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Illinois Anti-Predatory Lending Database Program



Doc#: 1607556256 Fee: \$72.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/15/2016 02:34 PM Pg: 1 of 18

Certificate of Exemption

GREATER METROPOLITAN TITLE, LLC
175 E. HAWTHORN PARKWAY, SUITE 135
VERNON HILLS, IL 60061

FILE # 15-133
20985

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 12-34-403-013-0000

Address:

Street: 1501-1527 W. North Ave.

Street line 2:

City: Melrose Park,

State: IL

ZIP Code: 60160

Lender: ReadyCap Commercial, LLC

Borrower: KD Melrose Park Holdings LLC, Melrose Park Investors LLC, and KD Senior Melrose Park Holdings, LLC

Loan / Mortgage Amount: \$4,900,000.00

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: 54CFEA52-51B5-4E35-AD12-5B1A4CB3EB7F

Execution date: 3/9/2016

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THIS INSTRUMENT PREPARED BY
AND WHEN RECORDED, RETURN
TO:

ReadyCap Commercial, LLC
Post Closing / Melissa Perez
1320 Greenway Drive, Suite 560
Irving, Texas 75038

PERMANENT INDEX NUMBER(S):
12-34-403-013-0000

THIS SPACE RESERVED FOR RECORDERS USE ONLY
(TO BE RECORDED IN THE REAL PROPERTY RECORDS OF
COOK COUNTY, ILLINOIS)

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is dated March 8, 2016, among KD MELROSE PARK HOLDINGS, LLC, an Illinois limited liability company, MELROSE PARK INVESTORS LLC, a Delaware limited liability company, and KD SENIOR MELROSE PARK HOLDINGS, LLC, a Delaware limited liability company each with an address of 9701 Wilshire Blvd, 10th floor, Beverly Hills, CA 90212, as mortgagor, trustor and/or grantor, as applicable (together with their permitted successors and assigns, "Borrower"), for the benefit of READYCAP COMMERCIAL, LLC, whose address is 1320 Greenway Drive, Suite 560, Irving, TX 75038 (together with its successors and assigns referred to below sometimes and in either case as "Lender" or "Beneficiary"). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (defined below). The property secured hereby is commonly known as Melrose Park with a street address of 1501 West North Ave., Melrose Park, Illinois 60160. For all state law, statutory and other purposes hereunder, (i) the term "Borrower" as used herein shall be deemed to mean grantor or mortgagor of the Property as described herein the same as if the term "grantor" or "mortgagor" were used in lieu of the term "Borrower" throughout this Security Instrument, and (ii) the term "Lender" as used herein shall be deemed to mean grantee or mortgagee of the Property with all the rights conferred hereby the same as if the term "grantee" or "mortgagee" were used in lieu of the term "Lender" throughout this Security Instrument.

Recitals:

This Security Instrument secures a loan in the original principal amount of \$4,900,000.00 (the "Loan") advanced pursuant to a Loan Agreement between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified, the "Loan Agreement"), and further evidenced by, among other documents, a Promissory Note (together with all extensions, renewals, replacements, restatements or other modifications thereof, the "Note") by Borrower in favor of Lender. The stated maturity date of the Note (exclusive of any acceleration thereof as provided in the Loan Documents) is April 1, 2019.

Borrower desires to secure the monetary obligations under the Loan Documents (defined below) (collectively, the "Indebtedness") and the performance of all of the obligations due under the Note, the Loan Agreement and all other documents, agreements and certificates executed and/or delivered in connection with the Loan (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, collectively, the "Loan Documents") and this Security Instrument is given

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pursuant to the Loan Agreement, and payment, fulfillment, and performance of the obligations due thereunder and under the other Loan Documents are secured hereby in accordance with the terms hereof.

Article I Conveyance and Grant

Section 1.1. Property Mortgaged. For valuable consideration, Borrower irrevocably mortgages, grants, remises, releases, bargains, sells, pledges, assigns, warrants, transfers, conveys and grants a security interest to Lender to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

(a) **Land.** The real property described in Exhibit A attached hereto (collectively, the "**Land**") together with all additional lands, estates, development rights, and any and all oil, gas and other mineral rights now or hereafter owned or acquired by Borrower in, on or under or for use in connection with the Land;

(b) **Improvements.** The buildings, additions, enlargements, extensions, modifications, repairs, replacements and improvements of any kind or nature now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(c) **Easements.** All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and all estates, rights, titles and interests of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements (collectively, together with the Land, the Improvements and all other real property interests of any kind of nature identified in this Section 1.1, the "**Real Property**");

(d) **Fixtures and Personal Property.** All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furniture, software used in or to operate any of the foregoing and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements or used in connection with the operation thereof, and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or used in connection therewith (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**UCC**"), and all proceeds and products of the above;

(e) **Leases and Rents.** All leases, subleases, sub-subleases, licenses, concessions or other agreements pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every guarantee of the performance of any of the same (collectively, the "**Leases**") and all right, title and interest of Borrower therein including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property (collectively, the "**Rents**");

(f) **Insurance Proceeds.** All insurance proceeds under any insurance policies covering the Property, including, without limitation, judgments or settlements made in lieu thereof (collectively, the "**Insurance Proceeds**");

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(g) Condemnation Awards. All condemnation awards, including interest thereon, which may heretofore and hereafter be made with respect to the Property (collectively, the "**Awards**");

(h) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property;

(i) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property and to any and all claims of Borrower against any third party whatsoever;

(j) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(k) Intangibles. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(l) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including without limitation, the Reserves, all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof (collectively, the "**Accounts**"); and

(m) Proceeds and Other Rights. All proceeds of and all other rights in and to any of the foregoing items set forth in this Section 1.1.

Section 1.2. Assignment of Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, Lender grants to Borrower a revocable license to (i) collect, receive, use and enjoy the Rents and Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness, for use in the payment of such sums, and (ii) enforce the terms of the Leases.

Section 1.3. Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the UCC. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Indebtedness and all other obligations of Borrower under the Loan Documents, a security interest in the Personal Property to the full extent permitted under the UCC.

Section 1.4. Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the UCC) on the Land or in the Improvements, and this Security Instrument shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the UCC.

Section 1.5. Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto Lender and to the use and benefit of Lender and its successors and assigns, forever; PROVIDED, HOWEVER, if the Indebtedness is fully paid at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, and if Borrower shall well and truly perform the other obligations set forth in the Loan Documents and this Security Instrument, the estates hereby granted shall cease, terminate and be void.

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Article II Debt and Obligations Secured

THIS SECURITY INSTRUMENT IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF THE BORROWER UNDER THE NOTE AND THE OTHER LOAN DOCUMENTS INCLUDING THIS SECURITY INSTRUMENT.

Section 2.1. Payment and Performance. Borrower shall pay to Lender all amounts secured by this Security Instrument as they become due, and shall strictly and in a timely manner perform all of Borrower's obligations under the Note, the Loan Agreement and the other Loan Documents. Borrower's obligations for the payment of the Indebtedness as described in the Note and the Loan Agreement and the performance of the other obligations under all other Loan Documents shall be referred to herein collectively as the "**Obligations**".

Section 2.2. Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Article III Property Covenants

Borrower covenants and agrees that:

Section 3.1. Insurance. Borrower shall obtain and maintain, or cause to be obtained and maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.2. Taxes and Other Charges. Borrower shall pay all real estate and personal property taxes, assessments, water rates or sewer rents, ground rents, maintenance charges, impositions, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof in accordance with the Loan Agreement.

Section 3.3. Leases. Borrower shall not (and shall not permit any other applicable Person to) enter in any Leases for all or any portion of the Property except in accordance with the provisions of the Loan Agreement.

Section 3.4. Warranty of Title. Borrower has good, indefeasible, marketable and insurable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same. Borrower possesses an unencumbered fee simple absolute estate in the Real Property except for the Permitted Liens, such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Liens and the liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all Personal Property, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Liens, such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument to Lender against the claims of all Persons whomsoever.

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Article IV Due on Sale/Encumbrance

Section 4.1. No Sale or Pledge. Except in accordance with the terms of the Loan Agreement, Borrower shall not cause or permit a Sale or Pledge.

Article V Further Assurances

Section 5.1. Compliance with Loan Agreement. Borrower shall comply with all covenants set forth in the Loan Agreement relating to acts or other further assurances to be made on the part of Borrower in order to protect and perfect the lien or security interest hereof upon, and in the interest of Lender in, the Property.

Section 5.2. Authorization to File Financing Statements. Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of this Security Instrument.

Article VI Prepayment; Release of Property

Section 6.1. Prepayment. The Indebtedness may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note and the Loan Agreement.

Section 6.2. Release of Property. If Borrower pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Borrower under the Loan Documents, Lender shall execute and deliver to Borrower a release of lien in form acceptable to Lender and shall execute and deliver to Borrower suitable statements of termination of any financing statement on file evidencing Lender's security interest in fixtures and the Personal Property. Lender may charge Borrower a reasonable fee at the time of such release.

Article VII Default

Section 7.1. Event of Default. The term "Event of Default" as used in this Security Instrument shall have the meaning assigned to such term in the Loan Agreement.

Article VIII Remedies on Default

Section 8.1. Remedies. If an Event of Default occurs and is continuing, at any time thereafter Lender may exercise any one or more of the following rights and remedies in addition to the rights and remedies that may be available to Lender under any other Loan Documents, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Indebtedness to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the

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Indebtedness then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Indebtedness not then due, unimpaired and without loss of priority;

- (d) sell for cash or upon credit the Property or any part thereof and rights of redemption thereof, pursuant to power of sale or otherwise, if available, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) seek and obtain the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Indebtedness and without regard to the solvency of Borrower, any guarantor or indemnitor under the Loan or any other Person liable for the payment of the indebtedness;
- (h) the license granted to Borrower hereunder to collect Rents shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents (including Agent), nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Indebtedness, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes and other charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;
- (i) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document and/or the Accounts to the payment of the following items in any order in its sole discretion: (i) Taxes and other charges; (ii) insurance premiums; (iii) interest on the unpaid principal balance of the Indebtedness; (iv) amortization of the unpaid principal balance of the Indebtedness; (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of the Loan Documents;

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- (j) surrender the insurance policies maintained pursuant to the Loan Agreement, collect the unearned insurance premiums for such insurance policies and apply such sums as a credit on the Indebtedness in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such insurance premiums;
- (k) apply the undisbursed balance of any deposit made by Borrower with Lender in connection with the restoration of the Property after a casualty thereto or condemnation thereof, together with interest thereon, to the payment of the Indebtedness in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; and/or
- (l) pursue such other remedies as Lender may have under applicable law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 10.1(e) of the Loan Agreement shall occur with respect to Borrower, the entire unpaid Indebtedness shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 8.2. Application of Proceeds. Upon the occurrence and during the continuance of any Event of Default, the purchase money, proceeds and avails of any disposition of the Property (or any part thereof) and any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents may, in each case, be applied by Lender to the payment of the Indebtedness or the preservation or protection of Lenders Lien in any portion of the Property not so disposed of, in such order, priority and proportions as Lender in its sole discretion shall determine.

Section 8.3. Lender's Expenditures. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Borrower fails to comply with any provision of this Security Instrument or any Loan Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Security Instrument or any Loan Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the Default Rate from the date incurred or paid by Lender to the date of repayment by Borrower. The Security Instrument also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled.

Section 8.4. Other Rights.

- (a) The failure of Lender to insist upon strict performance of any term under the Loan Documents shall not be deemed to be a waiver of such term. Borrower shall not be relieved of Borrower's obligations by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, or (ii) the release, regardless of consideration, of any part of the Property, or of any Person liable for the Indebtedness or any portion thereof.
- (b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the insurance policies required to be maintained pursuant to the Loan Agreement, or for failure to determine whether insurance in force is adequate as to the amount of risks insured.

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- (c) Lender may resort for the payment of the Indebtedness to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others.

Section 8.5. Bankruptcy.

- (a) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.
- (b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

Section 8.6. Subrogation. If any or all of the proceeds of the Loan have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles and interests existing against the Property of the holder of such indebtedness and rights are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the performance of all other obligations under the Loan Documents.

Article IX Environmental Hazards

Section 9.1. Environmental Covenants. Borrower has provided representations, warranties and covenants regarding environmental matters set forth in the Environmental Indemnity and Borrower shall comply with the aforesaid covenants regarding environmental matters.

Article X Governmental Taxes and Charges

Section 10.1. Current Taxes, Fees and Charges. Upon request by Lender, Borrower shall execute such documents in addition to this Security Instrument and take whatever other action is reasonably requested by Lender to perfect and continue Lender's lien on the Property. Borrower shall reimburse Lender for all taxes, as described below, together with all reasonable expenses incurred in recording, perfecting or continuing this Security Instrument, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Security Instrument.

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Section 10.2. Taxes. The following shall constitute taxes to which this Article applies: (a) a specific tax upon this type of Security Instrument or upon all or any part of the Indebtedness secured by this Security Instrument; (b) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Security Instrument; (c) a tax on this type of Security Instrument chargeable against the Lender or the holder of the Note (other than income tax); and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower (other than income tax).

Section 10.3. Subsequent Taxes. If any tax to which this Article applies is enacted subsequent to the date of this Security Instrument, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Borrower either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided in the Loan Agreement.

Article XI Waivers

Section 11.1. Marshaling and Other Matters. Borrower hereby waives, to the extent permitted by law, the benefit of all Legal Requirements now or hereafter in force regarding appraisal, valuation, stay, extension, reinstatement and redemption and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof.

Section 11.2. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or the Loan Agreement specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not permitted by Legal Requirements to waive its right to receive notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 11.3. Sole Discretion of Lender. Whenever pursuant to this Security Instrument, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein or in such other Loan Document provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 11.4. Waiver of Jury Trial. BORROWER AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE.

Article XII Notices

Section 12.1. Notices. All notices or other written communications hereunder shall be delivered in accordance with the applicable terms and conditions of the Loan Agreement to the addresses set forth in the introductory paragraph of this Security Instrument or such other address as may be given the other party in accordance with the terms of the Loan Agreement.

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Article XIII Applicable Law

Section 13.1. Governing Law. The governing law and related provisions contained in the Loan Agreement are hereby incorporated by reference as if fully set forth herein.

Article XIV Intentionally Omitted

Article XV Miscellaneous Provisions

Section 15.1. No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower, Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 15.2. Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 15.3. Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 15.4. Headings, Etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 15.5. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 15.6. Entire Agreement. This Security Instrument and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Security Instrument and the other Loan Documents.

Section 15.7. Limitations on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

Section 15.8. Joint and Several Liability. If Borrower consists of more than one Person, the obligations and liabilities of each such Person hereunder shall be joint and several.

Section 15.9. Commercial Use. The Property shall be used solely as a commercial property and at no time during the term of the Loan shall the Property be used for personal, family or household purposes by Borrower or any affiliate of Borrower or for agricultural purposes.

Section 15.10. Exculpation. The provisions of the Loan Agreement related to Exculpation are hereby incorporated by reference into this Assignment to the same extent and with the same force as if fully set forth herein.

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Section 15.11. Counterparts. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single agreement. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder

Article XVI State Specific Provisions

Section 16.1. Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article and the other terms and conditions of this Security Instrument, the terms and conditions of this Article shall control and be binding.

Section 16.2. Benefits of the Act. Lender may proceed with judicial foreclosure under the real property laws of Illinois, specifically, the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et seq.*, including all amendments thereto which may become effective from time to time after the date hereof (the "**Act**"). Lender may proceed by such judicial action as is available under the Act to enforce the payment of the Indebtedness and the performance and discharge of the obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Security Instrument as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to the Lender with respect to the Loan Documents under applicable law. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any other available remedy of the Lender under the Act or other applicable law. Borrower and Lender shall have the benefit of all the provisions of the Act. If any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

- (a) If any provision in this Security Instrument shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Security Instrument that shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. If any provision of this Security Instrument shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the terms hereof, any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights and remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.
- (b) Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated elsewhere in this Security Instrument, shall be added to the obligations secured by this Security Instrument and/or by the judgment of foreclosure.

Section 16.3. Insurance. Wherever provision is made in this Security Instrument or the other Loan Documents for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and power of Lender shall continue in Lender as judgment creditor or Lender until confirmation of sale.

- (a) As required pursuant to the Collateral Protection Act, 815 ILCS 180/10(3), Borrower is hereby notified that in the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Security Instrument or the other Loan Documents or evidence of their renewal as required herein or in the other Loan Documents, Lender may, but

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shall not be obligated to, procure such insurance at Borrower's expense to protect Lender's interests in the Property. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes 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 the terms of this Security Instrument or the other Loan Documents. If Lender purchases insurance for the Property as set forth herein, Borrower shall pay all amounts advanced by Lender, together with interest thereon at the Default Rate (as set forth in the Loan Agreement) from and after the date advanced by Lender until actually repaid by Borrower, promptly upon demand by Lender.

- (b) Any amounts so advanced by Lender, together with interest thereon, shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the Indebtedness evidenced by the Note. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

Section 16.4. Protective Advances. All advances, disbursements and expenditures made by Lender in accordance with the terms of this Security Instrument and the other Loan Documents, either before and during a foreclosure of this Security Instrument, and before and after judgment of foreclosure therein, and at any time prior to sale of the Property, and, where applicable, after sale of the Property, and during the pendency of any related proceedings, in addition to those otherwise authorized by the Act shall have the benefit of all applicable provisions of the Act, including without limitation advances, disbursements and expenditures for the following purposes:

- (a) all advances by Lender in accordance with the terms of the Loan Agreement or the other Loan Documents to: (i) preserve, maintain, repair, restore or rebuild the Improvements upon the Property; (ii) preserve the lien of this Security Instrument or the priority thereof; or (iii) enforce this Security Instrument, as referred to in Section 15-1302(b)(5) of the Act;
- (b) payments by Lender of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) 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; (iii) other obligations authorized by this Security Instrument; or (iv) 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 15-1505 of the Act;
- (c) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
- (d) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Security Instrument as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act; (ii) 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 (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Security Instrument or the Property;
- (e) Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 15-1508(b)(1) of the Act;
- (f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by any of the Loan Documents;

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- (g) expenses deductible from proceeds of sale as referred to in Sections 15-1512(a) and (b) of the Act; and
- (h) expenses incurred and expenditures made by Lender for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Borrower's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) 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 Lender takes possession of the Property imposed by Section 15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Lender to be required for the benefit of the Property or required to be made by the owner of the Property 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; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (vii) if the Loan secured hereby is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable Related Document; and (viii) payments required to be paid by Borrower or Lender pursuant to any lease or other agreement for occupancy of the Property.

All such payments and expenditures shall become due and payable without notice or demand and with interest thereon from the date of payment or advance by Lender until paid at the Default Rate of interest.

Section 16.5. Mortgagee in Possession. In addition to any provision of this Security Instrument authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Subsections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and any 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 5/15-1703 of the Act.

Section 16.6. Application of Proceeds. Notwithstanding anything contained in this Security Instrument to the contrary, the proceeds of any foreclosure sale of the Property shall be distributed and applied in accordance with Section 15-1512 of the Act in the following order of priority: first, on account of all reasonable costs and expenses incident to the foreclosure proceedings or such other remedy; second, on account of all reasonable costs and expenses in connection with securing possession of the Property prior to such foreclosure sale, and the reasonable costs and expenses incurred by or on behalf of Lender in connection with holding, maintaining and preparing the Property for sale; third, in satisfaction of all claims in the order of priority adjudicated in the foreclosure judgment or order confirming sale; and fourth, any remainder in accordance with the order of court adjudicating the foreclosure proceeding.

Section 16.7. Waiver of Redemption and Reinstatement. To the full extent permitted by law, Borrower hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Sections 15-1601 and 15-1602 of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

Section 16.8. Future Advances under the Loan Agreement. This Security Instrument is given for the purpose of securing loan advances which Lender may make to or for Borrower pursuant and subject to the terms and provisions of the Loan Agreement. The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Security Instrument shall secure unpaid balances of loan advances made

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after this Security Instrument is delivered to the Office of the Recorder of the County in which the Property is located, whether made pursuant to an obligation of mortgagee or otherwise, provided that such advances are made within twenty (20) years from the date hereof and in such event, such advances shall be secured to the same extent as if such future advances were made on the date hereof, although there may be no advance made at the time of execution hereof and although there may be no indebtedness outstanding at the time any advance is made and all of such indebtedness, including future advances, shall be a lien from the time that this Security Instrument is recorded with the Recorder of the County in which the Property is located as provided in 735 ILCS 5/15-1302(b). Such loan advances may or may not be evidenced by notes executed pursuant to the Loan Agreement. In addition to the loan advances referred to above, Lender shall have the right, but not the obligation, to make protective advances with respect to the Property for the payment of taxes, assessments, insurance premiums, repairs, maintenance and other costs incurred in the protection of the Property, and such protective advances, together with interest thereon at the Default Rate set forth in the Loan Documents from the date of each such advance until it is repaid in full, shall be secured by this Security Instrument with priority running from the time of the recording of this Security Instrument with the Recorder of the County in which the Property is located pursuant to 735 ILCS 5/15-1302(b)(5).

Section 16.9. Amount Secured Hereby. At all times, regardless of whether any loan proceeds have been disbursed, this Security Instrument secures (in addition to the Indebtedness secured hereby) the payment of any and all service charges, liquidated damages, expenses and advances (whether obligatory or at the option of the Lender) due to or incurred by Lender in connection with the Loan; provided, however, that in no event shall the total amount secured hereby exceed two hundred percent (200%) of the face amount of the Note.

Section 16.10. Business Loan Recital/Statutory Exemption.

- (a) Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1) of Section 4 of the Illinois Interest Act (815 ILCS 205/0.01, et seq., including Section 4(1) thereof); (B) the Indebtedness secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4(1); (C) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4(1), and (D) the secured Indebtedness is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 et seq. and has been entered into solely for business purposes of Borrower and Borrower's investment or profit, as contemplated by said section.
- (b) Without limiting the generality of anything contained herein, Borrower acknowledges and agrees that the transaction of which this Security Instrument is part is a transaction which does not include either agricultural real estate (as defined in 15-1201 of the Act) or residential real estate (as defined in 15-1219 of the Act).

Section 16.11. Maturity Date. The Note shall be due and payable in full on or before the maturity date of April 1, 2019, with conditional extension rights as set forth in the Loan Agreement, if any, and provided that to the extent that the maturity date of the Note is extended, amended or modified from time to time, the maturity date set forth above shall also be so extended, amended or modified, but under no circumstances will this Security Instrument secure Indebtedness advanced under the Loan Agreement after that date which is twenty- five (25) years from the maturity date set forth above unless this Security Instrument is modified to reflect a new maturity date.

Section 16.12. Interest Rate. This Security Instrument secures the full and timely payment of the Indebtedness, including, among other things, the obligation to pay interest on the unpaid principal balance at a per annum rate of interest equal to 6.679% (the "**Interest Rate**") and from and after the maturity date or the occurrence of an Event of Default at a per annum rate equal to the Interest Rate plus 5%.

Section 16.13. Fixture Filing. This Security Instrument also shall constitute a "fixture filing" for the purposes of the Uniform Commercial Code against all of the Property which is or is to become fixtures.

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Information concerning the security interest herein granted may be obtained at the addresses of debtor (Borrower) and secured party (Lender) as set forth in the first paragraph of this Security Instrument. Borrower is the record owner of the Property.

Signature Page Follows

Property of Cook County Clerk's Office

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BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SECURITY INSTRUMENT AND BORROWER AGREES TO ITS TERMS.

BORROWER:

KD MELROSE PARK HOLDINGS, LLC,
an Illinois limited liability company

By: [Signature]
Name: Kenny DeAngelis, Jr.
Title: Manager

MELROSE PARK INVESTORS LLC,
a Delaware limited liability company

By: [Signature]
Name: Kenny DeAngelis, Jr.
Title: Manager

KD SENIOR MELROSE PARK HOLDINGS, LLC,
a Delaware limited liability company

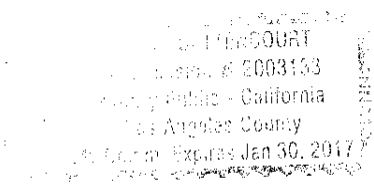
By: [Signature]
Name: Kenny DeAngelis, Jr.
Title: Manager

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On March 9, 2016, before me, Scott B. Henning, Notary Public, personally appeared KENNY DEANGELIS, JR., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
Signature of Notary

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EXHIBIT A

Legal Description

Common Property Address: 1501 West North Ave.
Melrose Park, Illinois 60160

Permanent Index Numbers: 12-34-403-013-0000

THE EAST 297.46 FEET OF LOT 3 OF THE SUBDIVISION OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART THEREOF LYING NORTH OF A LINE 469.13 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 34) AND (EXCEPT THAT PART THEREOF TAKEN FOR WIDENING OF NORTH AVENUE) AND (EXCEPT THE EAST 25 FEET FALLING IN 15TH AVENUE), IN COOK COUNTY, ILLINOIS.

APN: 12-34-403-013-0000