occurrence of an Event of Default as hereinafter provided, Mortgagee shall have the remedies of a secured party under the UCC and, at Mortgagee's option, may also invoke the remedies as otherwise provided in this instrument. In exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified as part of the Mortgaged Property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the UCC or of the remedies otherwise provided in this instrument.

## ARTICLE II: ASSIGNMENT OF RENTS AND LEASES

Mortgagor hereby covenants and agrees for the benefit of Mortgagee as follows:

2.1 This instrument is intended to create an absolute and present assignment to Mortgagee of the items of Mortgaged Property constituting Rents and not merely the passing of a security interest; provided, however, that so long as no Event of Default exists hereunder, Mortgagor shall have the right and license to collect said Rents as the same shall accrue, further provided that the terms and conditions of any separate instrument assigning the Rents to Mortgagee shall govern over any contrary provision in this Section 2.1.

2.2 As further security for the Obligations, Mortgagor hereby absolutely grants, transfers and assigns unto Mortgagee all rents, royalties, issues, profits and income ("Rents") now or hereafter due or payable for the occupancy or use of the Premises, and all leases and subleases, whether written or oral, with all security therefor, including, without limitation, all guaranties thereof, now or hereafter affecting the Premises; on the condition that Mortgagor shall have the right to collect and retain such rents prior to any Event of Default. Mortgagor represents, warrants, and covenants to Mortgagee that the same have not been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time during the life of this assignment be sold, assigned, transferred or set over by the Mortgagor or by any person or persons whosoever except same being subject to this Mortgage; and that Mortgagor has good right to sell, assign, transfer and set over the same and to grant to and confer upon Mortgagee the rights, interests, powers and authorities herein granted and conferred. Failure of Mortgagee at any time or from time to time to enforce the assignment of rents and leases under this Section 2.2 shall not in any manner prevent its subsequent enforcement, and Mortgagee is not obligated to collect anything hereunder, but is accountable only for sums actually collected.

2.3 Mortgagor shall give Mortgagee at any time upon demand any further or additional forms of assignment of transfer of said rents, leases and subleases and security as may be requested by Mortgagee, and shall deliver to Mortgagee executed copies of all such leases and security.

# UNOFFICIAL COPY

2.4 Mortgagee shall be entitled to deduct and retain a just and reasonable compensation from monies received hereunder for its services or that of its agents in collecting said monies. Any monies received by Mortgagee hereunder may be applied when received from time to time in payment of any taxes, assessments or other liens affecting the Premises regardless of the delinquency, such application to be in such order as Mortgagee may determine. The acceptance of this Mortgage by Mortgagee or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any tenancy or lease nor an assumption of any liability under any such tenancy or lease.

2.5 Upon or at any time after an Event of Default, Mortgagee may declare the Obligations immediately due and payable, and may, at its option, without notice, and whether or not the Obligations shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, (a) enter upon, take possession of, manage and operate the Premises, or any part thereof (including without limitation making necessary repairs, alterations and improvements to the Premises); (b) make, cancel, enforce or modify leases; (c) obtain and evict tenants; (d) fix or modify rents; (e) do any acts which Mortgagee deems reasonably proper to protect the security hereof, and (f) either with or without taking possession of the Premises, in its own name sue for or otherwise collect and receive such rents, issues and profits, including without limitation those past due and unpaid. In connection with the foregoing, Mortgagee shall be entitled and empowered to employ attorneys and their staff, and management, rental and other agents in and about the Premises and to effect the matters which the Mortgagee is empowered to do, and if Mortgagee shall itself effect such matters, Mortgagee shall be entitled to charge and receive reasonable management, rental and other fees therefor as may be customary in the area in which the Premises are located; and the fees, charges, costs and expenses of Mortgagee or such persons shall be part of the Obligations. Mortgagee may apply all funds collected as aforesaid, less costs and expenses of operation and collection, including but not limited to fees and disbursements of attorneys and their staff, and agents' fees, charges, costs and expenses, as aforesaid, to the Obligations in such order as Mortgagee may determine. The entering upon and taking possession of the Premises, the collection of such rents, issues and profits and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect notice of default under any Loan Document or invalidate any act done pursuant to said notice.

2.6 Any tenants or occupants of any part of the Premises are hereby authorized to recognize the claims of Mortgagee hereunder without investigating the reason for any action taken by Mortgagee, or the validity or the amount of indebtedness owing to Mortgagee, or the existence of any Event of Default, or under or by reason of this assignment of rents and leases, or the application to be made by Mortgagee of any amounts to be paid to Mortgagee. The sole signature of Mortgagee shall be sufficient for the exercise of any rights under this assignment and the sole receipt of Mortgagee for any sums received shall be a full discharge and release therefor to any such tenant or occupant on the Premises. Checks for all or any part of the rentals collected under this assignment of rents and leases shall be drawn to the exclusive order of Mortgagee.

2.7 Mortgagor further agrees that it will perform and observe all of the terms and provisions on lessor's part to be performed and observed under any and all leases of the Premises. Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty or liability of lessor under any lease of the Premises, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all liability, loss or damage which Mortgagee may or might incur under any lease of the Premises or by reason of this assignment; and any and all such liability, loss or damage incurred by Mortgagee, together with the costs and expenses, including but not limited to fees and disbursements of attorneys and their staff, incurred by Mortgagee in defense of any claims or demands therefor (whether successful or not), shall be part of the Obligations, and Mortgagor shall

# UNOFFICIAL COPY

reimburse Mortgagee therefor on demand, together with interest at the Default Rate from the date of demand to the date of payment.

## ARTICLE III: DEFAULT AND REMEDIES

3.1 Events of Default. An event of default (each an “Event of Default”) shall occur under this Mortgage if any one or more of the following events shall occur: (a) if an Event of Default (as defined in the Credit Agreement or any of the other Loan Documents shall occur under the Credit Agreement or any of the other Loan Documents; (b) if default shall be made by Mortgagor in the due performance or observance of any covenant, agreement or condition herein contained or required to be performed or observed by Mortgagor under this Mortgage; (c) if any representation or warranty of Mortgagor contained herein shall prove to be in any material respect incorrect or if there shall be any material breach of any such representation or warranty; (d) if the Mortgaged Property or any portion thereof or ownership interest therein is sold, transferred, assigned or in any manner conveyed without the prior written consent of Mortgagee; or (e) if a default or event of default shall occur and continue beyond the applicable cure period, if any, under or within the meaning of any other deed of trust or mortgage covering any of the Mortgaged Property.

3.2 Remedies. Upon the occurrence of any one or more Events of Default, then, and in each and every such event, Mortgagee shall have the right to exercise any one or more of the following rights and remedies in addition to any other rights and remedies available under the other Loan Documents and applicable law and equity:

(a) Acceleration. At the option of Mortgagee, all of the Obligations then outstanding and unpaid and all accrued and unpaid interest thereon shall become and be due and payable immediately, notwithstanding anything to the contrary in the Credit Agreement, the Notes or any other Loan Document.

(b) Foreclosure. Mortgagor agrees that upon the occurrence of an Event of Default hereunder, Mortgagee shall have the right to immediately foreclose this Mortgage. In any foreclosure proceeding the court shall, upon application, at once, and without notice to Mortgagor or any party claiming under Mortgagor, and without giving bond on such application (such notice and bond being hereby expressly waived) and also without reference to the then value of the Mortgaged Property, to the use of said Mortgaged Property as a homestead or to the solvency or insolvency of any person liable for any said Obligations, appoint a receiver for the benefit of the legal holder(s) of the Obligations secured hereby, to take possession of the Mortgaged Property, with power to collect rents, issues and profits of the Mortgaged Property, then due or to become due, during the pendency of such foreclosure suit (such rents, issues and profits being hereby expressly assigned and pledged as additional security for the payment of the Obligations secured by this Mortgage); this provision for appointment of a receiver being expressly a condition upon which the Obligations secured hereby were made; and Mortgagor hereby further consents that said receiver may, out of the said rents, pay prior or coordinate liens, the taxes, assessments, water rates and insurance on Mortgaged Property, then due or unpaid or accruing whether before or after the filing of such bill, and for any necessary repairs thereon, and management and rental fees and any other proper charges, and the amount of any deficiency decree; provided that, in case of any default or breach, as aforesaid, as a concurrent (and not alternative or exclusive) remedy and measure for making effective the terms provisions and purposes hereof, it shall be lawful for Mortgagee, its agent or attorney forthwith (either with or without process of law, forcibly or otherwise) to enter upon and take possession of said Mortgaged Property and to expel and remove any person, goods or chattels occupying or upon the same, to collect and to receive all of the rents, issues and profits therefrom, from time to time, to manage and control the same and make all necessary repairs, and lease the same or any part thereof at such rentals as

# UNOFFICIAL COPY

in its sole discretion it may deem just and reasonable, and after deducting all reasonable attorneys' fees and all expenses incurred in the protection, care, repair and management of said Mortgaged Property, distribute to Mortgagee the remaining income for application upon the Obligations secured hereby in the same manner as is hereafter provided upon the sale of said Mortgaged Property under foreclosure; and said Mortgagor hereby expressly releases and waives any and all right to possession, control or management of the Mortgaged Property, or to the rents, issues and profits therefrom, after any Event of Default under this Mortgage and said Mortgagor hereby further expressly releases and waives any and all damages and claims for damages occasioned by such expulsion.

(c) Right of Entry. Upon written demand of Mortgagee, Mortgagor shall forthwith surrender to Mortgagee the actual possession of all of the Mortgaged Property and it shall be lawful (whether or not Mortgagor has so surrendered possession) for Mortgagee, either personally or by agents or attorneys, forthwith to enter into or upon the Mortgaged Property and to exclude Mortgagor, the agents and servants of Mortgagor, and all parties claiming by, through or under Mortgagor, wholly therefrom, and Mortgagee shall thereupon be solely and exclusively entitled to possession of said Mortgaged Property and every part thereof, and to use, operate, manage and control the same, either personally or by managers, agents, servants or attorneys to the fullest extent authorized by law; and upon every such entry, Mortgagee may, from time to time, at the expense of Mortgagor, make all necessary and proper repairs and replacements to the Mortgaged Property as Mortgagee in its discretion sees fit, and any amounts so expended shall be due on demand, bear interest at the Default Rate and shall be secured hereby.

(d) Collection of Rent. Upon the occurrence and continuance of an Event of Default, Mortgagee may make demand for and collect and receive all Rents and other income from the Mortgaged Property, including Rents and other income accrued but unpaid prior to the date of such Event of Default, and the receipt of Mortgagee therefor shall be binding on Mortgagor with respect to the amount so paid. All sums of money received by Mortgagee from Rents, after deducting therefrom the reasonable charges and expenses paid or incurred in connection with the collection and disbursement thereof, shall be applied to the payment of the Obligations in such order and manner as Mortgagee may elect, or applied to remedy any Event of Default as Mortgagee may direct. Any lessee of the Mortgaged Property, or any part thereof, is hereby authorized and directed by Mortgagor to make payments of rent in accordance with written instructions relating thereto executed by Mortgagee, or any Person acting on behalf of Mortgagee with apparent authority, and shall be fully protected in relying and acting upon such written instructions. Such lessee shall have no duty to determine whether any sum paid to Mortgagee hereunder is properly applied by Mortgagee.

(e) Equitable Remedies. Mortgagee may proceed by suit or suits at law or in equity to enforce the Obligations and to foreclose the lien created by this Mortgage and in such event Mortgagee shall be entitled to be reimbursed for its respective attorneys' fees and for all other expenses, costs and outlays.

(f) Receivership. Mortgagee shall be entitled as a matter of right to the appointment of a receiver of the Mortgaged Property, without prior notice to Mortgagor and without regard to (i) the solvency or insolvency of Mortgagor at the time of the application for such receiver, (ii) the then value of the Mortgaged Property or (iii) whether any waste of the Mortgaged Property has occurred or is threatened. Mortgagee, may be appointed as such receiver. Such receiver shall have full power to (i) collect the rents, issues and profits from the Mortgaged Property, (ii) construct or complete the construction of any improvements on the Mortgaged Property, (iii) exercise any right or remedy granted to Mortgagee under the Loan Documents, and (iv) all other powers necessary or incidental for the protection, possession, control, development, management, leasing and operation of the Mortgaged Property.

# UNOFFICIAL COPY

(g) Selectively Release, Liquidate or Substitute Collateral. Mortgagee shall have the right, but not the obligation, to release any portion of the Mortgaged Property for such consideration as Mortgagee may require without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release and applied to the Obligations and without in any way impairing the validity, priority or enforceability of any of the other Loan Documents, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder.

(h) Delivery of Collateral. Mortgagor shall assemble any Personal Property serving as collateral for the Obligations, or any portion thereof, at any place or places designated by Mortgagee, and promptly to deliver such collateral to Mortgagee or Mortgagee's agent.

(i) Other Creditor's Rights and Remedies. Mortgagee shall have the right to exercise any one or more of the rights and remedies available under the Uniform Commercial Code or otherwise at law or in equity.

3.3 Costs of Collection and Fees and Expenses Generally. Mortgagor promises to pay all costs, expenses and reasonable attorneys' fees and expenses incurred by the Mortgagee in collecting the Obligations secured hereby whether by foreclosure, suit or otherwise, in protecting or sustaining the lien of this Mortgage or in any litigation or controversy arising from or in connection with the Loan Documents or this Mortgage, together with interest thereon from the date of payment at the highest rate applicable under the Loan Documents, and Mortgagor agrees that any such sums and the interest thereon shall be a lien on said Mortgaged Property and shall be secured by this Mortgage. All fees and expenses allowable pursuant to the provisions hereof shall be additional Obligations secured hereby and shall be a charge upon said Mortgaged Property and shall constitute a lien thereon prior and paramount to the Obligations secured hereby, and whenever possible shall be provided for in any judgment or decree entered in any such proceedings. There shall be included in any decree foreclosing the lien of this Mortgage and be paid out of the rents or proceeds of any sale made in pursuance of any such decree in the following order: (a) all costs of such suit or suits, advertising, sale and conveyance, reasonable attorneys' fees and expenses of attorneys for the Mortgagee, stenographers' fees, outlays for documentary evidence and costs of abstract and examination of title, title opinions and title guaranty policies; (b) all moneys advanced by the Mortgagee for any purpose authorized in this Mortgage, with interest on such advances at the highest rate of interest applicable under the Loan Documents; (c) all the accrued interest remaining unpaid on the Obligations secured hereby; and (d) all of the principal of the Obligations secured hereby then remaining unpaid. The excess of the proceeds of the sale, if any, shall then be paid to the party entitled thereto. In case, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire Obligations due hereunder, Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be additional Obligations secured by this Mortgage, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses and charges shall have been paid in full.

3.4 Application of Proceeds. The proceeds of any foreclosure sale referred to in this Mortgage shall be applied as follows:

First: To the payment of the costs, expenses and liabilities of Mortgagee caused by the Event of Default giving rise to such sale, including, without limitation, the cost of all attorneys' fees and

# UNOFFICIAL COPY

expenses of Mortgagee and the cost of obtaining title reports, title insurance, environmental reports, appraisal reports, insurance, past due taxes and assessments and other expenses of conducting such sale and evaluating the potential acquisition the Mortgaged Property, together with interest thereon at the Default Rate, and all taxes and other charges, except any taxes or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment in full of the Obligations (including principal, interest, penalties, premiums and fees) in such order as Mortgagee may elect.

Third: To the payment of any other sums secured hereunder or required to be paid by Mortgagor pursuant to any provision of the Loan Documents.

Fourth: To the extent permitted by applicable law, to be set aside by Mortgagee as adequate security in Mortgagee's judgment for the payment of sums which would have been paid by application under clauses First through Third above to Mortgagee, arising out of an obligation or liability with respect to which Mortgagor has agreed to indemnify Mortgagee, but which sums are not yet due and payable or liquidated.

Fifth: At the option of Mortgagee, to the payment of any withholding tax in accordance with applicable federal, state or local law.

Sixth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

If the net proceeds of any such foreclosure or trustee's sale under this Mortgage are not sufficient to fully satisfy all of the Obligations, including, without limitation, the costs and expenses described above, then Mortgagor hereby promises and agrees to pay any such deficiency on demand together with interest thereon at the Default Rate.

3.5 Waivers. Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, 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, and Mortgagor hereby waives the benefit of such Laws. Mortgagor, for itself, its successors and assigns, hereby wholly waives the period of redemption and any right of redemption provided under any existing or future Law in the event of a foreclosure of this Mortgage. Mortgagor, for itself and all who may claim through or under it, hereby waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and hereby agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor hereby waives any order or decree of foreclosure, pursuant to the rights herein granted, on behalf of Mortgagor, and each and every person acquiring any interest in or title to the Mortgaged Property, subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable Law.

## ARTICLE IV: MISCELLANEOUS

4.1 Any part of the Mortgaged Property herein described may be released by the Mortgagee without affecting the lien hereof on the remainder. The liability of the Mortgagor on the Obligations secured hereby shall continue in its original force and effect until the entire principal balance of the Obligations secured hereby and all accrued and unpaid interest thereon is paid in full. Mortgagee may by written and signed agreement with the then record owner of the real estate, or with the heirs, executors,



# UNOFFICIAL COPY

administrators, devisees, successors or assigns of such record owner, or with any one or more persons liable, whether primarily or secondarily, for the payment of any Obligations secured hereby, without notice of any other of said persons, extend the time of payment, or otherwise modify the terms and conditions for repayment of, the Obligations, or any part thereof, without thereby modifying or affecting the lien of this Mortgage or releasing any such person from any liability for such Obligations, and this Mortgage shall be security for all additional interest under such extension or other modification agreement; and the granting of any extension or extensions of time of payment, or any other modifications of the terms and conditions for repayment, of any of the Obligations secured hereby or interest thereon either to the maker or to any other party, or to the releasing of a portion of the security hereof, or taking other or additional security for payment of said Obligations, or waiver of or failure to exercise any right to mature or enforce the whole debt under any covenant or stipulation herein contained, or extending the time of payment of any other Obligations or liability secured hereby, shall not in anywise affect this Mortgage or the rights of Mortgagee hereunder, or operate as a release from any liability upon said Obligations under any covenant or stipulation herein contained.

4.2 This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all parties claiming by, through or under Mortgagor. All covenants and agreements of Mortgagor herein shall be joint and several.

4.3 Mortgagor acknowledges and agrees that all expenses and amounts expended by Mortgagee, or owed to Mortgagee under any indemnity in this Mortgage, shall be due as and when incurred, bear interest at the Default Rate and shall constitute part of the Obligations, and all indemnities contained in this Mortgage shall apply notwithstanding any negligent conduct or omission of Mortgagee (except to the extent otherwise provided herein and except to the extent of gross negligence or willful misconduct on the part of Mortgagee), are in addition to any legal liability or responsibility Mortgagor otherwise has, and shall survive the foreclosure of this Mortgage and the payment and performance of the Obligations.

4.4 If all or any portion of any provision of this Mortgage or any other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

4.5 The term "Mortgagee" shall be deemed to mean and include the endorsee(s), transferee(s) or the holder(s) at the time being of the Loan Documents and any of the Obligations, and the successor or successors and assigns of Mortgagee. In the event that ownership of the Mortgaged Property becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage or the Obligations in the same manner as with Mortgagor, without in any way vitiating, discharging or otherwise affecting Mortgagor's liability hereunder or for the payment and performance of the Obligations or being deemed a consent on the part of Mortgagee to such vesting.

4.6 Any notice, demand or other communication hereunder shall be given as provided in the Credit Agreement.

4.7 All of the grants, covenants, terms, agreements, provisions and conditions herein contained shall run with the land. Time is of the essence of all of the Obligations and any other obligations of Mortgagor under the Loan Documents and hereunder.

# UNOFFICIAL COPY

4.8 The captions or headings used herein are for the convenience of the parties and are not a part of this Mortgage. This Mortgage may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

4.9 To the extent that proceeds of the Loans or advances under this Mortgage are used to pay any outstanding deed of trust, mortgage, charge, prior encumbrance or other lien against the Mortgaged Property, Mortgagee is hereby subrogated to any and all rights of the owner or holder of such outstanding deed of trust, mortgage, charge, prior encumbrances or other lien regardless of whether the same are released.

4.10 To the extent that Mortgagee receives any payment on account of the Obligations and any such payment(s) or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal Law, common law or equitable cause, then, to the extent of such payment(s) received, the Obligations or part thereof intended to be satisfied and all liens, security interests, mortgages and/or other encumbrances upon or pertaining to any assets of Mortgagor and theretofore created and/or existing in favor of Mortgagee as security for the payment and performance of the Obligations shall be revived and continue in full force and effect, as if such payment(s) had not been received by Mortgagee and applied on account of the Obligations.

4.11 This Mortgage cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the Person against whom enforcement is sought. To the extent permissible under applicable law, any amendments or modifications hereof or of the Loan Documents shall not affect the priority of the lien of this Mortgage, and any Person purporting to have or to take a junior deed of trust or other lien upon the Mortgaged Property, or any interest therein, shall be subject to the rights of Mortgagee to amend, modify, increase, vary, alter or supplement this Mortgage, the Notes or any of the other Loan Documents. This right shall include, without limitation, the right to extend the Maturity Date of the Notes, the right to increase or decrease the interest rate under the Notes, the right to increase the principal amount of the Obligations, and the right to waive or forebear from the exercise of any of its rights hereunder or under any of the other Loan Documents, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Mortgage losing its priority over the rights of any such junior lien.

4.12 Mortgagee shall have no obligation to accept any payment under the Notes or the Credit Agreement in advance of the due date thereof except to the extent Mortgagee has expressly agreed to the contrary in the Notes, the Credit Agreement or this Mortgage.

4.13 Upon the foreclosure of the lien created hereby on the Mortgaged Property, as herein provided, any Lease then existing which is subordinate or has been subordinated to this Mortgage shall be terminated as a result of such foreclosure unless Mortgagee has entered into a written nondisturbance agreement with the tenant thereunder or unless Mortgagee has subordinated, in writing, this Mortgage to such Lease. Any such subordination shall not require the consent or agreement of the tenant under any such Lease, but such subordination shall be recorded in the official real estate records for the County where the Land is located. If both the landlord's and tenant's interest under any Lease which constitutes a part of the Mortgaged Property shall at any time become vested in any one person, this Mortgage and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee hereunder as to each separate estate. If any Lease which is or has been subordinated to this Mortgage contains an option or right in favor of the tenant thereunder to purchase all or any portion or interest in the Mortgaged Property then, such option or right shall be subordinate in all

# UNOFFICIAL COPY

respects to this Mortgage and the rights of Mortgagee hereunder, and the exercise of any such option or right shall not affect, release or terminate this Mortgage nor obligate Mortgagee to release or terminate this Mortgage.

4.14 This Mortgage shall be governed by, and construed in accordance with, the law of the State of Illinois.

4.15 **REFERENCE IS MADE TO THAT CERTAIN INTERCREDITOR AGREEMENT DATED AS OF THE DATE HEREOF, BY AND AMONG ADVANTAGE CAPITAL COMMUNITY DEVELOPMENT FUND XXV, L.L.C., AND ENTERPRISE SUB-CDE I, LLC (AS AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "INTERCREDITOR AGREEMENT"). ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, THE LIENS AND SECURITY INTERESTS GRANTED TO LENDER AND THE EXERCISE OF CERTAIN RIGHTS OR REMEDIES BY LENDER HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT.**

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the Mortgagor has executed and delivered this Mortgage as of the day and year first above written.

**MORTGAGOR:**

**D-REAL ESTATE 26<sup>TH</sup> STREET, LLC**, an Illinois limited liability company

By: Marque Medicos Management Services Corp., an Illinois corporation, its Manager

By: *Derrick D. Walley*  
Printed Name: Derrick D. Walley  
Title: President

ILLINOIS )  
STATE OF ~~MISSOURI~~ )  
                  COOK )  
COUNTY OF ~~ST. LOUIS~~ )

On this 19 day of October in the year 2013 before me, a Notary Public in and for said state, personally appeared Derrick D. Walley, President of Marque Medicos Management Services Corp., an Illinois corporation, the Manager of D-Real Estate 26<sup>th</sup> Street, LLC, an Illinois limited liability company, known to me to be the person(s) who executed the within Mortgage in behalf of said corporation and limited liability company and acknowledged to me that he/she/they executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(SEAL)

*R. Borek*  
Notary Public

My term expires: 6-18-2016



[SIGNATURE PAGE TO MORTGAGE IN FAVOR OF ENTERPRISE SUB-CDE I, LLC]

# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description Of The Land

LOTS 1 AND 2 IN E.A. CUMMINGS AND COMPANY'S RESUBDIVISION OF LOTS 1 TO 100 BOTH INCLUSIVE AND VACATED ALLEYS IN THE SUBDIVISION OF BLOCK 4 IN STEEL'S SUBDIVISION OF THE SOUTH EAST  $\frac{1}{4}$  AND THE EAST  $\frac{1}{2}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 26, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address:

3501-3505 W. 26<sup>th</sup> Street  
Chicago, Illinois 60623

Tax Identification Number:

16-26-401-009-0000 Vol. 577