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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1422745076

Doc#: 1422745076 **Fee:** \$92.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/15/2014 03:20 PM Pg: 1 of 28

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 08-16-200-103-0000

Address:

Street: 95 WEST ALGONQUIN ROAD

Street line 2:

City: ARLINGTON HEIGHTS

State: IL

ZIP Code: 60005

Lender: NXT CAPITAL, LLC

Borrower: 95 WA INVESTOR LLC

Loan / Mortgage Amount: \$12,300,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: C5669EE4-37CE-4AA5-8A26-D4C09F15C246

Execution date: 08/14/2014

8985757 2 of 14

Property of Cook County Clerk's Office

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

Jami L. Brodey, Esq.
GOLDBERG KOHN LTD.
55 East Monroe Street
Suite 3300
Chicago, Illinois 60603
(312) 201-4000

SPACE ABOVE THIS LINE FOR RECORDER'S USE.

**MORTGAGE
ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND
FIXTURE FILING**

MADE BY

95 WA INVESTOR LLC,
a Delaware limited liability company

as "Borrower"

to

NXT CAPITAL, LLC,
a Delaware limited liability company

as "Lender"

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MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

Project Commonly Known As

"95 W. Algonquin Office"

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as amended, modified, restated, extended, waived, supplemented or replaced from time to time, this "**Security Instrument**") is made as of August 14, 2014, by 95 WA INVESTOR LLC, a Delaware limited liability company (together with its successors and permitted assigns, "**Borrower**"), whose address is c/o The Hearn Company, 875 North Michigan Avenue, Suite 4100, Chicago, Illinois 60611, in favor of NXT CAPITAL, LLC, a Delaware limited liability company, its successors and assigns (collectively, "**Lender**"), whose address is 191 North Wacker Drive, Suite 1200, Chicago, Illinois 60606, Attention: Timothy R. Verrilli, Managing Director.

RECITALS

Lender has agreed, subject to the terms and conditions of that certain Loan Agreement dated as of even date herewith, executed by and between Borrower and Lender (as amended, modified, restated, extended, waived, supplemented or replaced from time to time, the "**Loan Agreement**"), to make a loan (the "**Loan**") to Borrower. The Loan is evidenced by that certain Promissory Note of even date herewith in the original principal amount of Twelve Million Three Hundred Thousand and No/100 Dollars (\$12,300,000.00) (which note, together with all notes issued in substitution or exchange therefor and all amendments, modifications, restatements and renewals thereof or thereto, is hereinafter referred to as the "**Note**"), providing for monthly payments as set forth in the Note, with the balance thereof, due and payable on August 14, 2017 (said date or any earlier date on which the entire unpaid principal amount shall be paid or required to be paid in full, whether by prepayment, acceleration or otherwise is hereinafter called the "**Maturity Date**"). The terms and provisions of the Loan Agreement and Note are hereby incorporated by reference in this Security Instrument. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

This Security Instrument is to secure the following obligations of Borrower (collectively, the "**Secured Obligations**"): (i) the payment of the Note, together with all interest, premiums, principal payments due under the Loan Agreement, the Exit Fee, Minimum Interest Recovery, principal payments due under the Loan Agreement and other amounts, if any, due in accordance with the terms of the Note and the other Loan Documents, as well as the payment of any additional indebtedness accruing to Lender on account of any future payments, advances or expenditures made by Lender pursuant to the Note, the Loan Agreement or this Security Instrument or any of the other Loan Documents or otherwise in connection with the Loan together with interest thereon (all payment obligations are hereinafter referred to as the "**Indebtedness**") and (ii) the performance of all other

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Obligations (as defined in Section 1.2 below) and covenants of Borrower under the Loan Documents.

1. Grant and Secured Obligations.

1.1. Grant. For the purpose of securing payment and performance of the Secured Obligations, Borrower hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages, warrants, assigns, sells, pledges and transfers to Lender, with power of sale and with right of entry and possession, a security interest, which Borrower 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 described in Exhibit A, together with all existing and future easements and rights affording access to it (the "**Premises**"); together with

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

(c) All existing and future appurtenances, privileges, rights-of-way, franchises and tenements of the Premises, including all mineral rights, oil, gas, and associated substances, and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future Leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("**Leases**") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such Leases and all rents, income, revenues, prepayments, security deposits, tax, insurance and replacement reserve deposits, receipts, termination, cancellation, and option payments, royalties, profits, issues, service reimbursements, fees, accounts receivables, and revenues from the Premises and/or Improvements from time to time accruing under the Leases (the "**Rents**"); together with

(e) All goods, materials, supplies, work in process, chattels, furniture, fixtures, equipment, appliances, machinery and other personal property of any kind, now or later to be attached to, incorporated into, placed in, on or about, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, 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 Security Instrument; together with

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(f) All of Borrower's interest in and to all operating and depository accounts arising out of the Project, including without limitation, the Blocked Account, the Loan funds, whether disbursed or not, all reserves set forth in the budget for the Property, the Funded Reserve, the Replacement Reserve, the Insurance Escrow and the Property Tax Escrow and any other monies on deposit with or for the benefit of Lender, including deposits for the payment of real estate taxes and insurance, any cash collateral account, and any bank accounts of Borrower, including all funds, items, instruments, investments, securities and other things of value at any time paid, deposited, credited or held in or in transit to any account; together with

(g) All claims, demands, judgments, insurance policies, insurance proceeds, refunds, reserves, accounts receivable, cost savings, deposits, rights of action, awards of damages, compensation, settlements and other rights to the payment of money hereafter made resulting from or relating to (i) the taking of the Premises or the Improvements or any part thereof under the power of eminent domain, (ii) any damage (whether caused by such taking, by casualty or otherwise) to the Premises, Improvements or appurtenances thereto or any part thereof, or (iii) the ownership or operation of the Property; together with

(h) To the extent assignable, all management contracts, permits, licenses, applications, approvals, plans, specifications and drawings, contracts, purchase and sale agreements, purchase options, entitlements, soil test reports, other reports of examination or analysis of the Premises or the Improvements, development rights and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation and use of the Premises, Improvements and/or Leases, including building permits, environmental certificates, certificates of operation, warranties and guaranties together with

(i) All of the following types of collateral, as defined in the Uniform Commercial Code as in effect from time to time in the State of Illinois (the "**Code**"): accounts, contract rights, general intangibles, chattel paper, documents, instruments, inventory, goods, equipment, investment property, deposit accounts, letter of credit rights, commercial tort claims, and all books and records relating to the foregoing, provided that Borrower will cooperate with Lender in obtaining "control" as defined in the Code with respect to collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper; together with

(j) 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 ("**Books and Records**"); together with

(k) All proceeds and products and renewals of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above; and together with

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(l) Any and all after-acquired right, title or interest of Borrower in and to any property of the types described in the preceding granting clauses.

The Recitals and Exhibits to this Security Instrument are hereby incorporated in this Security Instrument. Capitalized terms used above and elsewhere in this Security Instrument without definition have the meanings given them in the Loan Agreement.

1.2. Obligations.

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

(i) Payment and performance of all obligations and covenants of Borrower under the Loan Documents;

(ii) Payment and performance of all future advances and other obligations that Borrower 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, when a writing evidences the parties' agreement that the advance or obligation be secured by this Security Instrument;

(iii) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations; and

(iv) Payment of any and all loan commissions, service charges, liquidated damages, Expenses and advances due to or incurred by Lender regardless of whether any Loan proceeds have been disbursed.

1.3. 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 and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions 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.

2. Assignment of Leases and Rents.

2.1. Assignment. Borrower hereby irrevocably, absolutely, presently and unconditionally assigns to Lender all Leases and Rents and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits. This is an absolute assignment, not an assignment for security only and shall continue in effect until the Indebtedness is paid in full and all Secured Obligations are fully satisfied. Subject to Section 2.2 below, Borrower hereby gives Lender the right to collect the

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Rents and apply them in payment of the principal, interest and all other sums payable under the Loan Documents.

2.2. Grant of License. Lender hereby confers upon Borrower a revocable license ("**License**") to enforce the Leases and collect and retain the Rents as they become due and payable (excluding, however, any Lease termination, cancellation, option or similar payments, which Borrower agrees shall be held in trust and turned over to Lender for credit to principal under the Loan) so long as no Event of Default, as defined in Section 6.2 below, shall exist and be continuing. Borrower shall deliver such Rents to Lender as are necessary for the payment of principal, interest and other sums payable under the Loan Documents as such sums become due. If an Event of Default has occurred and is continuing, Lender shall have the right, which it may choose to exercise in its sole and absolute discretion and which it may exercise without taking possession of the Property, to terminate this License without notice to or demand upon Borrower, and without regard to the adequacy of Lender's security under this Security Instrument.

2.3. Collection and Application of Rents. Subject to the License granted to Borrower under Section 2.2 above, Lender has the right, power and authority to collect any and all Rents. Borrower 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 Borrower or in the name of Lender for any and all Rents.

Lender and Borrower 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, as defined in Section 6.2 below, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Borrower, 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 under Subsection 6.3(c) below. In Lender's sole and absolute 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 under Section 6.6 below. 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 Security Instrument, Lender and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Security Instrument and at law or in equity.

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 Property, unless Lender agrees in writing to the contrary, Lender is not and shall not be deemed to be:

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- (a) A "**mortgage in possession**" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for the control, care, management, or repair of the Property or any personal property or 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; or
- (e) Liable in any way for any injury or damage to any Person or property sustained by any Person or Persons in or about the Property.

2.5. Leasing. Borrower shall comply with and observe Borrower's obligations as landlord under all Leases and shall remain liable under the Leases. Borrower shall not lease the Property or any part of it except strictly in accordance with the terms hereof and in the Loan Agreement.

3. Grant of Security Interest.

3.1. Security Agreement. The parties intend for this Security Instrument to create a lien on 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, Borrower as debtor hereby grants Lender as secured party a security interest in all such Property (including, any replacement or substituted property) and Rents, to secure payment and performance of the Secured Obligations. This Security Instrument constitutes a security agreement under the Code covering all such Property and Rents. Lender shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.

3.2. Financing Statements. Borrower shall execute 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 Section 5.7 below, Borrower shall pay all fees and costs that Lender may incur in filing this Security Instrument (including any extensions, renewals and amendments thereof and reproductions of this Security Instrument) and such other documents in public offices and in obtaining such record searches as Lender may reasonably require. Borrower hereby authorizes and empowers Lender and irrevocably appoints Lender as Borrower's agent and attorney-in-fact to file, on Borrower's behalf, all financing statements, refilings, amendments, renewals and continuations thereof as Lender deems necessary or advisable to create, preserve and protect such lien. 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

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any way derogating from or impairing this Security Instrument or the rights or obligations of the parties under it. Borrower hereby authorizes Lender to file financing statements covering "all assets" or "all personal property" of Borrower, as debtor, as contemplated by the Code.

4. **Fixture Filing.**

This Security Instrument constitutes a financing statement filed as a fixture filing under Article 9 of the Code, 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 Borrower, as debtor, and Lender, as secured party, are as set forth in the preambles of this Security Instrument and Borrower's organizational identification number is set forth on the signature page of this Security Instrument.

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

5.1. **Representations and Warranties.** Borrower represents and warrants that:

(a) Borrower has the full and unlimited power, right and authority to encumber the Property and assign the Leases and Rents; and

(b) This Security Instrument creates a first and prior lien on the Property.

5.2. **Performance of Secured Obligations.** Borrower shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.3. **Liens, Charges and Encumbrances.** Borrower shall immediately discharge any lien on the Property which Lender has not consented to in writing in accordance with the terms of Section 4.12 of the Loan Agreement.

5.4. **Damages and Insurance and Condemnation Proceeds.** In the event of any casualty or condemnation of the Property, the provisions of Article 6 of the Loan Agreement shall govern.

5.5. **Releases, Extensions, Modifications and Additional Security.** From time to time, Lender may perform any of the following acts without affecting the liability of Borrower or any other Person liable for the payment of the Secured Obligations, and without affecting the lien or charge of the Security Instrument as security for the payment of the Secured Obligations, incurring any liability or giving notice to any Person:

(a) Release any Person liable for payment of any Secured Obligation;

(b) Waive or modify any provision of this Security Instrument or the other Loan Documents or grant other indulgences, including, extending the time for payment, or otherwise altering the terms of payment, of any Secured Obligation;

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- (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 Security Instrument or the lien of it; or
- (h) Release the Property or any part of it.

5.6. Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Borrower under Section 5.7 of this Security Instrument and the other Loan Documents have been received, Lender shall release this Security Instrument, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Borrower shall pay any costs of preparation and recordation of such release.

5.7. Compensation, Exculpation, Indemnification.

(a) Borrower agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Lender when the law provides no maximum limit, for any services that Lender may render in connection with this Security Instrument, including Lender's providing a statement of the Secured Obligations or providing the release pursuant to Section 5.6 above. Borrower shall also pay or reimburse all of Lender's costs and expenses which may be incurred in rendering any such services. Borrower 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 Security Instrument or to protect the rights under this Security Instrument or the other Loan Documents, including any rights or remedies afforded to Lender under Section 6.3 below, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Security Instrument, including reasonable attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.3(i) below) and any cost of evidence of title. If Lender chooses to dispose of Property through more than one Foreclosure Sale, Borrower shall pay all costs, expenses or other advances that may be incurred or made by Lender in each of such Foreclosure Sales.

(b) Lender shall not be directly or indirectly liable to Borrower or any other Person as a consequence of any of the following:

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

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

(iii) Any loss sustained by Borrower 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.

Borrower 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.

(c) Borrower agrees to indemnify, defend and hold Lender 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 it may suffer or incur:

(i) In performing any act required or permitted by this Security Instrument or any of the other Loan Documents or by law;

(ii) Because of any failure of Borrower to perform any of its obligations; 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 Documents.

This agreement by Borrower to indemnify Lender shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Security Instrument.

(d) Borrower shall perform all obligations to pay money arising under this Section 5.7 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.

5.8. Defense and Notice of Claims and Actions. At Borrower's sole expense, Borrower shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Security Instrument and the rights and powers of Lender created under it, against all adverse claims. Borrower 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. Lender may, at the expense of Borrower, appear in and defend any such claim, action or proceeding

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and any claim, action or other proceeding asserted or brought against Lender in connection with or relating to any part of the Property or this Security Instrument.

5.9. 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 Security Instrument or with the proceeds of any loan secured by this Security Instrument.

6. Accelerating Transfers, Default and Remedies.

6.1. Accelerating Transfers.

(a) "**Accelerating Transfer**" means any Transfer not expressly permitted under Section 4.10 of the Loan Agreement.

(b) Borrower acknowledges that Lender is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Borrower; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Lender's reliance, Borrower agrees that Borrower shall not make any Accelerating Transfer, unless the transfer is preceded by Lender's express written consent to the particular transaction and transferee. Lender may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Lender in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Lender may invoke any rights and remedies provided by Section 6.3 of this Security Instrument.

6.2. Events of Default. Borrower will be in default under this Security Instrument 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) Lender receives, at any time following the closing of the Loan, an official report indicating that Lender's security interest is not prior to all other security interests or other interests reflected in the report; or

(b) An "**Event of Default**" occurs under the Loan Agreement or any other Loan Document.

6.3. 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 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 Indebtedness and Secured Obligations to be due and payable immediately.

(b) Receiver. Lender shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through Borrower, and

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without regard for the solvency or insolvency of Borrower or the then value of the Property, 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 Borrower 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 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. 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, may exclude Borrower and its agents and employees wholly therefrom, 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 Security Instrument. Such other things may include: taking and possessing all of Borrower's or the then owner's Books and Records and accounts; 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; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Lender so requests, Borrower 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. Borrower hereby irrevocably constitutes and appoints Lender as Borrower'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 Borrower's name on any instruments. If Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Lender, Lender or such receiver may obtain a judgment or decree conferring on Lender or such receiver, the right to immediate possession of the Property or requiring the delivery of the Property to Lender or such receiver, and Borrower specifically consents to the entry of such judgment or decree.

(d) Cure; Protection of Security. Lender may cure any breach or default of Borrower, and if it chooses to do so in connection with any such cure or with respect to preventing a loss to Lender's interest in the Property, 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 Security Instrument, including, without limitation, completing construction of the improvements, if any, 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 Security Instrument; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien against the Property; obtaining insurance and/or paying any premiums or charges

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for insurance required to be carried under the Loan Agreement; repairing, restoring or 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 6.3(d) either with or without giving notice to any Person. Any amounts disbursed by Lender under this Subsection 6.3(d) together with interest thereon at the Default Rate from the date of disbursement, shall be secured by this Security Instrument and shall be due and payable on demand. Nothing contained in the Loan Documents shall require Lender to incur any expense or take any action hereunder.

(e) Uniform Commercial Code Remedies. Lender may exercise any or all of the remedies granted to a secured party under the Code.

(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 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. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect (i) the Secured Obligations, or any part thereof or (ii) any deficiency remaining unpaid after foreclosure and sale of the Property. To the extent a notice of sale shall be required by law for the sale or disposition of the Personal Property, a reasonable authenticated notification of disposition shall be notification given at least ten (10) days' prior to any such sale, provided however, that no notification need be given to Borrower if it has authenticated after default a statement renouncing or modifying any right to notification of sale or other intended disposition.

(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 Borrower or any other Person 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 Borrower. 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 shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or

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otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) For purposes of this power of sale, Lender 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 may dispose of any personal property, in any manner permitted by Article 9 of the Code, 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, Borrower agrees that the following procedures constitute a commercially reasonable sale: Lender shall mail written notice of the sale to Borrower not later than ten (10) 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 the foregoing, 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, 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 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 Security Instrument on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

Lender and any receiver, or any of their agents or representatives, shall have no liability for any loss, damage, injury, cost or expenses resulting from any action or omission that was taken or omitted in good faith.

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6.4. Credit Bids. At any Foreclosure Sale, any Person, including Borrower or Lender, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such Property, Lender may settle for the purchase price by crediting the sales price of the Property against the following obligations:

- (a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Borrower is obligated to pay or reimburse Lender under Section 5.7 of this Security Instrument; and
- (b) Second, all other Secured Obligations in any order and proportions as Lender in its sole discretion may choose.

6.5. 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 Borrower is obligated to reimburse Lender under Section 5.7 of this Security Instrument;
- (b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Lender under the terms of this Security Instrument 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 thereto.

6.6. 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 under Section 6.3 above, 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 thereto.

Lender shall have no liability for any funds which it does not actually receive. To the extent permitted by applicable law, Borrower waives all claims, damages and demands against Lender arising out of the disposition, repossession or retention of the Property.

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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 Security Instrument. The Loan Documents also grant further rights to Lender and contain further agreements and affirmative and negative covenants by Borrower which apply to this Security Instrument and to the Property.

7.2. No Waiver or Cure. 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 Security Instrument 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 Security Instrument; or prejudice Lender or any receiver in the exercise of any other right or remedy afforded any of them under this Security Instrument; or be construed as an affirmation by Lender of any tenancy, lease or option, or a subordination of the lien of this Security Instrument.

(a) Lender, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.3(c) above.

(b) Lender collects and applies Rents as permitted under Sections 2.3 and 6.6 above, either with or without taking possession of all or any part of the Property.

(c) 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 Section 5.4 above.

(d) Lender makes a site visit, observes the Property and/or conducts tests as permitted under the Loan Agreement.

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

(f) Lender or any receiver invokes any right or remedy provided under this Security Instrument.

7.3. Powers of Lender.

(a) If Lender performs any act which it is empowered or authorized to perform under this Security Instrument, including any act permitted by Section 5.5 or Subsection 6.3(d) of this Security Instrument, 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 Security Instrument on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Borrower shall not be released or changed if Lender grants any successor in interest to Borrower any extension of time

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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 Borrower 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 Subsections 6.3(b) and/or 6.3(c) of this Security Instrument 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 Security Instrument.

(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 Security Instrument. 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 Borrower consists of more than one Person, each shall be jointly and severally liable for the faithful performance of all of Borrower's obligations under this Security Instrument and the other Loan Documents.

7.6. Applicable Law. The creation, perfection and enforcement of the lien and security interest of this Security Instrument shall be governed by the law of the State in which the Premises are located. Subject to the foregoing, in all other respects, this Security Instrument shall be governed by the substantive laws of the State of Illinois.

7.7. Waiver of Homestead and Redemption. Borrower hereby waives all right of homestead exemption in the Property. Borrower hereby waives all right of redemption on behalf of Borrower and on behalf of all other Persons acquiring any interest or title in the Property subsequent to the date of this Security Instrument, except decree or judgment creditors of Borrower.

7.8. Waiver of Statutory Rights. To the extent permitted by law, Borrower 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 Security Instrument, but hereby waives the benefit of such laws. Borrower 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 and security interest hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Borrower hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Security Instrument on behalf of Borrower and on behalf of each and every Person acquiring any interest in or title to the Property of any

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nature whatsoever, subsequent to the date of this Security Instrument. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

7.9. Marshalling. Borrower hereby waives, in the event of foreclosure of this Security Instrument or the enforcement by Lender of any other rights and remedies hereunder, any right otherwise available in respect to marshalling of assets that secure the Obligations and any other Indebtedness or to require Lender to pursue its remedies against any other such assets.

7.10. Severability. If any provision of this Security Instrument 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 Security Instrument 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.

7.11. Notice. Notices shall be given under this Security Instrument in conformity with the terms and conditions of the Loan Agreement and in conformity with applicable law.

7.12. Future Advances. This Security Instrument is given to secure not only the existing Secured Obligations, but also future advances (whether such advances are obligatory or are made at the option of Lender or otherwise) made by Lender under the Note or this Security Instrument, to the same extent as if such future advances were made on the date of the execution of this Security Instrument. The total amount of Secured Obligations secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that Lender may, but shall not be obligated to, make under this Security Instrument, the Loan Documents or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed five (5) times the aggregate face amount of the Note. This Security Instrument shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens, security interests and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

7.13. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY CLAIM, CONTROVERSY, DISPUTE, ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS (INCLUDING WITHOUT LIMITATION ANY ACTIONS OR PROCEEDINGS FOR ENFORCEMENT OF THE LOAN DOCUMENTS) AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH OF THEM HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. BORROWER AND LENDER WARRANT AND REPRESENT THAT EACH HAD THE OPPORTUNITY OF REVIEWING THIS JURY

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WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

7.14. Inconsistencies. In the event of any inconsistency between this Security Instrument 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. The terms of the Loan Agreement are hereby incorporated herein and expressly made a part hereof by this reference.

7.15. Further Assurances. Borrower agrees to execute any further documents, and to take any further actions reasonably requested by Lender to evidence or perfect the security interests granted herein, to maintain the first priority of the security interests, and to effectuate the rights granted to Lender hereunder.

7.16. Certain Matters Relating to Property Located in the State of Illinois. With respect to the Property which is located in the State of Illinois, notwithstanding anything contained herein to the contrary:

(a) Remedies. In addition to the rights and remedies provided in Section 6.3 hereof, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., Illinois Revised Statutes (as such law may be amended, restated or replaced (the "Act")), to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1702 of the Act.

(b) Receiver – Lender in Possession. Upon the occurrence of an Event of Default, Lender, to the extent permitted by law and without regard to the value of the Property or the adequacy of the security for the Obligations and other sums secured hereby, shall be entitled as a matter of right and without any additional showing or proof, at Lender's election, to either the appointment by the court of a receiver (without the necessity of Lender posting a bond) to enter upon and take possession of the Property and to collect all rents, income and other benefits thereof and apply the same as the court may direct or to be placed by the court into possession of the Property as mortgagee in possession with the same power herein granted to a receiver and with all other rights and privileges of a mortgagee in possession under law. The right to enter and take possession of and to manage and operate the Property, and to collect all rents, income and other benefits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently therewith or independently thereof. Lender shall be liable to account only for such rents, income and other benefits actually received by Lender. Notwithstanding the appointment of any receiver or other custodian, Lender shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by, or payable or deliverable under the terms of this Security Instrument to Lender. Any such receiver shall have all of the rights and powers described in Section 15-1704 of the Act.

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(c) Leases. Lender is authorized to foreclose this Security Instrument subject to the rights, if any, of any or all tenants of the Property, even if the rights of any such tenants are or would be subordinate to the lien of this Security Instrument. Lender may elect to foreclose the rights of some subordinate tenants while foreclosing subject to the rights of other subordinate tenants.

(d) Waiver of Redemption Laws. Borrower acknowledges that the transaction of which this Security Instrument is a part is a transaction which includes neither agricultural real estate, as defined in Section 15-1201 of the Act, nor residential real estate, as defined in Section 15-1219 of the Act, and to the full extent permitted by law, Borrower hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601 of the Act.

(e) Expenses. Without limiting the generality of Section 6.3 hereof, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Security Instrument, shall be included in the Indebtedness or added to the judgment of foreclosure.

(f) Protective Advances.

(i) All advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Security Instrument or by the Act (collectively, "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act herein below referred to:

(A) all advances by Lender in accordance with the terms of this Security Instrument to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the mortgaged real estate; (B) preserve the lien of this Security Instrument or the priority thereof; or (C) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(B) payments by Lender of: (A) installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by this Security Instrument; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

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(C) advances by Lender in settlement or compromise of any claims asserted by claimants under any senior mortgages or any other prior liens;

(D) attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Security Instrument as referred to in Sections 1504 (d)(2) and 5/15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Security Instrument or arising from the interest of Lender hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action related to this Security Instrument or the Property;

(E) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(F) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the Act;

(G) expenses incurred and expenditures made by Lender for any one or more of the following: (A) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or the Lender takes possession of the Property imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; and (C) payments required or deemed by Lender to be for the benefit of the Property or required to be made by the owner of the mortgaged real estate under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property.

(ii) All Protective Advances shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(iii) This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

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(A) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in the:

(B) determination of the amount of obligations secured by this Security Instrument at any time;

(C) amount found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional amount becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(D) if the right of redemption has not been waived by Borrower, computation of amount required to redeem, pursuant to Subsections (d)(1) and (2) of Section 5/15-1603 of the Act;

(E) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(F) application of income in the hands of any receiver or mortgagee in possession; and

(G) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

7.17. Business Loan. Borrower acknowledges and agrees that (a) the proceeds of the Loan will be used in conformance with subparagraph (1)(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 (1)(1); and (b) the Loan constitutes a business loan which comes within the purview of said Section 4 (815 ILCS 205/4 et seq.).

7.18. Collateral Protection Act. Unless Borrower provides Lender with evidence of the insurance coverage required by this Security Instrument, Lender may purchase insurance at Borrower's expense to protect Lender's interests in the Property. This insurance may, but need not, protect Borrower's interest. The coverage that Lender purchases may not pay any claim that Borrower may make or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by this Security Instrument. If Lender purchases insurance for the Property, Borrower will be responsible for the costs of such insurance, including interest and any other charges that may be imposed in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Security Instrument, the cost of such insurance shall be added to the indebtedness

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secured hereby. The cost of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

7.19. Successors and Assigns. This Security Instrument and all provisions hereof shall extend to and be binding upon Borrower and its successors, grantees and assigns, any subsequent owner or owners of the Property and all Persons claiming under or through Borrower (but this clause shall not be construed as constituting the consent by Lender to the transfer of any interest in the Property), and the word "**Borrower**" when used herein shall include all such Persons and all Persons liable for the payment of or performance of the Secured Obligations or any part thereof, whether or not such Persons shall have executed the Note or this Security Instrument. The word "**Lender**", when used herein, shall include the successors and assigns of Lender named herein, and the holder or holders, from time to time, of the Note, including any Holder subject to a Co-Lender Agreement. Lender may from time to time, without the consent of Borrower, sell, transfer, pledge, assign, convey or syndicate this Security Instrument, the Loan and the Loan Documents (or any interest therein), and any and all servicing rights with respect thereto, and may grant participations in the Loan, delegate its duties and obligations under the Loan and the Loan Documents, split the Loan into multiple parts, or the Note into multiple component notes or tranches or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in rated or unrated public offerings or private placement. Borrower shall not assign or attempt to assign its rights under this Security Instrument or any of the other Loan Documents or the Loan or delegate or attempt to delegate any of its duties or obligations under this Security Instrument or any of the other Loan Documents or the Loan and any purported assignment or delegation shall be void.

7.20. Modification; Consent. No modification, waiver, amendment or discharge of this Security Instrument or any other Loan Document shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment or discharge is sought. Consent by Lender to any act or omission by Borrower 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

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IN WITNESS WHEREOF, Borrower has executed this Security Instrument as of the date first above written.

BORROWER:

95 WA INVESTOR LLC, a Delaware limited liability company

By: Stephen G. Hearn  Trust, its Managing Member

By: _____
Name: Stephen G. Hearn
Its: Trustee

Borrower's Organizational Number: 5540927

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

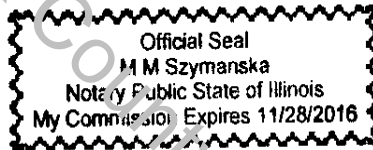
I, M. M. Szymanska, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Stephen G. Hearn, the Trustee of Stephen G. Hearn Living Trust, the Managing Member of 95 WA INVESTOR LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said trust, as the managing member of such limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 12 day of August, 2014.

M. M. Szymanska
Notary Public

My Commission Expires:

11/28/2016



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EXHIBIT A

Description of Premises

PARCEL 1:

LOT 3 (EXCEPTING THEREFROM THAT PART OF LOT 3 DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE SOUTHEASTERLY ALONG A 2541.29 FOOT RADIUS CURVE, BEING ALSO THE NORTHERLY LINE OF SAID LOT 3, THE CENTER OF CIRCLE OF SAID CURVE BEARS ON AN ASSUMED BEARING OF NORTH 47 DEGREES 58 MINUTES 18 SECONDS EAST FROM SAID POINT, CENTRAL ANGLE 2 DEGREES 12 MINUTES 20 SECONDS, 97.82 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTHEASTERLY ALONG SAID CURVE CONCAVE TO THE NORTHEAST RADIUS 2541.29 FEET, CENTRAL ANGLE 11 DEGREES 26 MINUTES 54 SECONDS, 507.78 FEET TO A POINT OF REVERSE CURVATURE; THENCE SOUTHERLY ALONG A 30.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST, CENTRAL ANGLE 55 DEGREES 04 MINUTES 09 SECONDS, 28.83 FEET TO A POINT ON A 2551.87 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS NORTH 35 DEGREES 00 MINUTE 05 SECONDS EAST FROM SAID POINT; THENCE NORTHWESTERLY ALONG SAID CURVE, RADIUS 2551.07 FEET, CENTRAL ANGLE 8 DEGREES 26 MINUTES 03 SECONDS, 375.52 FEET TO A POINT ON A 2546.12 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS NORTH 42 DEGREES 14 MINUTES 05 SECONDS EAST FROM SAID POINT; THENCE NORTHWESTERLY ALONG SAID CURVE, RADIUS 2546.12 FEET, CENTRAL ANGLE 2 DEGREES 18 MINUTES 00 SECOND, 102.21 FEET; THENCE NORTH 40 DEGREES 00 MINUTE 33 SECONDS WEST 56.36 FEET TO THE POINT OF BEGINNING), IN ARLINGTON PLACE SUBDIVISION, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 41 NORTH RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE RECIPROCAL EASEMENT AGREEMENT BY AND BETWEEN URBS-SCHMITZ AND KEPPEL INCORPORATED, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 1, 1979 AND KNOWN AS TRUST NUMBER 47058 AND OTHERS, DATED AUGUST 2, 1979 AND RECORDED OCTOBER 1, 1979 AS DOCUMENT 25171074 AND FILED OCTOBER 1, 1979 AS DOCUMENT LR. 3121973 AND AS AMENDED BY INSTRUMENT RECORDED JUNE 4, 1981 AS DOCUMENT 25893428 AND FILED AS DOCUMENT LR. 3218008 FOR INGRESS AND EGRESS IN PART OF ARLINGTON PLACE SUBDIVISION AND TEULACH'S SUBDIVISION AS DELINEATED IN SAID AGREEMENT, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY AMENDED AND RESTATED EASEMENT AND OPERATING AGREEMENT AND GRANT OF EASEMENTS BY AND AMONG AMERICAN NATIONAL BANK AND TRUST

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

PARCEL 4:

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

Address: 95 West Algonquin Road, Arlington Heights, Illinois 60005

PIN: 08-16-200-103-0000