

Illinois Anti-Predatory Lending Database Program

Doc#: 1615922118 Fee: \$120.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/07/2016 11:38 AM Pg: 1 of 37

Certificate of Exemption

8980244 D6 4 of 5

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 17-16-111-001-0000

Address:

Street: 625 WEST ADAMS STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60661

Lender: BANK OF THE OZARKS

Borrower: 625 W. ADAMS, LLC

Loan / Mortgage Amount: \$97,153,890.00

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: 55395F02-7DE4-4D11-B74B-0A5C301C4D01

Execution date: 5/26/2016

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Prepared by:

**RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN
TO:**

Riemer & Braunstein LLP
Times Square Tower
7 Times Square, Suite 2506
New York, New York 10036
Attn: Erik F. Andersen, Esq.

Address:
625 West Adams Street
Chicago, Illinois 60661

PIN(S): 17-16-111-001-0000, 17-16-111-
002-0000, 17-16-111-003-0000, 17-16-
111-004-0000, 17-16-111-005-0000, 17-
16-111-006-0000, 17-16-111-007-0000,
17-16-111-008-0000, 17-16-111-009-
0000, 17-16-111-010-0000, 17-16-111-
011-0000, 17-16-111-012-0000, 17-16-
111-013-0000 AND 17-16-111-014-0000

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

This CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (this "Mortgage"), is entered into and made effective as of May 26, 2016, by **625 W. ADAMS, LLC**, a Delaware limited liability company ("Mortgagor"), having its address and principal place of business at c/o USAA Real Estate Company, 9830 Colonnade Blvd., Suite 600, San Antonio, Texas 78230, as mortgagor, for the benefit of **BANK OF THE OZARKS** (together with its successor and assigns, "Mortgagee"), having an address at 8201 Preston Road, Suite 700, Dallas, Texas 75225, as mortgagee.

WITNESSETH:

A. Mortgagor is the owner of the fee estate situated at 125 S. Clark Street, Chicago, Illinois, more particularly described in Exhibit A attached hereto and incorporated herein by reference.

B. Mortgagee is making a loan (the "Loan") to Mortgagor under and pursuant to the terms and provisions of that certain Construction Loan Agreement by and between Mortgagee, as lender, and Mortgagor, as borrower, dated of even date herewith (as the same may be amended,

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restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), which Loan is further evidenced by that certain Promissory Note, dated of even date herewith, made by Mortgagor and payable to the order of Mortgagee in the original stated principal amount of NINETY-SEVEN MILLION ONE HUNDRED FIFTY-THREE THOUSAND EIGHT HUNDRED NINETY AND NO/100 DOLLARS (\$97,153,890.00) (together with all renewals, modifications, increases and extensions thereof, the "Note").

C. As a material inducement in order for Mortgagee to make the Loan to Mortgagor, Mortgagor has agreed to execute and deliver this Mortgage to and for the benefit of Mortgagee.

D. Mortgagor and Mortgagee intend for these Recitals to be a material part of this Mortgage.

NOW, THEREFORE, in consideration of the Loan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby covenants and agrees as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

Assignment of Rents: That certain Assignment of Rents and Revenues of even date herewith from Mortgagor to Mortgagee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is situated.

Construction Contracts: Collectively, the right title and interest of Mortgagor in any and all contracts, subcontracts and agreements, written or oral, between Mortgagor and any other party, and between parties other than Mortgagor in any way relating to any restoration, renovation, expansion, repair or construction of all or any portion of the Improvements or the supplying of material (especially fabricated or otherwise), labor, supplies or other services therefor.

Contracts: All of the right, title, and interest of Mortgagor, including equitable rights, in, to, and under any and all: (i) contracts for the purchase and/or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments and supplements to and renewals and extensions of the contracts at any time made,

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and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements with respect to water, wastewater, and other utility services whether executed, granted, or issued by a Person, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, permits, rights and entitlements are now or at any time thereafter existing, including without limitation, any and all certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required: (a) to evidence compliance by Mortgagor and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property; (b) for the construction and/or development of any improvements on the Mortgaged Property or rehabilitation thereof, if applicable (c) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (iii) financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; (iv) economic incentives or similar agreements or understandings; (v) agreements relating in any way to the construction, development or rehabilitation of the Land or Improvements or provision of materials therefor including, without limitation, all Construction Contracts; (vi) contracts with architects or engineers or others for the preparation or provision of any Plans, including all amendments and supplements to and renewals and extensions of such contracts at any time made; and (vii) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases).

Default Interest Rate: Such term shall have the meaning as provided in the Note.

Disposition: Such term shall have the meaning as provided in the Loan Agreement.

Environmental Indemnity Agreement: That certain Environmental Indemnity Agreement of even date herewith executed by Mortgagor and Guarantor for the benefit of Mortgagee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time..

Event of Default: Any happening or occurrence described in Article VI hereof.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Mortgagor and are now or hereafter attached to the Land or the Improvements, including, but not limited to, any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting,

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generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, lighting, traffic control, waste disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) or for any quasi-governmental units (development districts or authorities).

Guarantor (individually and/or collectively, as the context may require): Those Persons, if any, designated as Guarantor in the Guaranty.

Guaranty (individually and/or collectively, as the context may require): That or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Mortgagee guaranteeing the satisfaction of, or continued compliance with, all or any portion of the Obligations, or both, and any new instruments of guaranty as may hereafter be entered into and which guaranties the repayment of all or any part of the Indebtedness, the satisfaction of, or continued compliance with, all or any portion of the Obligations or both, including, without limitation, any such guaranties as are required for a USAA Qualifying Assignment.

Improvements: Any and all improvements of any kind or nature all as more particularly described in the Plans, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof, including, without limitation, the Office Building and the Parking Garage.

Indebtedness: (i) The principal, interest or other sums evidenced by the Note or the Loan Documents; (ii) any other amounts, payments or premiums payable under the Loan Documents; (iii) any and all other indebtedness, obligations and liabilities of any kind or character of Mortgagor to Mortgagee, now or hereafter existing if evidenced by a written promissory note or other written evidence of Mortgagor's obligation; and (iv) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements and extensions thereof, it being contemplated by Mortgagor and Mortgagee that Mortgagor may hereafter become indebted to Mortgagee in further sum or sums; provided, however, for the purposes of this Mortgage, the term "Indebtedness" shall exclude (a) any obligations of Guarantor under the Guaranty, (b) any obligations of Mortgagor or Guarantor that are Unsecured Environmental Costs and (c) any such other loan, advance, debt, obligation or liability with respect to which Mortgagee is by applicable law prohibited from obtaining a lien on real estate.

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Land: That certain real property or interest more particularly therein described in Exhibit A attached hereto and incorporated herein by reference, together with all rights, titles, interests and privileges of Mortgagor in and to (i) all streets, ways, roads, alleys, easements (including, without limitation, any easements under zoning lot development and easement agreements, whether now or hereafter affecting such real property), rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water, water rights and water courses which are appurtenant to, located on, under or above or used in connection with the Mortgaged Property, or any part thereof, whether adjudicated or unadjudicated, conditional or absolute, tributary, or non-tributary, surface or underground, designated or undesignated; (iv) timber and crops pertaining to such real property, and (v) all appurtenances, including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to such real property or now or hereafter transferred to such real property, and all reversions and remainders in or to such real property.

Leases: The right, title and interest of Mortgagor in any and all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property together with all security and other deposits or payments made in connection therewith, whether entered into before or after the filing by or against Mortgagor of any petition for relief under the United States Bankruptcy Code, 11 U.S.C. §101, et seq., as amended.

Mortgagee: **BANK OF THE OZARKS**, whose address for notice hereunder is 8201 Preston Road, Suite 700, Dallas, Texas 75225, and the subsequent holder or holders, from time to time, of the Note.

Loan Agreement: That certain Construction Loan Agreement of even date herewith by and between Mortgagor and Mortgagee, governing advances under the loan evidenced by the Note and secured, inter alia, by this Mortgage.

Loan Documents: The Loan Agreement, the Note, this Mortgage, the Environmental Indemnity Agreement, the Assignment of Rents, and any and all other agreements, documents and instruments now or hereafter executed by Mortgagor, Guarantor or any other Person or party in connection with the loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof and thereof; provided, however, for the purposes of this Mortgage, the Guaranty shall not be deemed to be a "Loan Document" hereunder.

Minerals: All right, title and interest of Mortgagor, if any, in and to all substances in, on, under or above the Land which are now, or may become in the future, intrinsically valuable, and

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which now or may be in the future enjoyed through extraction or removal from the Land, including, without limitation, oil, gas, all other hydrocarbons, coal, lignite, carbon dioxide, all other non-hydrocarbon gases, uranium, all other radioactive substances, gold, silver, copper, iron and all other metallic substances or ores.

Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases, Rents, Reserves, Plans and Construction Contracts, and any interest of Mortgagor now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases, Rents, Reserves, Plans and Construction Contracts, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations, together with any and all proceeds of any of the foregoing. As used in this Mortgage, the term "**Mortgaged Property**" shall be expressly defined as meaning all or, where the context permits or requires, any part of the above and all or, where the context permits or requires, any interest therein.

Note: That certain Promissory Note of even date herewith incorporated herein by this reference, executed by Mortgagor and payable to the order of Mortgagee in the principal amount of **NINETY-SEVEN MILLION ONE HUNDRED FIFTY-THREE THOUSAND EIGHT HUNDRED NINETY AND NO/100 DOLLARS (\$97,153,890.00)** and any and all renewals, modifications, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor, Guarantor or any other Person or party to the Loan Documents to Mortgagee or others as set forth in the Loan Documents expressly excluding, however, for the purposes of this Mortgage, the obligations of (i) Guarantor under the Guaranty, and (ii) Mortgagor and Guarantor under and pursuant to the Environmental Indemnity Agreement to the extent such are Unsecured Environmental Costs.

Office Building: Such term shall have the meaning as provided in the Loan Agreement.

Parking Garage: Such term shall have the meaning as provided in the Loan Agreement.

Permitted Disposition: Such term shall have the meaning as provided in the Loan Agreement.

Permitted Exceptions: The liens, easements, restrictions, security interests and other matters (if any) expressly listed as special exceptions (i.e., not pre-printed or standard exceptions) to coverage in the title insurance policy insuring the lien of this Mortgage and the liens and security interests created by the Loan Documents.

Person: Any corporation, limited liability company, limited liability partnership, general partnership, limited partnership, firm, association, joint venture, trust or any other association or

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legal entity, including any public or governmental body, quasi-governmental body, agency or instrumentality, as well as any natural person.

Personalty: All of the right, title, and interest of Mortgagor in and to; (i) furniture, furnishings, equipment, machinery, tangible personal property, and goods located within, used in the operation of or derived from the Improvements, (ii) crops, farm products, timber and timber to be cut, and extracted Minerals; (iii) general intangibles (including payment intangibles), money, insurance proceeds (whether or not such insurance was requested or required by Mortgagee), accounts, contract and subcontract rights, trademarks, trade names, copyrights, monetary obligations, chattel paper (including electronic chattel paper), instruments, investment property, documents, letter of credit rights, inventory and commercial tort claims; (iv) all cash funds, fees (whether refundable, returnable or reimbursable), deposit accounts or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (v) the Construction Contracts, Plans (subject to applicable copyright laws) and all building and construction materials and equipment; and (vi) all other personal property of any kind or character as defined in and subject to the provisions of the Code; any and all of which are now owned or hereafter acquired by Mortgagor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, design, development, construction, financing, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof.

Plans: Any and all plans, specifications, shop drawings and other technical descriptions as may be prepared for the construction or rehabilitation of the Improvements or, as applicable, the development of the Land and all supplements thereto and amendments and modifications thereof; provided, however, with respect to plans or specifications for tenant improvements, the term "Plans" shall only refer to such item to the extent of Mortgagor's interest therein and, if applicable, Mortgagor's right to the approval thereof.

Rents: Any and all rents, revenues, royalties, income, issues, proceeds, bonus monies, profits, security and other types of deposits (after Mortgagor acquires title thereto) and other benefits paid or payable by parties to the Leases and/or Contracts (other than Mortgagor) for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all or any portion of the Mortgaged Property.

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Reserves: All sums on deposit or due under any of the Loan Documents now or hereafter executed by Mortgagor for the benefit of Mortgagee including (i) the accounts into which the Reserves have been deposited; (ii) all insurance on said accounts; (iii) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto; (iv) all sums now or hereafter therein or represented thereby; (v) all replacements, substitutions or proceeds thereof; (vi) all instruments and documents now or hereafter evidencing the Reserves or such accounts; (vii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom); and (viii) all proceeds of the foregoing.

1.2 Additional Definitions. As used herein, the following terms shall have the following meanings: (i) "hereof," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to, under and with respect to, this Mortgage or to the other documents or matters being referenced; (ii) "heretofore" means before, "hereafter" means after, and "herewith" means concurrently with the date of this Mortgage; (iii) all pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender as the context may suggest or require; (iv) "including" means including, without limitation; (v) all terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require; and (vi) all capitalized terms not defined in Section 1.1 hereof shall have the meanings ascribed to such terms in the Loan Agreement.

1.3 Not a Revolver Facility. It is expressly understood and agreed that the Indebtedness is not intended to be a "revolver" facility and that no principal amount repaid by Mortgagor may be reborrowed by Mortgagor.

ARTICLE II

GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS, CONVEYS, and CONFIRMS to Mortgagee the Mortgaged Property, subject, however, to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

ARTICLE III

WARRANTIES AND REPRESENTATIONS

Mortgagor hereby unconditionally warrants and represents to Mortgagee, as of the date hereof and at all times during the term of this Mortgage, as follows:

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3.1 Title and Lien. Mortgagor has a first and prior fee estate in the Land and Improvements, and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests, claims, easements, restrictions, options, leases, covenants, and other rights, titles, interests, or estates of any nature whatsoever, except the Permitted Exceptions. This Mortgage constitutes a valid, subsisting first lien on the Land, the Improvements, the Leases and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty, Contracts, Rents, Construction Contracts, Plans, and, to the extent that the term "Leases" includes items covered by the Code, in and to the Leases; all in accordance with the terms hereof and all subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure or other enforcement of this Mortgage, and shall inure to the benefit of and be enforceable by Mortgagee in the event Mortgagee acquires title to the Mortgaged Property pursuant to any foreclosure or otherwise.

3.2 Incorporation of Warranties and Representations. All the warranties, representations, 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 Mortgage to the same extent and with the same force as if fully set forth herein.

3.3 Separate Tax Parcel; Legal Lot. To the best of Mortgagor's actual knowledge, the Mortgaged Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot under all applicable Legal Requirements (or, if not subdivided, no subdivision or platting of the Land is required under applicable Legal Requirements), and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel.

3.4 No Commencement of Construction. As of the date of this Mortgage, no work or construction of any kind has been commenced on the Land. As of the date of this Mortgage there are no outstanding bills for labor and materials relating to the Mortgaged Property due and owing to any contractor, subcontractor, or supplier.

ARTICLE IV

AFFIRMATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee, that until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged, as follows:

4.1 Payment and Performance. Mortgagor will pay the Indebtedness as and when specified in the Loan Documents, and will perform and discharge all of the Obligations, in full and on or before the dates same are to be performed.

4.2 First Lien Status. Mortgagor will protect the first lien and security interest status of this Mortgage and the other Loan Documents and will not permit to be created or to exist in

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respect of the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

4.3 Tax on Mortgage. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof, Mortgagor will immediately pay all such taxes, provided that if such law as enacted makes it unlawful for Mortgagor to pay such tax, Mortgagor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Mortgagor to pay such taxes, then Mortgagor must prepay the Indebtedness in full within one hundred twenty (120) days after demand therefor by Mortgagee.

4.4 Incorporation of Affirmative Covenants, Conditions and Agreements. 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 Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay all property taxes and other impositions, and comply with Legal Requirements, in accordance with the Loan Agreement, and (ii) agrees that the proceeds of insurance and awards for condemnation shall be settled, held and applied in accordance with the Loan Agreement.

ARTICLE V

NEGATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee, that until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged, as follows:

5.1 Use Violations. Except to the extent permitted under the Loan Agreement, Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Mortgagor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Mortgagee, except to the extent permitted under the Loan Agreement. Mortgagor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (i) materially violates any Legal Requirement; (ii) may be materially dangerous, unless safeguarded as required by law and/or appropriate insurance; (iii) constitutes a public or private nuisance; (iv) makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto; (v) changes the use of the Mortgaged Property; (vi) permits or suffers to occur any material physical waste on or to the

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Mortgaged Property; or (vii) converts the Mortgaged Property to a condominium or cooperative form of ownership.

5.2 No Drilling. Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof; provided, however, extraction of Minerals from the subsurface of the Land shall not be deemed to violate this Section 5.2 so long as such extraction is done from an offsite location consistent with all Legal Requirements and in a manner such that no material negative effect or danger whatsoever occurs with respect to the surface of the Mortgaged Property.

5.3 No Disposition or Encumbrance. Neither Mortgagor nor any shareholder, member or partner of Mortgagor will make a Disposition without obtaining Mortgagee's prior written consent, other than a Permitted Disposition. Mortgagor will not create, incur, assume or suffer to exist any lien or encumbrance against all or any portion of the Mortgaged Property, other than as expressly permitted pursuant to the Loan Agreement including, without limitation, any lien securing a Property-Assessed Clean Energy (PACE) or similar loan.

5.4 Incorporation of Covenants, Conditions and Agreements. 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 Mortgage to the same extent and with the same force as if fully set forth herein.

ARTICLE VI

EVENTS OF DEFAULT

6.1 The term "Event of Default," as used herein shall have the same meaning described for such term in the Loan Agreement.

ARTICLE VII

REMEDIES

7.1 Mortgagee's Remedies Upon Event of Default. Upon the occurrence and during the continuance of an Event of Default, then this Mortgage is subject to foreclosure as provided by law and Mortgagee may, at Mortgagee's option, exercise any of its rights or remedies at law or in equity and, in addition exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

(a) Right to Perform Mortgagor's Covenants. Mortgagee may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness, and Mortgagor promises,

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within ten (10) days of written demand, to pay to Mortgagee, at the place where the Note is payable, all sums so advanced or paid by Mortgagee, with interest from the expiration of such ten (10) day period through the date Mortgagor makes such payment at the Default Interest Rate. No such payment by Mortgagee shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Mortgagee shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Mortgagee may make an advance, or which Mortgagee may pay.

(b) **Right of Entry.** Mortgagee may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to rent the same for the account of Mortgagor and to apply such Rents as provided in Article IX hereof. All such costs, expenses, and liabilities incurred by Mortgagee in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as set forth in the Assignment of Rents, shall constitute a demand obligation owing by Mortgagor and shall bear interest from the date of expenditure until paid at the Default Interest Rate, all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Mortgagee pursuant to this subsection, Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Mortgagee in managing the Mortgaged Property unless such loss is caused by the gross negligence or willful misconduct of Mortgagee, nor shall Mortgagee be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **MORTGAGOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY MORTGAGEE FOR, AND TO HOLD MORTGAGEE HARMLESS FROM, ANY AND ALL LIABILITY, LOSS, OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY MORTGAGEE UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST MORTGAGEE BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE.** Should Mortgagee incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure

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until paid at the Default Interest Rate, shall be secured hereby, and Mortgagor shall reimburse Mortgagee within ten (10) days of written demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Mortgagee for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, or for any hazardous or environmentally sensitive substance in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Mortgagor hereby assents to, ratifies, and confirms any and all actions of Mortgagee with respect to the Mortgaged Property taken under this subsection.

The remedies in this subsection are in addition to other remedies available to Mortgagee and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to Mortgagee. Any receipt of consideration received by Mortgagee pursuant to this subsection shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

(c) Right to Accelerate. Mortgagee may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Mortgagor and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Mortgagee shall not be deemed to be a waiver of any rights or remedies of Mortgagee under the Loan Documents, at law or in equity.

(d) Mortgagee's Judicial Remedies. Mortgagee, upon written request of Mortgagee, may proceed by suit or suits, at law or in equity, 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 Mortgage as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. To the fullest extent permitted by applicable law, this remedy shall be cumulative of any other judicial or nonjudicial remedies available to Mortgagee with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Mortgagee.

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(e) **Foreclosure.** Mortgagee may immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the Indebtedness secured hereby, pursuant to the statutes in such case made and provided, and sell the Mortgaged Property or cause the Mortgaged Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Mortgagee in its sole and absolute discretion. Should Mortgagee desire that more than one sale or other disposition of the Mortgaged Property be conducted, Mortgagee shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or on such different days or at such different times and in such order as Mortgagee may designate in its sole and absolute discretion, and no such sale or disposition shall terminate or otherwise affect the liens and security interests of this Mortgage on any part of the Mortgaged Property not sold or disposed of until all of the Indebtedness has been paid in full and the Obligations have been fully performed and discharged. In the event foreclosure proceedings are instituted or filed by Mortgagee, all reasonable out-of-pocket expenses incident to such proceedings, including, but not limited to, court costs and reasonable attorneys' fees and expenses, shall be paid by Mortgagor within ten (10) days of written demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Indebtedness evidenced by the Note. The secured Indebtedness and all other Obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate, any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable out-of-pocket attorneys' fees and expenses and any other amounts due and unpaid to Mortgagee under the Loan Documents, may be bid by Mortgagee in the event of a foreclosure sale hereunder. Without limiting the foregoing or any other rights or remedies available to Mortgagee, Mortgagee may also commence and prosecute a judicial foreclosure action under applicable law.

(f) **Multiple Parcels.** If the Mortgaged Property consists of multiple parcels, then in any sale of the Mortgaged Property pursuant to Mortgagee's exercise of its remedies after an Event of Default (including any judicial foreclosure sale and any nonjudicial sale under applicable law), the multiple parcels may be sold in a single sale or, at the option of the Mortgagee in its sole and absolute discretion, a sale of any one or more of such parcels separately. Any such separate sales may be made in whatever order Mortgagee determines in its sole and absolute discretion. Mortgagee may, in its sole and absolute discretion, cause the entire Mortgaged Property to be offered for sale as a single auction lot and may also cause bids to be solicited for individual parcels of the Mortgaged Property as separate auction lots in any order, but shall be under no obligation to proceed in either manner or the other. Mortgagor acknowledges that if Mortgagee sells multiple parcels individually, no fair value or deficiency hearing shall be required after each sale.

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(g) Mortgagee's Right to Appointment of Receiver. Mortgagee, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Mortgagor and without any showing of insolvency, fraud, or mismanagement on the part of Mortgagor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and, to the extent permitted by law, of the Rents. Mortgagor, for itself and on behalf of each other Person liable for payment of the Obligations, hereby: (i) waives, and authorizes Mortgagee to waive any requirement that a receiver post a bond; (ii) waives any requirement for notice of appointment of a receiver; and (iii) irrevocably consents to the appointment of a receiver or receivers. Any receiver(s) appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(h) Mortgagee's Uniform Commercial Code Remedies. Mortgagee may exercise any or all of the remedies available to a secured party under the Code.

(i) Rights Relating to Rents. Mortgagor has, pursuant to the Assignment of Rents, assigned to Mortgagee all Rents under each of the Leases covering all or any portion of the Mortgaged Property. Mortgagee may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents in accordance with the Assignment of Rents. All Rents collected by Mortgagee shall be applied as provided for in the Assignment of Rents; provided, however, that if the costs, expenses, and attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Interest Rate, and shall be immediately due and payable. The entrance upon and possession of the Mortgaged Property, the collection of Rents, and the application thereof as set forth above shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any action pursuant to such notice. Failure or discontinuance by Mortgagee at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Mortgagee of the right, power, and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Mortgagee shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Mortgage, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Mortgagor to Mortgagee. In addition, from time to time, Mortgagee may elect, and notice hereby is given to each Lessee of such right, to subordinate the lien of this Mortgage to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election, the lien of this Mortgage shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each

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instance, such subordination will not affect or be applicable to (and will expressly exclude any) lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant, and other rights, titles, interests, or estates of any nature regarding all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Mortgage and the execution of the Lease identified in such instrument of subordination.

(j) Other Rights. Mortgagee (i) may surrender the insurance policies maintained pursuant to the Loan Agreement or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 7.4 hereof, and, in connection therewith, Mortgagor hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such premiums; and (ii) may apply the reserve for all property taxes and other impositions and insurance premiums, if any, required by the provisions of this Mortgage, toward payment of the Indebtedness; and (iii) shall have and may exercise any and all other rights and remedies which Mortgagee may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

(k) Mortgagee as Purchaser. Mortgagee may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Mortgagee shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unperfected portion of the Indebtedness. Mortgagee, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Mortgagee's purchase shall be applied in accordance with Section 7.4 of this Mortgage.

(l) Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to a consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their nature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the secured indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

(m) Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (i) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment,

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(ii) except as otherwise expressly required by the Loan Documents, all notices of any Event of Default or of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (iii) any right to a marshalling of assets or a sale in inverse order of alienation.

(n) Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Loan Documents, all of Mortgagor's obligations thereunder, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

7.2 Other Rights of Mortgagee. Should any part of the Mortgaged Property come into the possession of Mortgagee, whether before or after an Event of Default, Mortgagee may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Mortgagee may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Mortgagee may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Mortgagee in respect of the Mortgaged Property. Mortgagor covenants to promptly reimburse and pay to Mortgagee within ten (10) days of written request, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, property taxes, impositions, or other charges) incurred by Mortgagee in connection with Mortgagee's custody, preservation, use, or operation of the Mortgaged Property, together with interest thereon from the date such ten (10) day period expires until such payment is made by Mortgagor at the Default Interest Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Mortgagee's possession.

7.3 Possession After Foreclosure. In the event there is a sale or sales pursuant to Section 7.1(e) hereof, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Mortgagor or Mortgagor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Mortgagor and Mortgagor's successors shall be considered as tenants at sufferance of the

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purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.4 Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Article VII, or the proceeds from the surrender of any insurance policies pursuant to any of the Loan Documents, or any Rents collected by Mortgagee from the Mortgaged Property (following any application of such Rents in accordance with the Assignment of Rents), or sums received pursuant to Section 8.1 hereof which Mortgagee elects to apply to the Indebtedness in accordance with the applicable provisions of the Loan Agreement, or proceeds from insurance received pursuant to Section 8.2 hereof which Mortgagee elects to apply to the Indebtedness in accordance with the applicable provisions of the Loan Agreement, shall be applied by Mortgagee to the Indebtedness in the following order and priority: (i) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums including reasonable attorneys' fees and expenses incurred by Mortgagee pursuant to the Loan Documents; (ii) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or mortgagee of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Mortgagee shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to Mortgagor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

7.5 Abandonment of Sale. In the event a foreclosure hereunder is commenced by Mortgagee in accordance with Subsection 7.1(e) hereof, at any time before the sale Mortgagee may, but shall not be obligated to, abandon the sale, and Mortgagee may then institute suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Mortgagee should institute a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, Mortgagee may, at any time before the entry of a final judgment in said suit, dismiss the same and sell the Mortgaged Property or any part thereof in accordance with the provisions of this Mortgage.

7.6 Payment of Fees. If the Note or any other part of the Indebtedness shall be collected or if any of the Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for

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collection after maturity, whether matured by the expiration of time or by an option given to Mortgagee to mature same, or if Mortgagee becomes a party to any suit where this Mortgage or the Mortgaged Property or any part thereof is involved, Mortgagor agrees to pay Mortgagee's reasonable attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Interest Rate.

7.7 Miscellaneous.

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

(b) Other Remedies. In addition to the remedies set forth in this Article, during the continuance of an Event of Default, Mortgagee shall, in addition, have all other remedies available to them at law or in equity.

(c) Remedies Cumulative; Non-Exclusive; Etc. All rights, remedies, and recourses of Mortgagee granted in the Note, this Mortgage, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Mortgagor, the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Mortgagee exercising or pursuing any remedy in relation to the Mortgaged Property prior to Mortgagee bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Mortgagee elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Mortgagor prior to exercising any remedies in relation to the Mortgaged Property, all liens and security interests, including the lien of this Mortgage, shall remain in full force and effect and may be exercised at Mortgagee's option.

(d) Partial Release; Etc. Mortgagee may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Mortgagor or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Mortgagee may resort to any of the collateral therefor in such order and manner as Mortgagee may elect. No collateral heretofore, herewith, or

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hereafter taken by Mortgagee shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(e) Waiver and Release by Mortgagor. To the full extent Mortgagor may do so under applicable law, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption and, Mortgagor, for Mortgagor and Mortgagor's representatives, successors and assigns, and for any and all Persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, exemption from civil process, notice of intention to mature or declare due the whole or any part of the Indebtedness or Obligations, notice of election to mature or declare due the whole or any part of the Indebtedness or Obligations and all rights to a marshalling of the assets of Mortgagor, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests created hereby and by the other Loan Documents. Mortgagor shall not have, or assert, any right under any statute or rule of law pertaining to the marshalling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Property for the collection of the Indebtedness or Obligations without any prior or different resort for collection, or the right of the Mortgagee under the terms of this Mortgage to the payment of such Indebtedness or Obligations out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever. If any law referred to in this Section 7.7(e) and currently in force, of which Mortgagor or Mortgagor's representatives, successors and assigns and such other Persons claiming any interest in the Property might take advantage despite this Section 7.7(e), shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 7.7(e).

(f) No Implied Covenants. To the full extent permitted by law, Mortgagor and Mortgagee mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Mortgage and the other Loan Documents. All agreed contractual duties are set forth in this Mortgage, the Note, and the other Loan Documents.

(g) Real Property Laws Govern. The remedies in this Article VII shall be available under and governed by the real property laws of the State of Illinois and shall not be governed by the personal property laws of the State of Illinois, including but not limited to, the power to dispose of personal property in a commercially reasonable manner under the Code, provided, Mortgagee elects to proceed as to the Fixtures and Personalty together with the other Mortgaged Property under and pursuant to the real property remedies of this Article VII.

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ARTICLE VIII

SPECIAL PROVISIONS

8.1 Condemnation Proceeds. Subject to the provisions of the Loan Agreement, Mortgagee shall be entitled to receive any and all sums which may be awarded and become payable to Mortgagor for condemnation of the Mortgaged Property or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Mortgagee, and Mortgagor shall, upon request of Mortgagee, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Mortgagee to collect and receipt for any such sums. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Mortgagee as a result of condemnation shall be applied or disbursed in accordance with the terms of the Loan Agreement.

8.2 Insurance Proceeds. The proceeds of any and all insurance upon the Mortgaged Property shall be collected by Mortgagee to be applied or disbursed in accordance with the terms of the Loan Agreement (whether or not such insurance was required or requested by Mortgagee).

ARTICLE IX

ASSIGNMENT OF RENTS

9.1 Assignment of Rents. Reference is made to the Assignment of Rents of even date herewith which is made a part hereof for all purposes.

ARTICLE X

SECURITY AGREEMENT

10.1 Security Interest. This Mortgage (i) shall be construed as a mortgage on real property, and (ii) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of the Code until the grant of this Mortgage shall terminate as provided in Section 12.1 hereof, a first and prior security interest under the Code as to property within the scope thereof and in the state where the Mortgaged Property is located with respect to the Personalty, Fixtures, Contracts, Rents and Leases and Construction Contracts and Plans. To this end, Mortgagor has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Mortgagee, a first and prior security interest in all of Mortgagor's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts, Rents and Leases and Construction Contracts and Plans, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the

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Obligations. It is the intent of Mortgagor and Mortgagee that this Mortgage encumber all Leases and that all items contained in the definition of "Leases" which are included within the Code be covered by the security interest granted in this Article; and all items contained in the definition of "Leases" which are excluded from the Code be covered by the provisions of Article II hereof.

10.2 Financing Statements. Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such "Financing Statements" and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect, and preserve Mortgagee's security interest herein granted, and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest. Without limiting the foregoing, Mortgagor hereby specifically authorizes Mortgagee to prepare, file of record or otherwise effectuate new financing statements, financing statement amendments and financing statement continuations which describe all or any portion of the Mortgaged Property as collateral thereunder and Mortgagor specifically agrees that Mortgagee may cause same to be filed without any signature of a representative of the Mortgagor appearing thereon where such filings are permitted by applicable law.

10.3 Construction Mortgage and Fixture Filing. This Mortgage secures future advances to be used for construction of Improvements on the Land pursuant to the Loan Agreement. Accordingly, this Mortgage constitutes a "construction mortgage" under the Code. This Mortgage shall also constitute a "fixture filing" for the purposes of the Code. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from the parties hereto at the addresses set forth on the first page hereof. For purposes of the security interest herein granted, the address of Debtor (Mortgagor) and the address of the Secured Party (Mortgagee) is set forth in the first paragraph of this Mortgage.

ARTICLE XI

SPECIAL ILLINOIS PROVISIONS

11.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article XI and the other provisions of this Mortgage, the terms and conditions of this Article XI shall control and be binding.

11.2 Compliance with the Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et. seq.* (as amended from time to time the "IMF Law"), the provision of the IMF Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Law.

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(b) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is specifically referred to herein may be repealed, Mortgagee 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.

(c) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the IMF Law in the absence of said provision, Mortgagee shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

(d) All advances, disbursements and expenditures made or incurred by Mortgagee 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 Mortgage, the other Loan Documents or by the IMF Law (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the IMF Law, including, without limitation, those provisions of the IMF Law herein below referred to:

(i) all advances by Mortgagee in accordance with the terms of this Mortgage or the other Loan Documents to: (A) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the IMF Law;

(ii) payments by Mortgagee of (A) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien or encumbrance); (B) 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 Mortgaged Property or any part thereof; (C) other obligations authorized by this Mortgage; 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 15-1505 of the IMF Law;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien);

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d) and 15-1510 of the IMF Law; (B) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (C) in

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preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgaged Property;

(v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection 15-1508(b)(1) of the IMF Law;

(vi) expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the IMF Law;

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee 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 mortgagee takes possession of the Mortgaged Property imposed by Subsection 15-1704(c)(1) of the IMF Law; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments deemed by Mortgagee to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged 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 Mortgaged Property; and (D) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become due and payable ten (10) days following written notice therefor and with interest thereon from the expiration of such ten (10) day period until paid at the rate of interest payable after default under the terms of the Note.

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

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 IMF Law, apply to and be included in:

(i) any determination of the amount of indebtedness secured by this Mortgage at any time;

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

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(iii) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections 5-1603(d)(2) and (e) of the IMF Law;

(iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMF Law;

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

(vi) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the IMF Law.

(e) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMF Law, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMF Law.

11.3 Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the Mortgaged Property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and

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valid in an action at law upon the Note. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

11.4 Use of Proceeds. Mortgagor represents and warrants to Mortgagee (i) that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(l) (or any substitute, amended or replacement statute), and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(l), and (ii) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 *et seq.*

11.5 No Lien Management Agreements and Broker Agreements. Mortgagor shall cause any property manager to enter into a subordination of management agreement with Mortgagee whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager, to the lien of this Mortgage. Any agreement entered into hereafter by Mortgagor with any "broker" (as defined in the Real Estate License Act of 2000, 225 ILCS 454/1 *et. seq.*) that is an affiliate of Mortgagor for the purpose of selling, leasing or otherwise conveying an interest in the Mortgaged Property shall contain a "no lien" provision whereby such broker waives and releases any and all lien rights that such broker, or anyone claiming through or under such broker, may have pursuant to the Commercial Real Estate Broker Lien Act, 770 ILCS 15/1 *et. seq.* Mortgagor shall cause each such affiliated broker to enter into a subordination agreement with Mortgagee, in recordable form, whereby such broker, on its own behalf or on behalf of any party claiming by, through or under such broker, subordinates present and future lien rights to the lien of this Mortgage.

11.6 Fixture Financing Statement. From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the Illinois Uniform Commercial Code (as amended from time to time) with respect to the Mortgaged Property and the goods described herein, which goods are or are to become fixtures related to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Mortgaged Property is located. For this purpose, the following information is set forth.

(a) Name and Address of Debtor:

625 W. Adams, LLC
c/o USAA Real Estate Company
9830 Colonnade Blvd.
Suite 600
San Antonio, Texas 78230

(b) Name and Address of Secured Party:

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Bank of the Ozarks
8201 Preston Road, Suite 700
Dallas, Texas 75225

- (c) This document covers goods which are or are to become fixtures.
- (d) Debtor is the record owner of the Land.
- (e) Debtor's chief executive office is located in the State of Texas.
- (f) Debtor's state of formation is Delaware.
- (g) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.
- (h) Debtor's organizational identification number is 5960784.
- (i) Debtor agrees that:

(i) Where Mortgaged Property is in possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Mortgaged Property for the benefit of Mortgagee;

(ii) Mortgagor will cooperate with Mortgagee in obtaining control with respect to Mortgaged Property consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its company name without giving Mortgagee at least thirty (30) days prior written notice in each instance.

11.7 Interest Laws. It being the intention of Mortgagee and Mortgagor to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Section 11.7 shall govern and control; (b) neither Mortgagor nor any other party obligated under the terms of the Note or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the Interest Rate (as

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that term is defined in the Note) shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note, this Mortgage and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the Interest Rate; and (e) neither Mortgagor nor any other party obligated under the terms of the Note or any of the other Loan Documents shall have any action against Mortgagee for any damages whatsoever arising out of the payment or collection of any Excess Interest.

11.8 Other Amounts Secured; Maximum Indebtedness. Mortgagor acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Mortgagee in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed ONE HUNDRED AND NINETY-FOUR MILLION THREE HUNDRED SEVEN THOUSAND SEVEN HUNDRED EIGHTY and No/100 Dollars (\$194,307,780.00). It is agreed that any future advances made by Mortgagee for the benefit of Mortgagor from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Mortgagee, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the indebtedness secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

11.9 Adjustable Mortgage Loan Provision. The Note which this Mortgage secures is an adjustable note on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Note.

11.10 Future Advances. All future advances made by Mortgagee for the benefit of Mortgagor from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Mortgagee, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the indebtedness secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

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11.11 Deed of Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

11.12 Collateral Protection Act. Unless Mortgagor provides Mortgagee with evidence of the insurance required by this Mortgage or any other Loan Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required under this Mortgage or any other Loan Document. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the indebtedness secured hereby, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et. seq.*, Mortgagor hereby acknowledges Mortgagee's right pursuant to this Section 11.12 to obtain collateral protection insurance.

11.13 Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Mortgagee. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Obligations, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

11.14 Construction Loan. The Note evidences a debt created by one or more disbursements made by Mortgagee to Mortgagor to finance the cost of the construction of certain improvements upon the Mortgaged Property in accordance with the provisions of a Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute an Event of Default hereunder. Upon the occurrence and during the continuance of any such Event of Default, the holder of the Note may at its option declare the Indebtedness immediately due and payable, or

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complete the construction of said improvements and enter into the necessary contracts therefore, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be due and payable within ten (10) days of written demand with interest from the expiration of such ten (10) day period until paid at the Default Interest Rate. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage. All future advances shall be made within twenty (20) years of the date hereof.

11.5 Maturity Date. The Maturity Date of the Loan is May 26, 2020, as such Maturity Date may be extended to May 26, 2021 pursuant to the terms and conditions of the Loan Agreement.

ARTICLE XII

MISCELLANEOUS

12.1 Release. If the Indebtedness is paid in full in accordance with the terms of this Mortgage, the Note, and the other Loan Documents, and if Mortgagor shall well and truly perform each and every one of the Obligations to be performed and discharged in accordance with the terms of the Loan Documents, then this conveyance shall become null and void and be released at Mortgagor's request and expense, and Mortgagee shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents.

12.2 Performance at Mortgagor's Expense. Mortgagor shall (i) pay all reasonable legal fees incurred by Mortgagee in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); and (ii) reimburse Mortgagee, promptly upon written demand, for all amounts expended, advanced, or incurred by Mortgagee to satisfy any obligation of Mortgagor under the Loan Documents, which amounts shall include all court costs, reasonable attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), reasonable fees of auditors and accountants and other investigation expenses reasonably incurred by Mortgagee in connection with any such matters. Except to the extent that costs and expenses are included within the definition of "Indebtedness," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

12.3 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this section shall limit the obligations of Mortgagor as otherwise set forth herein.

12.4 Recording and Filing. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled

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in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, documentary stamp taxes, fees, and other charges.

12.5 Notices. All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given if provided in a manner consistent with the notice provisions in the Loan Agreement.

12.6 Covenants Running with the Land. All Obligations contained in this Mortgage and the other Loan Documents are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Mortgage has been fully released by Mortgagee.

12.7 Successors and Assigns. All of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives and all other Persons claiming by, through, or under them.

12.8 No Waiver; Severability. Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other Persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.9 Counterparts. To facilitate execution, this Mortgage may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Mortgage to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 APPLICABLE LAW. THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE

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OF TEXAS FROM TIME TO TIME IN EFFECT EXCEPT TO THE EXTENT PREEMPTED BY UNITED STATES FEDERAL LAW; **PROVIDED, HOWEVER, THIS LIEN INSTRUMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS IN ALL RESPECTS.**

12.11 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the performance and discharge of the Obligations.

12.12 Rights Cumulative. Mortgagee shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Mortgagor or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Mortgagee, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Mortgagee hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise with respect to the Mortgaged Property.

12.13 Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

12.14 Loan Agreement. Reference is hereby made for all purposes to the Loan Agreement of even date herewith between Mortgagee and Mortgagor pertaining to the construction of Improvements on the Land, and the funding of the principal amount of the Note. In event of a conflict between the terms and provisions hereof and the Loan Agreement, the Loan Agreement shall govern.

12.15 Construction. All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the

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object of such term whether such is singular or plural in nature, as the context may suggest or require.

12.16 **ENTIRE AGREEMENT; AMENDMENT.** THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. THE PROVISIONS OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS MAY BE AMENDED OR WAIVED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE RESPECTIVE PARTIES TO SUCH DOCUMENTS.

12.17 **WAIVER OF RIGHT TO TRIAL BY JURY.** MORTGAGOR AND MORTGAGEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY MORTGAGOR OR MORTGAGEE IN THE OBLIGATIONS THEREUNDER OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.

12.18 **NOTICE OF INDEMNIFICATION:** MORTGAGOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS MORTGAGE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS, INCLUDING, BUT NOT LIMITED TO **SECTION 7.1** HEREOF WHICH MAY, IN CERTAIN INSTANCES, INCLUDE INDEMNIFICATION BY MORTGAGOR OR OTHERS AGAINST MORTGAGEE'S OWN NEGLIGENCE.

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EXECUTED as of the date first above written.

MORTGAGOR

625 W. ADAMS, LLC,
a Delaware limited liability company

By: USODP 625 W. Adams JV, LLC,
a Delaware limited liability company,
its sole member

By: WORP/CA 625 Adams, LLC,
a Delaware limited liability company,
its managing member

By: [Signature]
Name: Thomas M. Scott
Title: an Authorized Signatory

STATE OF Illinois)
COUNTY OF Cook)

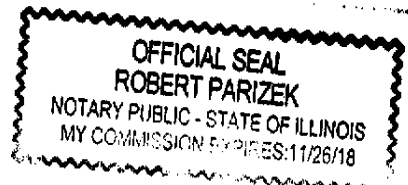
SS:

On the 25th day of May, 2016, before me, the undersigned, personally appeared Thomas M. Scott, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

Notary Public

My commission expires:



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List of Exhibits:

Exhibit A - Land Description

Property of Cook County Clerk's Office

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EXHIBIT A

Land Description

Real Property in the City of Chicago, County of Cook, State of Illinois, described as follows:

PARCEL 1:

LOTS 1, 2 AND 3 IN THE WEST 1/2 OF BLOCK 27 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 1 TO 5, BOTH INCLUSIVE, IN FELSENTHAL AND OTHER'S SUBDIVISION OF THE LOTS 4, 5 AND 6 IN THE SUBDIVISION OF THE WEST 1/2 OF BLOCK 27 IN THE SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 7 IN THE SUBDIVISION OF THE WEST 1/2 OF BLOCK 27 IN THE SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOTS 1, 2, 3, 4 AND 5 (EXCEPT THE SOUTH 15 FEET OF LOT 5) IN STEEL'S SUBDIVISION OF LOTS 8 TO 16, A SUBDIVISION OF THE WEST 1/2 OF BLOCK 27 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBERS:

17-16-111-001-0000, 17-16-111-002-0000, 17-16-111-003-0000,
17-16-111-004-0000, 17-16-111-005-0000, 17-16-111-006-0000, 17-16-111-007-0000,
17-16-111-008-0000, 17-16-111-009-0000, 17-16-111-010-0000, 17-16-111-011-0000,
17-16-111-012-0000, 17-16-111-013-0000 AND 17-16-111-014-0000

ADDRESS: 625 W. ADAMS STREET, CHICAGO, ILLINOIS 60661