

2513

# UNOFFICIAL COPY



Doc# 1715913017 Fee \$74.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 06/08/2017 09:55 AM PG: 1 OF 19

Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 25-32-309-017-1011

**Address:**

**Street:** 1347 WATER STREET

**Street line 2:**

**City:** BLUE ISLAND

**State:** IL

**ZIP Code:** 60406

**Lender:** BLACK SQUARE REAL ESTATE INC

**Borrower:** BLACK SQUARE FUNDING LLC

**Loan / Mortgage Amount:** \$99,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is not owner-occupied.

**Certificate number:** 338D2436-4A92-4FEF-9E83-6C34E4EF7553

**Execution date:** 5/1/2017

COOP REVIEW 

# UNOFFICIAL COPY

**This Document  
Prepared By and After  
Recording Return to:**

Black Square Real  
Estate, Inc.  
P.O. Box 3390  
Salt Lake City, Utah  
84110

---

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

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION

(Additional recording fees apply)

# UNOFFICIAL COPY

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, AND FIXTURE FILING (this "Security Instrument") is made and entered into effective as of May 1, 2017, by and between Black Square Funding, LLC, a Delaware limited liability company ("Borrower"), with an address of 807 East South Temple, Suite 200, Salt Lake City, Utah 84102, as mortgagor and Black Square Real Estate, Inc., a Delaware corporation ("Lender"), with an address of 807 East South Temple, Suite 200, Salt Lake City, Utah 84102, as mortgagee.

### RECITALS

A. Lender and Borrower have entered into that certain Loan Agreement (the "Loan Agreement") and Borrower has executed and delivered to Lender that certain Secured Promissory Note (the "Note"), each dated May 1, 2017, pursuant to which Lender has agreed to loan to Borrower a principal amount of up to Ninety Nine Thousand and 00/100 Dollars (\$99,000.00) (the "Loan") and Borrower promised to pay Lender the principal of such Loans and interest at the rate and in installments as provided in the Loan Agreement, with a final payment of the outstanding principal balance and accrued and unpaid interest being due on or before March 1, 2018, subject to one extension for six months to a date no later than September 1, 2018. All capitalized terms used herein without definition shall have the meanings given to such terms in the Loan Agreement.

B. This Security Instrument is given pursuant to the Loan Agreement, and the payment, fulfillment, and performance by Borrower of its obligations thereunder and under the Note and of the Secured Obligations (as defined in Section 1.4 hereof) are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument.

NOW, THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby warrants, represents, covenants and agrees as follows:

### ARTICLE I Granting Clauses

Section 1.1 PROPERTY MORTGAGED. Borrower hereby irrevocably MORTGAGES, WARRANTS, BARGAINS, SELLS, PLEDGES, REMISES, ALIENS, CONVEYS, ASSIGNS, TRANSFERS AND SETS OVER to Lender, WITH MORTGAGE COVENANTS AND POWER OF SALE, and with all other statutory rights and covenants and subject to the further terms of this Security Instrument, all of the following described property (collectively, the "Property");

(a) The real property located in the County of Cook, State of Illinois, described on Exhibit A, attached hereto and incorporated herein, and all and singular tenements, hereditaments and appurtenances thereto, together with all right, title and interest of Borrower in all easements, rights-of-way, gores or strips of land, surface waters, ground waters, watercourses, mineral interests and subsurface rights, alleys, streets and sidewalks, whether now owned or hereafter acquired, either in law or in equity, adjacent or appurtenant to or adjoining such real property (the "Land");

# UNOFFICIAL COPY

(b) Any and all buildings and improvements now or hereafter erected or located on the Land, including all right, title and interest of Borrower in and to all fixtures, attachments, appliances, equipment, machinery and other articles attached to such buildings and improvements (the "Improvements");

(c) All right, title and interest of Borrower in and to all tangible personal property now owned or hereafter acquired by Borrower and now or at any time hereafter located on the Land or within the Improvements and used in connection therewith, including all building materials stored on the Land, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment, all furniture, furnishings, equipment and other personal property owned by Borrower and used in connection with the operation of the Property, and all renewals and replacements thereof (the "Personal Property"), all of which property shall, so far as permitted by law, be deemed to form a part and parcel of the real property and for the purpose of this Security Instrument to be real estate and covered by this Security Instrument;

(d) All of Borrower's interest in all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, construction, leasing, operation or management of the Property, whether now existing or entered into or obtained after the date hereof, including the "Leases" and "Rents" (as hereinafter defined);

(e) All leases and other agreements for use and occupancy of any part of the Property, now existing or hereafter entered into, including any and all extensions or modifications thereto (the "Leases"), and all of the rents, royalties, security deposits, income, receipts, revenues and other sums now due or which may hereafter become due to Borrower under any Lease or arising from the use and enjoyment of any part of the Property, and all rights and remedies which Borrower may have against any party under the Leases (the "Rents");

(f) All the estate, interest, right, title or other claim or demand with respect to the proceeds of insurance and any and all awards made for the taking of any part of the Property by the power of eminent domain, or by any proceeding or purchase in lieu thereof;

(g) All of Borrower's interest in and to any deposits made with or other security given to utility companies by Borrower with respect to the Property;

(h) All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(i) The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

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

(k) All causes of action and claims (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) against any person or entity for damages or injury to the Property or in connection with any transactions financed in whole or in part by the proceeds of the Loan.

# UNOFFICIAL COPY

## Section 1.2 Grant of Security Interest.

(a) With respect to any portion of the Property which constitutes personal property, fixtures or other property or interests governed by the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Property is located (the “UCC”), this Security Instrument shall constitute a security agreement between Borrower, as the debtor, and Lender, as the secured party, and Borrower hereby GRANTS TO LENDER A SECURITY INTEREST in such portion of the Property. Borrower agrees to execute and deliver to Lender all financing and continuation statements and other information which are from time to time required to establish and maintain the validity and priority of the security interests herein granted. Upon the occurrence of an Event of Default, Lender shall have all of the rights and remedies of a secured party available under the UCC with respect to the property encumbered by the security interests; provided, however, Lender may, at its option, dispose of such property in accordance with Lender’s rights and remedies under this Security Instrument, in lieu of proceeding under the UCC.

(b) This Security Instrument shall also constitute a Financing Statement for purposes of the UCC and shall constitute a “fixture filing” under such statutes, and shall be filed in the real estate records of the County in which the Land is located. Borrower hereby authorizes Lender to file all Financing Statements evidencing the security interest granted to Lender in the Property in all appropriate filing jurisdictions. For such purposes the name and address of the “Debtor” and the “Secured Party” are as set forth below:

Debtor: Black Square Funding, LLC  
807 East South Temple, Suite 200  
Salt Lake City, Utah 84102  
(Organization No. 5420877)

Secured Party: Black Square Real Estate, Inc.  
807 East South Temple, Suite 200  
Salt Lake City, Utah 84102

Address of Property: 1347 Water Street  
Blue Island, Illinois 60406

## Section 1.3 Assignment of Leases and Rents.

(a) Assignment. Borrower hereby absolutely and unconditionally assigns, sells, transfers and conveys to Lender all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing, Borrower shall have a revocable license from Lender to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Secured Obligations (as defined in Section 1.4 hereof) and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Secured Obligations or solvency of Borrower, the

# UNOFFICIAL COPY

license herein granted shall automatically expire and terminate, without notice to Borrower by Lender (any such notice being hereby expressly waived by Borrower to the extent permitted by applicable law).

(b) Perfection Upon Recordation. Borrower acknowledges that Lender has taken all actions necessary to obtain, and that upon recordation of this Security Instrument, Lender shall have, to the extent permitted under applicable law, a valid and fully perfected, present assignment of the Rents arising out of the Leases and all security for such Leases. Borrower acknowledges and agrees that, upon recordation of this Security Instrument, Lender's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Borrower and to the extent permitted under applicable law, all third parties, including, without limitation, any successors or assignees of Lender in any case under Title 11 of the United States Code (the "Bankruptcy Code"), without the necessity of commencing a foreclosure action with respect to this Security Instrument, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

(c) Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Borrower and Lender agree that (a) this Security Instrument shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Security Instrument extends to property of Borrower acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the Property unto and to the use and benefit of Lender and its successors and assigns, forever.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Secured Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

### Section 1.4 Secured Obligations.

(a) This Security Instrument shall secure the following indebtedness and obligations, including all replacements, renewals, amendments, extensions, substitutions and modifications thereof:

(1) Payment of all indebtedness and performance of all obligations and covenants of Borrower under or pursuant to (i) the Loan Agreement; (ii) the Note; (iii) this Security Instrument; and (iv) all other Loan Documents (as defined in Section 1.4(c)); and

(2) Payment of all future advances and all sums advanced by Lender to protect the Property or otherwise pursuant to the terms of the Loan Documents, with interest on all of the foregoing at the Default Rate from the date of Lender's advance to the date of Borrower's repayment of same.

# UNOFFICIAL COPY

(b) The obligations secured by this Security Instrument which are described in paragraph (a) above are herein collectively referred to as the "Secured Obligations."

(c) This Security Instrument, the Loan Agreement, the Note, and any other writing or instrument given to evidence or secure the payment or performance of any of the Secured Obligations (but not the Guaranty) are herein collectively referred to as the "Loan Documents." For the avoidance of doubt and notwithstanding anything to the contrary contained in this Security Instrument or any other Loan Document, the Secured Obligations shall not include and this Security Instrument shall not secure the obligations of Guarantor under the Guaranty.

## ARTICLE II Payments and Performance

Section 2.1 Payment of Secured Obligations. Borrower shall pay all sums it is obligated to pay under the Loan Documents without offset, counterclaim or defense, as and when the same shall become due. Borrower shall fully and faithfully observe and perform all of the obligations of Borrower to be observed and performed under the Loan Documents.

## ARTICLE III Remedies

Section 3.1 Remedies. Upon the occurrence of an Event of Default, Lender shall have the right to take any one or more of the following actions:

(a) Declare all Secured Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind except as otherwise provided herein;

(b) Commence an action, judicial or otherwise, to (i) foreclose this Security Instrument in accordance with applicable law by judicial order or power of sale, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, or (ii) specifically enforce any of the covenants of this Security Instrument;

(c) Exercise any or all of the remedies available to Lender as a secured party under the UCC;

(d) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Property or any part thereof and do any acts which it deems necessary or desirable to protect and preserve Lender's security;

(e) Without notice to Borrower or anyone claiming under Borrower, and without regard to the value of the Property, to obtain from any court having jurisdiction the appointment of a receiver or receivers of the Property, and Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all of the usual powers and duties of receivers in like or similar cases and all powers and duties of Lender in case of entry as provided in Section 3.5 hereof;

# UNOFFICIAL COPY

(f) With or without entry, to the extent permitted and pursuant to the procedures provided by applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; or

(g) Subject to any applicable Law and the right of lessees under Leases, the license granted to Borrower under Section 1.3 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct business thereon; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (iv) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (v) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Secured Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, other charges, insurance premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees.

Section 3.2 Application of Proceeds. Upon the occurrence of any Event of Default, the proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument, the Loan Agreement, or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 3.3 Remedies Not Exclusive; No Waiver. Except as may be prohibited by applicable law, every power or remedy given Lender by any of the Loan Documents, or to which Lender otherwise may be entitled, may be exercised without prejudice to any other power or remedy, concurrently, independently, in any order or any manner from time to time and as often as may be deemed expedient by Lender. No remedy or power is intended to be exclusive of any other remedy or power, and Lender may pursue inconsistent remedies. The acceptance by Lender of the payment or performance of any Secured Obligation after the same shall be due shall not constitute a waiver of Lender's right to the prompt payment or performance of same, or to declare a default as herein provided. The acceptance by Lender of any sum in an amount less than the sum then due shall not constitute a waiver of Borrower's obligation to pay the entire sum, and such failure shall continue to be a default by Borrower notwithstanding Lender's acceptance of such partial payment. Consent by Lender to any action or inaction of Borrower which is subject to consent or approval shall not be deemed a waiver of any other or future right of Lender to consent under this Security Instrument. Nothing set forth in this Security Instrument shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its actual taking of possession of the Property pursuant to the powers granted herein.



# UNOFFICIAL COPY

Section 3.4 Waivers. To the extent permitted by law, Borrower hereby agrees that it shall not at any time insist upon, plead, claim or take any benefit or advantage, in any way whatsoever, whether now or in the future, and Borrower hereby irrevocably waives, all of the following, whether the same exists under federal or state law, or otherwise at law or in equity:

- (a) Any right of redemption of any of the Property after sale under this Security Instrument;
- (b) All rights and claims it may have in or to any of the Property as a "homestead exemption," or similar exemptions;
- (c) Any stay, extension or moratorium law which may extend the period for enforcement of this Security Instrument or any period of redemption;
- (d) Any and all right to require the marshaling of assets in connection with the exercise of any of Lender's remedies under this Security Instrument, it being agreed that Lender shall have the right to determine, in its sole discretion, the order in which any of the Property shall be sold, or the order in which any Secured Obligations are satisfied from the proceeds of such sale;
- (e) Any law providing for the valuation or appraisal of all or any part of the Property prior to or after any sale or sales made pursuant to this Security Instrument;
- (f) Personal service or process in any action or proceeding at any time commenced to enforce this Security Instrument or any of the Loan Documents, Borrower hereby agreeing that such process shall be deemed properly and adequately served if sent to Borrower as provided in Section 5.2 hereof;
- (g) All notices not herein specifically required of Borrower's default under any of the Loan Documents, or of Lender's exercise, or election to exercise, any right, option or election under this Security Instrument;
- (h) Any and all technical or procedural errors, defects and imperfections in any of the Loan Documents or any proceedings instituted by Lender under this Security Instrument; and
- (i) Any and all rights of set off that Borrower may have against Lender.

Section 3.5 Preservation of Security. Notwithstanding the provisions of this Article III, and in addition to any other rights or remedies of Lender under this Security Instrument, should Borrower at any time fail to make any payment or perform any obligation under any Loan Document, which failure continues beyond any applicable cure period, Lender, in its sole discretion, without obligation to do so and without notice to or demand upon Borrower, and without releasing Borrower from any Secured Obligation or waiving any of Lender's rights under the Loan Documents, may cure such default of Borrower in such manner and to such extent as Lender may deem necessary to protect the security of this Security Instrument. In connection therewith, without limiting its general powers, Lender shall have and is hereby given the right, but not the obligation:

- (a) To direct Borrower to vacate and surrender possession of the Property to Lender;
- (b) To enter upon and take possession of the Property;

# UNOFFICIAL COPY

(c) To direct Borrower to terminate any management agent and employ such management agent as Lender may reasonably determine;

(d) To make additions, alterations, repairs and improvements to the Property which Lender may consider necessary or proper to keep the Property in good condition and repair;

(e) To appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Lender;

(f) To pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which, in the judgment of Lender, may affect the security of this Security Instrument or be prior or superior hereto; and

(g) In exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants.

All costs and expenses incurred by Lender in connection with the exercise of the foregoing rights, including costs of evidence of title, court costs, appraisals, surveys and reasonable attorneys' fees, shall be secured by this Security Instrument, be reasonable in amount and be repayable by Borrower upon demand, with interest at the Default Rate.

## ARTICLE IV Environmental

Section 4.1 Indemnity. Borrower shall indemnify, defend and save and hold harmless Lender from and against any and all losses, liabilities, damages, costs and expenses (including costs of remediation or cleanup, loss of property value or defects in title to the Property, and the reasonable fees and disbursements of Lender's counsel) asserted against or suffered or incurred by Lender and in any way relating to or arising out of the generation, storage, manufacturing, refining, releasing, transportation, treatment, disposal or other presence of any Hazardous Substance on or about or removed from the Property, which indemnity shall survive: (i) the foreclosure of this Security Instrument; (ii) any conveyance of the Property in lieu of such foreclosure; (iii) the payment and performance of the Secured Obligations; (iv) the release of the lien of this Security Instrument; and (v) any other transfer of Borrower's title to or interest in the Property.

Section 4.2 Waiver of Lien. Lender may waive its lien against the Property or any portion thereof to the extent such Property is found to be environmentally impaired, and may exercise any and all rights and remedies of an unsecured creditor against Borrower and all of Borrower's assets and property for the recovery of any deficiency. No such waiver shall be final or binding, on Lender unless and until a final money judgment is obtained against Borrower.

Section 4.3 Action for Environmental Claims. Lender may seek a judgment that Borrower has breached its covenants, representations and/or warranties with respect to the environmental matters contained in the Loan Documents (the "Environmental Provisions"), and may commence and maintain an action or actions in any court of competent jurisdiction for enforcement of the Environmental Provisions and/or recovery of any all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses (including without limitation court

# UNOFFICIAL COPY

costs, consultants' fees and reasonable attorneys' fees, whether incurred in litigation or not and whether before or after judgment), incurred or advanced by Lender pursuant to the Environmental Provisions (collectively, the "Environmental Costs"). All Environmental Costs incurred by Lender shall bear interest at the Default Rate from and after the date such costs are incurred by Lender. All Environmental Costs together with interest thereon shall enjoy the same priority as the original principal amount of the Note. Borrower's obligations under this Section 4.3 shall survive foreclosure, deed in lieu of foreclosure, release, reconveyance or any other transfer of the Property or this Security Instrument. The obligations of Borrower and rights of Lender under this Article IV are in addition to any obligations of Borrower and rights of Lender with respect to Hazardous Substances under any other Loan Document.

## ARTICLE V General Covenants

Section 5.1 Due on Sale. If, without the Lender's prior written consent: (i) the Property or any part thereof or any interest in the Property or Borrower, including beneficial interests, is sold or conveyed; (ii) title to the Property or any interest therein is divested; (iii) the Property or any ownership interest in Borrower, including beneficial interests, is further encumbered or pledged (other than with respect to ownership interests, to the extent permitted by the Loan Agreement); or (iv) any lease of the Property or grant to any party of an option to lease or purchase the Property or any part thereof is entered into, Lender shall, at its sole discretion, be entitled to accelerate all sums due and payable under the Note and Loan Agreement to be immediately due and payable and exercise all remedies available to Lender under this Security Instrument or any of the other Loan Documents.

Section 5.2 Notices. All notices, demands, requests, and other communications desired or required to be given hereunder shall be in writing and shall be given in accordance with the terms of the Loan Agreement.

Section 5.3 Legal Existence. If Borrower is a corporation, partnership, limited liability company or other entity, Borrower shall preserve and keep in full force and effect its legal existence and all franchises, rights and privileges under the laws of the state of its incorporation or formation and its standing and/or qualification to do business in the State of Illinois.

Section 5.4 Liens. Borrower shall not create, permit to accrue or suffer to exist upon any of the Property, any security interest, judgment lien, mechanic's or materialman's lien, or any other lien, encumbrance, charge, retention or reservation of title, pledge, hypothecation or assignment as security, and shall promptly pay, when the same shall become due, all claims and demands of contractors, subcontractors, mechanics, materialmen, laborers and others which claims, if unpaid, might result in or permit the creation of a lien upon the Property, and Borrower shall cause any such lien to be promptly paid and discharged, whether by payment, bonding or otherwise, within thirty (30) days after the filing of same.

Section 5.5 Successors. The terms and provisions of this Security Instrument shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

# UNOFFICIAL COPY

Section 5.6 Governing Law. This Security Instrument and the Loan Documents are being delivered, and are intended to be performed, in the State of New York and the laws of the State of New York and of the United States of America shall govern the rights and duties of the parties hereto and the validity, construction, enforcement and interpretation of this Security Instrument and the other Loan Documents, provided, however, that with respect to the creation, perfection, priority and enforcement of the liens and security interests created by this Security Instrument and the other Loan Documents, and the determination of deficiency judgments, the Laws of the State of Illinois shall apply. Any action for foreclosure of this Security Instrument may be brought in the county where the Property is located, at Lender's option, and Borrower hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any such court and hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection that Borrower may now or hereafter have to the laying of venue in any such court and any claim that such court is an inconvenient forum.

Section 5.7 Release of Security Instrument. Upon payment and performance in full of all of the Secured Obligations, Lender shall, upon demand of Borrower but in no event later than the time prescribed by applicable law, reconvey the Property, without warranty, to the persons then entitled thereto. Upon payment of its fees and any other sums owing to it under this Security Instrument, Lender shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in such conveyance of any matters or facts shall be conclusive of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

Section 5.8 Lender's Approval. Unless another standard is specified, in any instance under this Security Instrument in which Lender's approval shall be required, such approval may be given or withheld by Lender in Lender's discretion. The granting of any approval by Lender shall not be deemed a waiver of such right of approval to any future matter, and all approvals by Lender must be in writing.

Section 5.9 Severability. If any term or provision of this Security Instrument or the application thereof to any person or circumstance shall, to any extent, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or any other circumstance or situation with respect to this Security Instrument, and each remaining term and provision of this Security Instrument shall be valid and be enforced to the fullest extent by law.

Section 5.10 Insurance. Borrower shall obtain and maintain, or cause to be maintained, insurance in full force and effect at all times with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 5.11 Future Advances. This Security Instrument is given to, and the parties intend that it shall secure indebtedness, exclusive of interest thereon, in a maximum amount equal to \$198,000.00 which indebtedness may include advances made at the request of Borrower or its respective successor(s) in title after this Security Instrument is filed of record to the fullest extent and with the highest priority contemplated by law (including disbursements that the Lender may, but shall not be obligated to, make under this Security Instrument, the Loan Documents or any other document with respect thereto) plus interest thereon, and any disbursements made for the enforcement of this Security Instrument and any remedies hereunder, including but not limited to, payment of taxes, special assessments, utilities or insurance on the Property, and interest on such disbursements and all disbursements by Lender pursuant to

# UNOFFICIAL COPY

applicable law (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Security Instrument shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law. All future advances under the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall have the same priority as if the future advance was made on the date that this Security Instrument was recorded.

Section 5.12 Cross-Collateralization. Borrower acknowledges that the Secured Obligations are secured by this Security Instrument together with those additional Cross-Collateralized Security Instruments given or hereafter given by Borrower and/or certain affiliates of Borrower to Lender, together with their respective Cross-Collateralized Loan Documents securing or evidencing the applicable Cross-Collateralized Loans, and encumbering the applicable Cross-Collateralized Properties. Upon the occurrence of an Event of Default, Lender shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Security Instrument and any or all of the Cross-Collateralized Security Instruments whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Secured Obligations and/or the Cross-Collateralized Loans, and the lien and the security interest created by the Cross-Collateralized Security Instruments shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Secured Obligations then due and payable but still outstanding and the payment of the Cross-Collateralized Loans then due and payable but still outstanding. Borrower acknowledges and agrees that the Property and the Cross-Collateralized Properties may be located in one or more States and/or counties, and therefore Lender shall be permitted to enforce payment of the Secured Obligations and the performance of any term, covenant or condition of the Note, this Security Instrument, the Loan Documents or the Cross-Collateralized Security Instruments or the Cross-Collateralized Loan Documents and exercise any and all rights and remedies under the Note, this Security Instrument, the other Loan Documents or the Cross-Collateralized Security Instruments or Cross-Collateralized Loan Documents or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Lender, in its sole discretion, in any one or more of the States or counties in which the Property or any Cross-Collateralized Properties are located. Neither the acceptance of this Security Instrument, the other Loan Documents or the Cross-Collateralized Security Instruments or the Cross-Collateralized Loan Documents nor the enforcement thereof in any one State or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of the Note, this Security Instrument, the other Loan Documents, or any Cross-Collateralized Security Instrument or any Cross-Collateralized Loan Documents through one or more additional proceedings in that State or county or in any other State or county. Any and all sums received by Lender under the Note, this Security Instrument, and the other Loan Documents shall be applied to the Secured Obligations in such order and priority as Lender shall determine, in its sole discretion, without regard to any allocated amount for the Property or any Cross-Collateralized Property or the appraised value of the Property or any Cross-Collateralized Property.

## ARTICLE VI State Specific Provisions

Section 6.1 State Specific Provisions. In the event of any material inconsistencies between this Article VI and any of the other terms and provisions of this Security Instrument, the terms and provisions of this Article VI shall control and be binding.

# UNOFFICIAL COPY

Section 6.2 Waiver of Redemption. Borrower acknowledges that the transaction of which this Security Instrument is a part is a transaction which does not include either agricultural real estate (as defined in Section 15 1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101 et seq.) (herein called the “Act”) or residential real estate (as defined in Section 15 1219 of the Act), and Borrower warrants and represents to Lender that none of the Property is presently, or will during the term of this Security Instrument, be used principally or at all for agricultural or farming purposes. To the full extent permitted by law, Borrower hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15 1601 and Section 15 1602 of the Act.

Section 6.3 In the event that any provision in this Security Instrument shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. If any provision of this Security Instrument shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Security Instrument, shall be added to the indebtedness secured by this Security Instrument or by the judgment of foreclosure.

Section 6.4 Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of “An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money,” approved May 24, 1879, as amended (815 ILCS 105/4(1)(1)); (B) the Secured Obligations secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower’s investment or profit, as contemplated by said Section 4; (C) the Secured Obligations secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the Secured Obligations is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* has been entered into solely for business purposes of Borrower and for Borrower’s investment or profit, as contemplated by said section.

Section 6.5 Protective Advances. Without limitation on anything contained in this Security Agreement, all advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after a judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Security Instrument or by the Act shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, “Protective Advances”):

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

(b) payments by Lender of: (A) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (B) other obligations authorized by this Security Instrument; or (C) with court approval, any other amounts in connection with other liens,

# UNOFFICIAL COPY

encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

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

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

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

(f) expenses incurred and expenditures made by Lender for any one or more of the following: (A) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments required or deemed by Lender to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (D) costs incurred by Lender for demolition, preparation for and completion of construction; and (E) pursuant to any lease or other agreement, for occupancy of the Property. Notwithstanding the foregoing, Lender shall only make such payments if Borrower has otherwise failed to pay such amounts within ten (10) days from the issuance of a bill, invoice or written demand for any such item.

All Protective Advances shall be so much additional indebtedness secured by this Security Instrument, and shall become due and payable ten (10) business days after written demand with interest thereon after such ten (10) business day period until paid at the applicable rate set forth in the Loan Agreement. This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Secured Obligations secured by this Security Instrument at any time; (B) the amount of the Secured Obligations found due and owing to Lender in a judgment of foreclosure or any subsequent, supplemental judgments, orders, adjudications or findings by any 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); (C) if right of redemption is deemed not to be waived by this Security Instrument, computation of any amounts required to redeem, pursuant to Section 15-1522 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1522 of the Act; (E) application of income in the hands of any receiver or of Lender in possession; and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of sections 15-1508 and Section 15-1511 of the Act.

Section 6.6 Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

# UNOFFICIAL COPY

Unless Borrower provides Lender with evidence of the insurance coverage required by this Security Instrument, the Loan Agreement or any of the other Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Property or any other collateral for the indebtedness or Secured Obligations. This insurance may, but need not protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property or any other collateral for the indebtedness or Secured Obligations. Borrower may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Borrower has obtained insurance as required by this Security Instrument, the Loan Agreement or any of the other Loan Documents. If Lender purchases insurance for the Property or any other collateral for the indebtedness or Secured Obligations, Borrower will be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

Section 6.7 Sealed Instrument. Borrower intends for this Security Instrument to be executed and delivered by Borrower, and accepted by Lender, as a sealed instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE FOLLOWS]




# UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has caused this Security Instrument to be duly executed on the day and year set forth in the acknowledgment attached hereto and to be effective as of the date first set forth above.

Black Square Funding, LLC  
a Delaware limited liability company

By: Black Square Real Estate, Inc.  
a Delaware corporation  
Its: Member

By:   
Name: Paul T. Basmajian  
Its: Officer

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF UTAH                    )  
  )  
  )        SS:  
COUNTY OF SALT LAKE    )

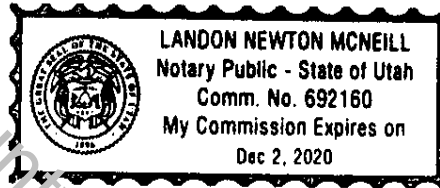
The foregoing instrument was acknowledged before me this 1st day of May, by Paul T. Basmajian, the authorized signatory of Black Square Real Estate, Inc., Member of Black Square Funding, LLC, organized under the laws of the State of Delaware, who acknowledged that s/he did sign the foregoing instrument on behalf of said officer.

Sign Name: *Landon Newton McNeill*  
Notary Public

Print Name: Landon Newton McNeill

[NOTARIAL SEAL]

My Commission Expires: December 2nd, 2020



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description

1347 Water Street, Blue Island, Illinois 60406

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, AND IS DESCRIBED AS FOLLOWS:

UNIT 1347 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN FAY'S POINT TOWN HOME CONDOMINIUM AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NO. 0714215052, AS AMENDED, IN THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

EASEMENTS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS SET FORTH AND DEFINED IN THE DECLARATION OF EASEMENTS RECORDED AS DOCUMENT NO. 0714215051 FOR INGRESS AND EGRESS, ALL IN COOK COUNTY, ILLINOIS.

Parcel ID: 25-32-309-017-1011

Cook County Clerk's Office