

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1833845060

Doc# 1833845060 Fee \$110.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 12/04/2018 02:25 PM PG: 1 OF 37

The property identified as: **PIN:** 04-05-100-013-0000

Address:

Street: 1627 Lake Cook Road

Street line 2:

City: Deerfield

State: IL

ZIP Code: 60015

Lender: Wells Fargo Bank

Borrower: Deerfield Senior Residences Property Owner, LLC

Loan / Mortgage Amount: \$55,600,000.00

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

Stewart Title NTS- Chicago
10 S. Riverside Plaza, Suite 1450
Chicago, IL 60606
PH: 312-949-4400
File NO: 1700022742

2 of 2

Certificate number: 6125BC4D-BF4D-4B6F-9EB6-160FB0322A49

Execution date: 12/3/2018

[Handwritten signature]
37

UNOFFICIAL COPY

Loan No. 1018346

PREPARED BY:

Richard M. Rosenblatt, Esq.
 Jones Day
 1420 Peachtree Street, N.E., Suite 800
 Atlanta, Georgia 30309

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National Association
 2030 Main Street, 8th Floor
 Irvine, California 92614
 Attention: Sally Sison
 Loan No.: 1018346

(Space Above For Recorder's Use)

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

NAME AND ADDRESS OF MORTGAGOR:	DEERFIELD SENIOR RESIDENCES PROPERTY OWNER, LLC c/o Harrison Street Real Estate Capital 71 South Wacker Drive, Suite 3575 Chicago, Illinois 60606 Attention: Stephen Gordon Organizational Number: DE 6967809
NAME AND ADDRESS OF LENDER:	WELLS FARGO BANK, NATIONAL ASSOCIATION 1750 H Street, N.W., Suite 650 Washington, D.C. 20006 Attention: Erin Peart Loan No. 1018346
PROPERTY ADDRESS	1627 Lake Cook Road Deerfield, Illinois 60015 Additional legal description on <u>Exhibit A</u> of this document.

UNOFFICIAL COPY

THIS INSTRUMENT COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES AND DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY, THE MAILING ADDRESSES OF THE SECURED PARTY AND THE DEBTOR ARE WITHIN.

THIS INSTRUMENT SECURES FUTURE ADVANCES.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Loan No. 1018346

THIS MORTGAGE SECURES A NOTE WHICH PROVIDES FOR A VARIABLE INTEREST RATE.

CONSTRUCTION FEE MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (Illinois)

Term or Maturity Date (exclusive of any renewal or extension rights): December 3, 2022

THIS CONSTRUCTION FEE MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter referred to as "Security Instrument"), made as of December 3, 2018, is granted by DEERFIELD SENIOR RESIDENCES PROPERTY OWNER, LLC, a Delaware limited liability company ("Mortgagor"), for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (collectively with its successors or assigns, "Lender").

ARTICLE 1. GRANT

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Security Instrument and to secure the full and timely payment, performance and discharge of the Secured Obligations (as herein defined), Mortgagor has mortgaged, transferred, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated and by these presents does hereby mortgage, transfer, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Lender WITH MORTGAGE COVENANTS, the real property described in Exhibit A attached hereto and made a part hereof, together with the Collateral (as defined herein), all buildings and other improvements, fixtures and equipment now or hereafter located on the real property and all right, title, interest, and privileges of Mortgagor now owned or hereafter acquired in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, licenses and permits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, estates, tenements, hereditaments, privileges, rights and rights of way appurtenant or related thereto; any and all rights of Mortgagor, as a declarant, under any covenants, conditions, and restrictions now or hereafter pertaining to the real property described on Exhibit A attached hereto, provided, however, that Lender shall have no liability under such covenants, conditions, and restrictions unless and until Lender forecloses on the real property; all buildings and other improvements and fixtures now or hereafter located on the real property, including, but not limited to, an independent living facility containing approximately two hundred forty (240) units, together with all apparatus, equipment and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property ("Improvements"); all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code of the state wherein said real property is located) in any way relating to the real property and/or the Improvements and in which Mortgagor has any

UNOFFICIAL COPY

Loan No. 1018346

interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Mortgagor insuring the Property (as hereinafter defined) and all rights and interest of Mortgagor thereunder and all rights, claims and/or causes of action which Mortgagor may have now or may have in the future against any party or parties with respect to the real property and any such items; all Payments (as hereinafter defined), all leases and lettings of the Property now or hereafter entered into and all right, title, and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including further, the right upon the happening of a Default (as hereinafter defined), to receive and collect the Payments thereunder; all rights of Mortgagor in and to the Contracts (as such term is defined in the Loan Agreement); all deposits in, and proceeds of, all operating accounts of Mortgagor maintained at Lender and all other accounts pledged to Lender herein or in any other Loan Documents (as such term is defined in the Loan Agreement); and all interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms. TO HAVE AND TO HOLD the above granted and described Property, together with the Collateral (as hereinafter defined) and all the rights, easements, profits and appurtenances and other property described above, together with all proceeds, products, replacements, additions, substitutions and renewals to or of any or all of the foregoing belonging unto and to the use and benefit of Lender and its successors and assigns, forever, to secure payment by the Mortgagor to Lender of the Secured Obligations at the time and in the manner provided for its payment in the Note and the Loan Agreement; PROVIDED, HOWEVER, these presents are upon the express condition that, if Lender shall be well and truly paid the Secured Obligations at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, the Property and the Collateral hereby conveyed and all rights and interests therein and thereto shall revert to Mortgagor and the estate, right, title and interest of Lender therein shall thereupon cease, terminate and become void and in such case Lender shall execute and deliver to Mortgagor at Mortgagor's cost, an appropriate release and discharge of this Security Instrument in form to be recorded.

- 1.2 **ADDRESS.** The address of the Property is: 1627 Lake Cook Road, Deerfield, Illinois 60015. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Security Instrument on the Property as described on Exhibit A.
- 1.3 **WARRANTY OF TITLE; USE OF PROPERTY.** Mortgagor represents and warrants that Mortgagor lawfully holds and possesses fee simple title absolute to the Property without limitation on the right to convey and encumber same and that this Security Instrument is a first and prior lien on the Property subject only to those exceptions set forth

UNOFFICIAL COPY

Loan No. 1018346

in the Title Policy (as defined in the Loan Agreement (as defined below)). Mortgagor covenants to warrant and defend Lender from and against all Persons claiming any interest in the Property. Mortgagor agrees, upon request by Lender and at no cost to Lender, and at the sole cost and expense of the Mortgagor, to execute, acknowledge and deliver to Lender all further instruments and documents that Lender reasonably believes to be appropriate to provide further evidence of the lien of the Security Instrument on such fee or other interest. Mortgagor warrants that the Property is not used principally for agricultural or farming purposes, and that the Property is not homestead and that all of the Property is a single tax parcel, and there are no properties included in such tax parcel other than the Property. Mortgagor further covenants and agrees that it shall not cause all or any portion of the Property to be replatted or for any lots or boundary lines to be adjusted, changed or altered for either ad valorem tax purposes or otherwise, and shall not consent to the assessment of the Property in more than one tax parcel or in conjunction with any property other than the Property.

- 1.4 **USE OF PROCEEDS.** Mortgagor represents and warrants to Lender that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Security Instrument constitute a business loan.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Security Instrument for the purpose of securing the payment and performance of the following obligations (collectively "Secured Obligations"):
- (a) Payment to Lender of all sums at any time owing with interest thereon, according to the terms of that certain Promissory Note Secured by Mortgage dated as of the date hereof (as the same may be amended, restated, amended and restated, modified, supplemented or replaced from time to time, the "Note"), in the principal amount of FIFTY-FIVE MILLION SIX HUNDRED THOUSAND AND NO/100THS DOLLARS (\$55,600,000.00) executed by Mortgagor and payable to the order of Lender; and
 - (b) Payment and performance of all covenants and obligations on the part of Mortgagor under that certain Construction Loan Agreement (as the same may be amended, restated, modified, amended and restated, supplemented or replaced from time to time, the "Loan Agreement") dated as of the date hereof by and between Mortgagor, as borrower, and Lender, which Loan Agreement provides for the construction of the Improvements on the Property; and
 - (c) Payment and performance of all covenants and obligations of Mortgagor under this Security Instrument and the other Loan Documents; and
 - (d) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Security Instrument; and

UNOFFICIAL COPY

Loan No. 1018346

- (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when such future advance or obligation is evidenced by an instrument in writing, which recites that it is secured by this Security Instrument including any and all advances or disbursements of Lender with respect to the Property for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Property; and
- (f) Payment and performance of all obligations of Mortgagor under or in connection with any "Swap Agreement", as defined in the Loan Agreement, at any time entered into between Mortgagor and Lender, together with all modifications, extensions, renewals and replacements thereof, as additional interest; and
- (g) Payment of all interest and fees and the reimbursement for any drafts made under any irrevocable letter(s) of credit issued for the account of Mortgagor, including, without limitation, the Letter of Credit (as defined in the Loan Agreement); and
- (h) All modifications, extensions, novations and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.
- 2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations together with all costs of collecting the Secured Obligations.
- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note of the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.
- 2.4 **MAXIMUM INDEBTEDNESS; FUTURE ADVANCES.** Notwithstanding anything to the contrary set forth in this Security Instrument, the maximum amount of principal indebtedness secured by this Security Instrument or which under any contingency may become secured hereby at any time hereafter is \$111,200,000.00 together with interest thereon, and all amounts expended by Lender to maintain the lien of this Security Instrument or protect any of the Property, including without limitation, all amounts in

UNOFFICIAL COPY

Loan No. 1018346

respect of insurance premiums and real estate taxes, charges and assessments, reasonable litigation expenses to prosecute or defend the rights, remedies, and lien of this mortgage or title to the Property, and any costs, charges, or amounts to which Lender become subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** To the fullest extent permitted by applicable law, Mortgagor hereby absolutely and irrevocably assigns and transfers to Lender all of its right, title and interest in, to and under: (a) all present and future leases, subleases, licenses, residency agreements or occupancy agreements of the Property or any portion or assignments thereof, including, but not limited to, the Operating Lease, and all other agreements of any kind relating to the management, leasing, operation, use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof (collectively, "Leases"); and (b) the rents, revenue, income, receipts, reserves, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing or assigned to Mortgagor under the Leases or accruing to Operating Lessee (as defined in the Loan Agreement) or Mortgagor under the Leases (collectively, "Payments"). The term "Leases", as referred to herein, shall also include all subleases and other agreements for the use or occupancy of the Property, options, rights of first refusal or guarantees of and Mortgagor's rights with respect to security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This assignment is intended to be and constitutes a present, unconditional and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.
- 3.2 **GRANT OF LICENSE.** Lender confers upon Mortgagor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Lender may collect and apply the Payments pursuant to Section 6.4 hereof without notice and without taking possession of the Property. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Lender. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Lender. Lender may apply, in its sole discretion, any Payments so collected by Lender against any Secured Obligation under the Loan Documents (as defined in the Loan Agreement), whether existing on the date hereof or hereafter arising. Collection of any

UNOFFICIAL COPY

Loan No. 1018346

Payments by Lender shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or under any duty to produce rents or profits. Lender shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise by Lender, or any of its respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Lender hereunder; or (ii) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.
- 3.4 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants, as of the date hereof, that Mortgagor has delivered to Lender a true, accurate and complete list of all Leases which are currently in existence, and that, except as disclosed to Lender in writing prior to the date hereof, (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (b) other than as expressly provided in the Loan Agreement, no rent or other payment under any existing Lease has been paid by any tenant for more than one (1) month in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised; and (c) none of the landlord's interests under any of the Leases has been transferred or assigned.
- 3.5 **COVENANTS.** Mortgagor covenants and agrees, at Mortgagor's sole cost and expense, to: (a) perform all of the obligations of landlord contained in the Leases and enforce by all available remedies performance by the tenants of the obligations of the tenants contained in the Leases; (b) give Lender prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the tenant or of the landlord; (c) exercise Mortgagor's best efforts to keep all portions of the Property that are currently subject to Leases leased at all times at rentals not less than the fair market rental value; (d) deliver to Lender fully executed, counterpart original(s) of each and every Lease and any modifications or amendments thereto if requested to do so; and (e) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the landlord and tenant) of any Lease (excluding residency agreements which include subordination provisions therein) to the Security Instrument, in form and substance acceptable to Lender, as Lender may reasonably request. Mortgagor shall not, without Lender's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) enter into or permit Operating Lessee or Manager to enter into, any Leases after the date hereof (other than (A)

UNOFFICIAL COPY

Loan No. 1018346

residency agreements and other rental or occupancy arrangements for resident occupancy on the standard forms approved by Lender on or before the Effective Date, with no material modifications (other than as otherwise approved by Lender, provided, however, Lender shall not withhold consent to any such modifications reasonably required by the Illinois State Department of Health) and (B) any leases entered into in the ordinary course of business for physical therapists, beauty salons and other ancillary services to be provided to the residents of the Property in each case that do not exceed 1,000 square feet and include the landlord's ability to terminate upon thirty (30) days prior written notice); (ii) execute any other assignment relating to any of the Leases; (iii) collect any rent or other sums due under the Leases in advance, other than to collect rentals one (1) month in advance of the time when it becomes due under any of the Leases; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the tenants from any obligations thereunder, except as provided in the Loan Agreement; (v) consent to any assignment or subletting by any tenant under any Lease; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust, mortgage, deed to secure debt or encumbrance. Except as provided herein, any such attempted amendment, cancellation, modification or other action in violation of the provisions of this Section without the prior written consent of Lender shall be null and void. Without in any way limiting the requirement of Lender's consent hereunder, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any tenant), modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose.

- 3.6 **LENDER RIGHT TO CURE.** Without regard to whether there exists a Default, if there exists a default by Mortgagor under the Management Agreement, Development Agreement, Operating Lease or Construction Agreement (as such terms are defined in the Loan Agreement), Mortgagor acknowledges and agrees: (a) that Lender may, at its option, with no obligation to do so, take any actions necessary to cure such default including, without limitation, any actions that require Lender or its designee to enter onto the Property, (b) to indemnify, defend and hold Indemnitees (defined below) harmless in connection with any such action, and (c) that any money advanced for any such purpose shall be secured hereby and payable by Mortgagor to Lender on demand with interest thereon at the Default Rate from the date such amounts are advanced; provided that if (i) no cure period for such is provided in the Management Agreement, Development Agreement, Operating Lease or Construction Agreement, as applicable, (ii) such default is susceptible to cure, and (iii) by waiting any period of time for such default to be cured would not result in additional damage to the Property or additional defaults and would not unreasonably prejudice, preclude, limit or hinder Lender from being able to exercise and protect its rights and remedies, then Mortgagor shall have thirty (30) days from the time Mortgagor has knowledge of such default to cure the default before the provisions in (a)-(c) shall be applicable.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.**

UNOFFICIAL COPY

Loan No. 1018346

- (a) Mortgagor hereby grants and assigns to Lender as of the Effective Date (as defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of Mortgagor's interest now or hereafter acquired in the following described personal property and fixtures in which Mortgagor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts (including impound accounts, if any), accounts receivable, contract rights, licenses (where allowed by law), agreements, general intangibles (which shall expressly exclude, however, any general intangibles that are the exclusive property of Manager), payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Mortgagor (which shall expressly exclude, however, any trademarks that are the exclusive property of Manager); all development rights and credits, and any and all permits (where allowed by law), consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Lender to Mortgagor under any Swap Agreement; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

UNOFFICIAL COPY

Loan No. 1018346

- (b) As to all of the above described personal property which is or which hereafter becomes a “fixture” under applicable law, it is intended by Mortgagor and Lender that this Security Instrument constitutes a fixture filing filed with the real estate records of Cook County, Illinois, under the Uniform Commercial Code, as amended or recodified from time to time, from the state wherein the Property is located (“UCC”) and is acknowledged and agreed to be a “construction mortgage” under the UCC. For purposes of this fixture filing, the “Debtor” is the Mortgagor and the “Secured Party” is the Lender. A description of the land which relates to the fixtures is set forth in Exhibit A attached hereto. Mortgagor is the record owner of such land. The filing of a financing statement covering the Collateral shall not be construed to derogate from or impair the lien or provisions of this Security Instrument with respect to any property described herein which is real property or which the parties have agreed to treat as real property. Similarly, nothing in any financing statement shall be construed to alter any of the rights of Lender under this Security Instrument or the priority of Lender’s lien created hereby, and such financing statement is declared to be for the protection of Lender in the event any court shall at any time hold that notice of Lender’s priority interest in any property or interests described in this Security Instrument must, in order to be effective against a particular class of persons, including but not limited to the Federal government and any subdivision, agency or entity of the Federal government, be filed in the UCC records.
- 4.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, or will have, good title to the Collateral; (b) Mortgagor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Mortgagor’s principal place of business is located at the address set forth on the cover page of this Security Instrument.
- 4.3 **COVENANTS.** Mortgagor agrees: (a) at the sole cost and expense of Mortgagor, to execute and deliver such documents as Lender deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Lender prior written notice thereof; (c) at the sole cost and expense of Mortgagor, to reasonably cooperate with Lender in perfecting all security interests granted herein and in obtaining such agreements from third parties as Lender deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Lender is authorized to file financing statements in the name of Mortgagor to perfect Lender’s security interest in the Collateral.
- 4.4 **RIGHTS OF LENDER.** In addition to Lender’s rights as a “Secured Party” under the UCC, Lender may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Lender’s rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the

UNOFFICIAL COPY

Loan No. 1018346

Collateral or any rights or interests of Lender therein; (c) subject to the rights of tenants at the Property, inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral.

During the existence of a Default (hereinafter defined) under this Security Instrument, then in addition to all of Lender's rights as a Secured Party under the UCC or otherwise at law and in addition to Lender's rights under the Loan Documents:

- (a) Lender may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Lender at a place designated by Lender; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license or otherwise dispose of any or all of the Collateral, and store the same at locations accessible to Lender at Mortgagor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
- (b) Lender may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Lender deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Lender may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral; and
- (c) Any proceeds of any disposition of any Collateral may be applied by Lender to the payment of expenses incurred by Lender in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Lender toward the payment of the Secured Obligations in such order of application as Lender may from time to time elect.

Notwithstanding any other provision hereof, Lender shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Lender unless Mortgagor shall make an express written election of said remedy under the UCC or other applicable law. Mortgagor agrees that Lender shall have no obligation to process or prepare any Collateral for sale or other disposition. Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Lender's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice.

- 4.5 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Lender may, without the obligation to do so, in Lender's name, or in the name of

UNOFFICIAL COPY

Loan No. 1018346

Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Mortgagor under this Security Instrument; provided, however, that Lender as such attorney-in-fact shall be accountable only for such funds as are actually received by Lender.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation for which it is responsible hereunder or under the Loan Agreement when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may adversely affect Lender's rights in the Property, then Lender may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to protect the value of the Property and Lender's rights in the Property, including the retaining of outside counsel, and any amount so expended by Lender will be added to the Secured Obligations and will be payable by Mortgagor to Lender on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Mortgagor's rights to contest payment of taxes or assessments as may be provided in the Loan Agreement, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Lender by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Lender pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Lender and which are measured by and imposed upon Lender's net income.
- 5.3 **TAXES AND INSURANCE IMPOUNDS.** At any time upon the occurrence and continuance of a Default and in accordance with the other Loan Documents, at Lender's option and upon its demand, Mortgagor shall, until all Secured Obligations have been paid in full, pay to Lender monthly, annually or as otherwise directed by Lender an amount estimated by Lender to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Property or Collateral and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents when same are next due. If Lender determines that any amounts paid by Mortgagor are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Lender shall notify Mortgagor of the increased amounts required to pay all amounts when due, whereupon Mortgagor shall pay to Lender within thirty (30) days thereafter the additional amount as stated in Lender's

UNOFFICIAL COPY

Loan No. 1018346

notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Lender shall, unless Mortgagor is otherwise in Default hereunder or under any Loan Document, apply said funds to the payment of, or at the sole option of Lender release said funds to Mortgagor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon the occurrence and continuance of a Default by Mortgagor hereunder or under any Loan Document, Lender may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Mortgagor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Security Instrument, Lender shall have the right to assign in writing all amounts collected and in its possession to its assignee whereupon Lender shall be released from all liability with respect thereto. Following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Lender may elect, the balance of all amounts collected and in Lender's possession shall be paid to Mortgagor and no other party shall have any right or claim thereto. The provisions of this Section are not intended to contravene any applicable requirements of the laws of the State of Illinois, and from time to time the provisions of this Section shall be deemed modified as necessary to be in conformance with the laws of the State of Illinois (provided that the provisions of this Section shall be controlling to the extent any contrary requirements of Illinois law may be waived, and Mortgagor hereby waives those requirements of Illinois law to the fullest extent allowed).

5.4 **LIENS, ENCUMBRANCES AND CHARGES.** Subject to Section 5.4 of the Loan Agreement, Mortgagor shall immediately discharge all liens, claims and encumbrances not approved by Lender in writing that has or may attain priority over this Security Instrument. Subject to the provisions of the Loan Agreement regarding mechanics' and materialmen's liens, Mortgagor shall pay when due all obligations secured by, or which may become, liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or Collateral, or any interest therein, whether senior or subordinate hereto.

5.5 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

- (a) Except as provided below, the following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Lender and, at the request of Lender, shall be paid directly to Lender: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Lender to be maintained by Mortgagor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which

UNOFFICIAL COPY

Loan No. 1018346

may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Security Instrument, Lender may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in such order and amounts as Lender in its sole discretion may choose, and/or Lender may release all or any part of the proceeds to Mortgagor upon any conditions Lender may impose. Lender may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Lender; provided, however, in no event shall Lender be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Lender or its employees or agents.

- (b) Notwithstanding the foregoing, Lender shall permit insurance or condemnation proceeds held by Lender to be used for repair or restoration if the following conditions are met: (i) the deposit with Lender of such additional funds, if any, which Lender determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period) in excess of such proceeds; (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Lender (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Lender of plans and specifications for the work, a contract for the work signed by a contractor reasonably acceptable to Lender, a cost breakdown for the work and, if required by Lender at that time, a payment and performance bond for the work, all of which shall be acceptable to Lender; and (iv) the delivery to Lender of evidence acceptable to Lender (aa) that after completion of the work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (cc) the restoration will be complete prior to the Maturity Date; and (dd) of the satisfaction of any additional conditions that Lender may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within sixty (60) days of receipt by Lender of such insurance or condemnation proceeds, then Lender may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Lender in its sole discretion may choose. If upon completion of the work, any portion of insurance proceeds has not been disbursed to Mortgagor or if any such proceeds are not made available to Mortgagor for restoration as provided herein, Lender shall disburse such balance to pay the Secured Obligations in such order and amounts as Lender in its sole discretion may choose.
- (c) Notwithstanding anything to the contrary contained herein or any other provision of applicable law, if the insurance proceeds or condemnation award at issue does

UNOFFICIAL COPY

Loan No. 1018346

not exceed \$1,000,000, and no Default is in existence hereunder (other than a Default directly caused by the applicable casualty or condemnation, provided that Mortgagor is complying with the applicable provisions of this Security Instrument to remedy the casualty or condemnation, as the case may be), such proceeds or award shall be paid directly to Mortgagor for use in the restoration of the Property, without any requirement that the conditions set forth and described in Section 5.5(b) above be satisfied. At Lender's request, Mortgagor shall deliver to Lender evidence reasonably satisfactory to Lender that such proceeds and/or condemnation awards have been used to comply with Mortgagor's obligation to repair and restore the Property pursuant to Section 5.6(e) hereof.

- 5.6 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Subject to the provisions of the Loan Agreement and except as may be otherwise permitted in the Loan Agreement, Mortgagor covenants: (a) to insure the Property and Collateral against such risks as Lender may reasonably require as set forth in the Loan Agreement and any commercially reasonable supplemental insurance provisions or requirements provided to Mortgagor by Lender, and, at Lender's request, to provide evidence of such insurance to Lender, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Property and Collateral in good condition and repair; (c) not to remove or demolish the Property or Collateral or any part thereof (except for any initial removal or demolition required in order to initially construct the Improvements as contemplated in the Loan Documents); (d) not to alter or add to the Property or Collateral except for any initial alterations or additions required in order to initially construct the Improvements as contemplated by the Loan Documents; (e) to complete or restore promptly and in good and workmanlike manner the Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Lender elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.5 hereof; (f) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (g) not to commit or permit waste of the Property or Collateral; and (h) to do all other acts which from the character or use of the Property or Collateral may be reasonably necessary to maintain and preserve its value.
- 5.7 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Lender hereunder against all adverse claims. Mortgagor shall, within two (2) days of receiving same, give Lender prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any material damage to the Property or Collateral and of any condemnation offer or action with respect to the Property or Collateral.

UNOFFICIAL COPY

Loan No. 1018346

- 5.8 **ACTIONS BY LENDER.** From time to time, without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Lender, without liability therefor and without notice, may: (a) release all or any part of the Property from this Security Instrument; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Security Instrument.
- 5.9 **DUE ON SALE; ENCUMBRANCE.** If any Transfer of the Property occurs in violation of Article 11 of the Loan Agreement THEN Lender, in its sole discretion, may at any time thereafter, following any applicable notice and opportunity to cure, if any, declare all Secured Obligations immediately due and payable.
- 5.10 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property and Collateral or in any manner obligated under the Secured Obligations ("Interested Parties"), Lender may, from time to time and without notice to Mortgagor (i) release any person or entity from liability for the payment or performance of any Secured Obligation; (ii) take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation; or (iii) accept additional security or release all or a portion of the Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Security Instrument upon the Property, the Collateral or any other security provided herein or in the other Loan Documents.
- 5.11 **SUBROGATION.** Lender shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Lender pursuant to the Loan Documents or by the proceeds of any loan secured by this Security Instrument.
- 5.12 **RIGHT OF INSPECTION.** Upon two (2) days' prior written notice, Lender, its agents, representatives and employees, may, during normal business hours, enter any part of the Property at any reasonable time for the purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof and the other Loan Documents.
- 5.13 **COMMUNITY FACILITIES DISTRICT.** Without obtaining the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed, Mortgagor shall not consent to, or vote in favor of, the inclusion of all or any part of the Property in any assessment district, improvement district, community facilities district, special district, special improvement district, governmental district or other similar district (any such district, a "Special Assessment District"). Mortgagor shall immediately give notice to Lender of any notification or advice that Mortgagor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Property in a Special Assessment District. Lender shall have the right to file a written objection to the

UNOFFICIAL COPY

Loan No. 1018346

inclusion of all or any part of the Property in a Special Assessment District, either in its own name or in the name of Mortgagor, and to appear at, and participate in, any hearing with respect to the formation of any such district.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term “Default” shall mean (x) the occurrence of any Default as defined in any one or more of the Loan Agreement and any other Loan Document after applicable notice, if any, and opportunity to cure, if any, or (y) the occurrence of an Event of Default under any Swap Agreement (as defined therein) between Borrower and Lender.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Lender shall have each and every one of the following rights and remedies in addition to Lender’s rights under the other Loan Documents or under any Swap Agreement between Mortgagor and Lender:
- (a) With or without notice, to declare all Secured Obligations (other than Swap Agreements) immediately due and payable.
 - (b) Pursuant to the terms of a Swap Agreement between Mortgagor and Lender, terminate such Swap Agreement.
 - (c) With or without notice, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor and, in connection therewith, to enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Security Instrument or the rights or powers of Lender under this Security Instrument; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Lender, is or may be senior in priority to this Security Instrument, the judgment of Lender being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Security Instrument; or (iv) to employ outside counsel, accountants, contractors and other appropriate persons.
 - (d) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a deed of trust or mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations.
 - (e) To the extent this Security Instrument may encumber more than one property, the Lender at its sole option shall have the right to foreclose any one property or to

UNOFFICIAL COPY

Loan No. 1018346

foreclose en masse. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness to the decree for sale all costs, fees and expenses described in Section 6.6 hereof which may be paid or incurred by or on behalf of Lender to prosecute such suit, and such other costs and fees including, but not limited to, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, accounting fees, brokerage commissions, costs of whatever nature or kind to protect and avoid impairment of the Property, and other related costs and fees as shall be necessary.

- (f) To apply to a court of competent jurisdiction for and to obtain ex parte appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such ex parte appointment and waives notice of any hearing or proceeding for such ex parte appointment.
- (g) To enter upon, possess, control, lease, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Lender deems proper, to make repairs, alterations and improvements to the Property as necessary, in Lender's sole judgment, to protect or enhance the security hereof and to continue and complete construction of the Improvements of the Property as necessary in Lender's sole judgment.
- (h) To cause the Property to be sold to satisfy the Secured Obligations. Except as required by law, neither Mortgagor nor any other person or entity other than Lender shall have the right to direct the order in which the Property is sold.
- (i) To resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent actions and to apply the proceeds received upon the Secured Obligations all in such order and manner as Lender determines in its sole discretion.
- (j) Upon sale of the Property at any foreclosure sale, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, to the extent permitted by law, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), costs of any

UNOFFICIAL COPY

Loan No. 1018346

hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Lender; and (z) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

- (k) Upon the completion of any foreclosure of all or a portion of the Property, commence an action to recover any of the Secured Obligations that remain unpaid or unsatisfied.
- (l) Exercise any and all remedies at law, equity, or under the Note, Security Instrument or other Loan Documents for such Default.

6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Lender, including, without limitation, cost of evidence of title and outside attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Lender under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

6.4 **APPLICATION OF OTHER SUMS.** All sums received by Lender under this Security Instrument other than those described in Section 6.2 hereof or Section 3.2 hereof, less all costs and expenses incurred by Lender or any receiver, including, without limitation, outside attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Lender shall determine in its sole discretion; provided, however, Lender shall have no liability for funds not actually received by Lender.

6.5 **NO CURE OR WAIVER.** Neither Lender's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by

UNOFFICIAL COPY

Loan No. 1018346

Lender or any receiver shall cure or waive any breach, Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or limit or impair the status of the security, or prejudice Lender in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of or security interests created by this Security Instrument.

- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Lender immediately and without demand all costs and expenses of any kind incurred by Lender pursuant to this Article 6 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein or as allowed by applicable law. In addition, Mortgagor will pay the costs and fees for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing amounts must be paid to Lender as part of any reinstatement tendered hereunder. In the event of any legal proceedings, to the extent allowed by law, court costs and outside attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Lender.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of cessation of labor, commencement or completion of construction of the Improvements or any other notices that Lender deems appropriate to protect Lender's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Lender's security interests and rights in or to any of the Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Lender may perform any obligation of Mortgagor hereunder; provided, however, that: (i) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (ii) Lender shall not be liable to Mortgagor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Lender under this Section. Furthermore, the Mortgagor hereby authorizes Lender and its agents or counsel to file financing statements that indicate the collateral (i) as all assets of the Mortgagor or words of similar effect or (ii) as being of an equal, greater or lesser scope, or with greater or lesser detail, than as set forth in this Security Agreement and/or this Security Instrument, on behalf of the Mortgagor.

UNOFFICIAL COPY

Loan No. 1018346

- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Lender provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Lender. No failure on the part of Lender to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Lender in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Lender may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Lender shall not waive the agreement contained herein that time is of the essence, nor shall Lender waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **NOTICES.** All notices, demands, or other communications under this Security Instrument and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Security Instrument). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) Business Days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	Deerfield Senior Residences Property Owner, LLC c/o Harrison Street Real Estate Capital 71 South Wacker Drive, Suite 3575 Chicago, Illinois 60606 Attention: Stephen Gordon
With a copy to:	DLA Piper L.L.P. (U.S.) 444 West Lake Street, Suite 900 Chicago, Illinois 60606 Attention: David Sickle, Esq.
And to:	JFMC Facilities Corporation 30 S. Wells Street, Suite 5010 Chicago, Illinois 60606 Attention: Boaz Blumovitz
Lender:	Wells Fargo Bank, National Association 1750 H Street, N.W., Suite 650

UNOFFICIAL COPY

Loan No. 1018346

	Washington, D.C. 20006 Attention: Erin Peart Loan No. 1018346
With a copy to:	Wells Fargo Bank, National Association 2030 Main Street, 8th Floor Irvine California 92614 Attention: Sally Sison Loan No. 1018346

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Lender, without delay, any notices, letters or other communications delivered to the Property or to Mortgagor naming Lender or the "Construction Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Mortgagor to perform its obligations to Lender under the Loan Documents.

- 7.2 **ATTORNEYS' FEES AND EXPENSES; ENFORCEMENT.** If the Note is placed with an outside attorney for collection or if an outside attorney is engaged by Lender to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, reinforcement of rights and remedies, then in all events, Mortgagor agrees to pay to Lender all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, actual outside attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court. In the event of any legal proceedings, to the extent allowed by law, court costs and outside attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Lender.
- 7.3 **NO WAIVER.** No previous waiver and no failure or delay by Lender in acting with respect to the terms of the Note or this Security Instrument shall constitute a waiver of any breach, default, or failure of condition under the Note, this Security Instrument or the obligations secured thereby. A waiver of any term of the Note, this Security Instrument or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.
- 7.4 **SEVERABILITY.** If any provision or obligation under this Security Instrument shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Security Instrument and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of this Security Instrument.
- 7.5 **SUCCESSORS AND ASSIGNS.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Security Instrument shall bind and inure to the benefit of the nominees, successors and assigns of the parties hereto, including, without

UNOFFICIAL COPY

Loan No. 1018346

limitation, subsequent owners of the Property or any part thereof; provided, however, that this Section does not waive or modify the provisions of Section 5.8 hereof.

- 7.6 **ATTORNEY-IN-FACT.** Mortgagor hereby irrevocably appoints and authorizes Lender as Mortgagor's attorney-in-fact, which agency is coupled with an interest, and as such attorney-in-fact Lender may, to the maximum extent permitted by law, without the obligation to do so, execute and/or record in Lender's or Mortgagor's name any notices, instruments or documents that Lender deems appropriate for the sole purpose of protecting Lender's security interest granted hereunder.
- 7.7 **TIME.** Time is of the essence of each and every term herein.
- 7.8 **GOVERNING LAW AND CONSENT TO JURISDICTION.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Security Instrument, this Security Instrument shall be governed by, and construed in accordance with, the laws of the State of Illinois, it being understood that, except as expressly set forth above in this paragraph and to the fullest extent permitted by the laws of the State of Illinois, the laws of New York shall govern any and all matters, claims, controversies or disputes arising under or related to this Security Instrument, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties relating to this Security Instrument, the Loan Agreement and the other Loan Documents and all of the indebtedness or obligations arising thereunder or hereunder. Mortgagor and Lender hereby agree that the laws of the States of New York and Illinois bear a reasonable relationship to transactions contemplated in the Loan Documents. Mortgagor hereby consents to the jurisdiction of any federal or state court within the City of New York, State of New York having proper venue and also consent to service of process by any means authorized by New York or federal law.
- 7.9 **INTENTIONALLY DELETED.**
- 7.10 **HEADINGS.** All article, section or other headings appearing in this Security Instrument are for convenience of reference only and shall be disregarded in construing this Security Instrument.
- 7.11 **COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

UNOFFICIAL COPY

Loan No. 1018346

- 7.12 **POWERS OF ATTORNEY.** The powers of attorney granted by Mortgagor to Lender in this Security Instrument shall be unaffected by the disability of the principal so long as any portion of the Loan remains unpaid or unperformed or any obligation under or in connection with a Swap Agreement between Mortgagor and Lender remains unpaid or unperformed. Lender shall have no obligation to exercise any of the foregoing rights and powers in any event. Lender hereby discloses that it may exercise the foregoing powers of attorney for Lender's benefit, and such authority need not be exercised for Mortgagor's best interest.
- 7.13 **DEFINED TERMS.** Unless otherwise defined herein, capitalized terms used in this Security Instrument shall have the meanings attributed to such terms in the Loan Agreement.
- 7.14 **RULES OF CONSTRUCTION.** The word "Mortgagor" as used herein shall include both the named Mortgagor and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Mortgagor under the Note and the other Loan Documents. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Security Instrument is executed by more than one person, the term "Mortgagor" shall include all such persons. The word "Lender" as used herein shall include Lender, its successors, assigns and affiliates. The term "Property" and "Collateral" means all and any part of the Property and Collateral, respectively, and any interest in the Property and Collateral, respectively.
- 7.15 **USE OF SINGULAR AND PLURAL; GENDER.** When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural, and the masculine gender includes the feminine and/or neuter.
- 7.16 **EXHIBITS, SCHEDULES AND RIDERS.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Security Instrument by such attachment for all purposes.
- 7.17 **INCONSISTENCIES.** In the event of any inconsistencies between the terms of this Security Instrument and the terms of the Loan Agreement or Note, including without limitation, provisions regarding collection and application of Property revenue, required insurance, tax impounds, and transfers of the Property, the terms of the Loan Agreement or Note, as applicable, shall prevail.
- 7.18 **MERGER.** No merger shall occur as a result of Lender's acquiring any other estate in, or any other lien on, the Property unless Lender consents to a merger in writing and in accordance with the terms of the Loan Agreement.
- 7.19 **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property and Collateral, hereby waives all rights to have the Property and Collateral and/or any other property, which is now or later may be security for any Secured

UNOFFICIAL COPY

Loan No. 1018346

Obligation marshalled upon any foreclosure of the lien of this Security Instrument or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Lender shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or other property as a whole or in separate parcels, in any order that Lender may designate.

- 7.20 **ADVERTISING.** Subject to Section 12.28 of the Loan Agreement, in connection with the Loan, but subject to applicable law (including local ordinances) and restrictions of record, Mortgagor hereby agrees that Wells Fargo & Company and its subsidiaries ("Wells Fargo") may publicly identify details of the Loan in Wells Fargo advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Loan, the date of the closing and a description of the size/location of the Property.
- 7.21 **SUBORDINATION OF PROPERTY MANAGER'S LIEN.** Any property management agreement for the Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Property shall be subject and subordinate to the lien of this Security Instrument and shall provide that Lender may terminate such agreement at any time after the occurrence of a Default hereunder. In addition, if a property management agreement does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Lender, in recordable form, 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 Security Instrument.
- 7.22 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing. The Loan Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Security Instrument and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference.
- 7.23 **COVENANTS RUNNING WITH THE LAND.** All representations, warranties, covenants, and Secured Obligations contained in the Loan Agreement and other Loan Documents are incorporated herein by this reference and, to the extent relating to the Property, are intended by the parties to be, and shall be construed as, covenants running with the land. All persons or entities who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and

UNOFFICIAL COPY

Loan No. 1018346

the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Lender.

7.24 **INTENTIONALLY DELETED.**

7.25 **RECORDING TAXES.** Mortgagor hereby covenants to pay any and all recording or other taxes or fees due arising out of or in connection with the filing, registration, recording, execution and delivery of this Security Instrument.

7.26 **RECEIPT OF SECURITY INSTRUMENT.** Mortgagor hereby acknowledges receipt of a true copy of this Security Instrument.

7.27 **INTENTIONALLY DELETED.**

7.28 **USURY LAWS.** It is the specific intent of Mortgagor and Lender that the Note bear a lawful rate of interest, and if any court of competent jurisdiction should determine that the rate therein provided for exceeds that which is statutorily permitted for the type of transaction evidenced thereby, the interest rate shall be reduced to the highest rate permitted by applicable law, with any excess interest theretofore collected being applied against principal or, if such principal has been fully repaid, returned to Mortgagor on demand.

7.29 **STATE SPECIFIC PROVISIONS.** The terms and provisions set forth below in this Section 7.29 shall be construed, to the greatest extent possible, consistently with those set forth elsewhere in this Security Instrument as being in addition to and supplementing such other terms and provisions set forth elsewhere in this Security Instrument; however, notwithstanding anything to the contrary set forth elsewhere in this Security Instrument, in the event of any conflict or inconsistency between the terms and provisions of this Section 7.29 and the terms and provisions set forth elsewhere in this Security Instrument, the following terms and provisions of this Section 7.29 shall govern and control but only to the extent of such conflicts:

- (a) This Security Instrument is given to secure "future advances" as defined and authorized under applicable Illinois statutes, including, without limitation, 205 ILCS 5/5d, 205 ILCS 105/1-6b, 815 ILCS 205/4.1, 735 ILCS 5/15-1207 and 735 ILCS 5/15-1302. Lender is obligated under the terms of the Loan Agreement to make advances upon the satisfaction of certain conditions as provided therein, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Security Instrument is recorded, as provided in Section 15 1302(b)(1) of the Act. Mortgagor covenants and agrees that this Security Instrument shall secure the payment of all loans and advances made pursuant to the terms and provisions of the Loan Agreement, whether such loans and advances are made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Lender or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances

UNOFFICIAL COPY

Loan No. 1018346

were made on the date of the execution of this Security Instrument and although there may be no advances made at the time of the execution of this Security Instrument and although there may be no other indebtedness outstanding at the time any advance is made. The lien of this Security Instrument shall be valid as to all Secured Obligations, including future advances, from the time of its filing of record in the office of the recorder of deeds of the county in which the Property is located. The total amount of the Secured Obligations may increase or decrease from time to time, but the total unpaid principal balance of the Secured Obligations (including disbursements which Lender may make under this Security Instrument or any other document or instrument evidencing or securing the Secured Obligations) at any time outstanding shall not exceed \$111,200,000.00. This Security Instrument shall be valid and shall have priority over all subsequent liens and encumbrances, including statutory liens except taxes and assessments levied on the Property, to the extent of the maximum amount secured hereby.

- (b) The Secured Obligations of Mortgagor pursuant to the note issued under the Loan Agreement, which obligations are secured by this Security Instrument, include, among other things, the obligation to pay interest on the unpaid principal balance of the Loan described in the Loan Agreement, which interest accrues from time to time at a variable rate of interest as provided in the Loan Agreement and the Note issued thereunder.
- (c) Mortgagor represents and warrants to Lender that the proceeds of the Loan secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured by this Security Instrument constitutes (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c) and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).
- (d) Pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor is hereby notified that unless Mortgagor provides Lender with evidence of the insurance coverage required by this Security Instrument, Lender may purchase insurance at Mortgagor's expense to protect Lender's interests in the Property, which insurance may, but need not, protect the interests of Mortgagor. The coverage purchased by Lender may not pay any claim made by Mortgagor or any claim made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained the insurance as required hereunder. If Lender purchases insurance for the Property, Mortgagor will be responsible for the costs of such insurance, including interest and any other charges imposed 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 Secured Obligations secured hereby. The costs of such insurance may be greater than the cost of insurance Mortgagor may be able to obtain for itself.
- (e) It is the intention of Mortgagor and Lender that the enforcement of the terms and provisions of this Security Instrument shall be accomplished in accordance with the

UNOFFICIAL COPY

Loan No. 1018346

Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:

- (i) Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, to the maximum extent permitted by law, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Security Instrument shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Security Instrument 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 (including Lender acting as a mortgagee-in-possession) or a receiver, any powers, rights or remedies prior to or upon the occurrence and during the continuance of a Default, which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Secured Obligations and shall have the benefit of all applicable provisions of the Act.
- (ii) Wherever provision is made in this Security Instrument for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Lender shall continue in Lender as judgment creditor or mortgagee until confirmation of sale.
- (iii) All advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Security Instrument, or the Loan Agreement or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:
- (A) all advances by Lender in accordance with the terms of the Security Instrument or the Loan Agreement to: (I) preserve, maintain, repair,

UNOFFICIAL COPY

Loan No. 1018346

restore or rebuild the improvements upon the Property; (II) preserve the lien of the Security Instrument or the priority thereof; or (III) enforce the Security Instrument, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

- (B) payments by Lender of (I) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (II) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (III) other obligations authorized by the Security Instrument; or (IV) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15 1505 of the Act;
- (C) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
- (D) outside attorneys' fees and other costs incurred: (I) in connection with the foreclosure of the Security Instrument as referred to in Sections 15-1504(d)(2) and 15 1510 of the Act; (II) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of the Security Instrument or arising from the interest of Lender hereunder; or (III) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Security Instrument or the Property;
- (E) Lender's fees and costs, including outside attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15 1508(b)(1) of the Act;
- (F) expenses deductible from proceeds of sale as referred to in Section 15 1512(a) and (b) of the Act;
- (G) expenses incurred and expenditures made by Lender for any one or more of the following: (I) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (II) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (III) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the

UNOFFICIAL COPY

Loan No. 1018346

limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Section 15-1704(c)(1) of the Act; (IV) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (V) payments deemed by Lender to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (VI) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (VII) if the loan secured hereby is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (VIII) payments required to be paid by Mortgagor or Lender pursuant to any lease or other agreement for occupancy of the Property and (IX) if the Security Instrument is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

- (iv) This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(5) of Section 15 1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:
- (A) any determination of the amount of indebtedness secured by this Security Instrument at any time;
 - (B) the indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional 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 has not been waived by this Security Instrument, computation of amounts required to redeem, pursuant to Sections 15 1603(d)(2) and 1603(e) of the Act;
 - (D) determination of amounts deductible from sale proceeds pursuant to Section 15 1512 of the Act;

UNOFFICIAL COPY

Loan No. 1018346

- (E) application of income in the hands of any receiver or mortgagee in possession; and
 - (F) computation of any deficiency judgment pursuant to Sections 15 1508(b)(2), 15 1508(e) and 15 1511 of the Act;
- (v) In addition to any provision of this Security Instrument authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 and 15-1703 of the Act.
- (vi) Mortgagor acknowledges that the Property does not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.
- (vii) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.
- (viii) Mortgagor expressly agrees that for purposes of this Security Instrument and the other Loan Documents: (A) this Security Instrument and the other Loan Documents shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1, et seq. (the "Credit Agreement Act"); (B) the Credit Agreement Act applies to this transaction including, but not limited to, the execution of this Security Instrument and the Note; and (C) any action on or in any way related to this Security Instrument and each other Loan Document shall be governed by the Credit Agreement Act. No modification, amendment or waiver of, or consent to any departure by the Mortgagor from, any provision of this Security Instrument will be effective unless made in a writing signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Mortgagor will entitle the Mortgagor to any other or further notice or demand in the same, similar or other circumstance.

MORTGAGOR HEREBY DECLARES THAT MORTGAGOR HAS READ THIS SECURITY INSTRUMENT, HAS RECEIVED A COMPLETELY FILLED IN COPY OF IT WITHOUT CHARGE THEREFOR AND HAS SIGNED THIS SECURITY INSTRUMENT AS OF THE DATE AT THE TOP OF THE FIRST PAGE HEREOF.

UNOFFICIAL COPY

Loan No. 1018346

(Signatures commence on the following page.)

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Loan No. 1018346

EXHIBIT A - DESCRIPTION OF PROPERTY

Real property in the Village of Deerfield, County of Cook, State of Illinois, described as follows:

PARCEL 1:

LOT 2 IN THE FINAL PLAT OF PPF AMLI LAKE COOK ROAD SUBDIVISION BEING A SUBDIVISION OF A PART OF THE NORTHWEST QUARTER OF SECTION 5 AND PART OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 42 NORTH RANGE 12, EAST OF THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1, FOR THE PURPOSE OF ACCESS, INGRESS AND EGRESS, FOR PERSONS AND VEHICLES, OVER AND ACROSS THE LAND DESCRIBED BELOW, AS CREATED BY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS DATED MARCH 9, 1977 AND RECORDED APRIL 11, 1977 AS DOCUMENT NUMBER 23879931 AND AS AMENDED BY DOCUMENT NUMBERS AS RECORDED 24035811 AND 24433944:

THE SOUTH 47 FEET OF THE NORTH 160 FEET OF THE WEST 1/2 OF GOVERNMENT LOT 2 IN SAID NORTHWEST 1/4 OF SECTION 5 (EXCEPT THE EAST 25 FEET THEREOF TAKEN FOR HUEHL ROAD AS SHOWN ON PLAT OF DEDICATION RECORDED AS DOCUMENT NUMBER 27064780 ON APRIL 30, 1984, THE SOUTH 47 FEET OF THE NORTH 160 FEET OF THE EAST 5.00 ACRES OF THE NORTH 1/2 OF GOVERNMENT LOT 2 EXCEPT THE WEST 162.00 FEET THEREOF IN SAID NORTH EAST 1/4 OF SECTION 6, THE NORTH 113.00 FEET OF THE EAST 80.00 FEET OF THE WEST 636.40 FEET OF SAID WEST 1/2 OF GOVERNMENT LOT 2 LYING SOUTH OF THE SOUTH RIGHT-OF-WAY LINE OF COUNTY LINE ROAD IN SAID NORTH WEST 1/4 OF SECTION 5, AND THE NORTH 113.00 FEET OF THE EAST 80.00 FEET OF THE WEST 143.62 FEET OF SAID GOVERNMENT LOT 2 LYING SOUTH OF SAID RIGHT- OF-WAY LINE OF COUNTY LINE ROAD IN SAID NORTH WEST 1/4 OF SECTION 5.

PARCEL 3:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR ACCESS, INGRESS AND EGRESS AS CREATED BY GRANT OF EASEMENT RECORDED MARCH 27, 1984 AS DOCUMENT NUMBER 27021045 AND AS AMENDED BY DOCUMENT NUMBERS 27419485, 88145387 AND 88199120.

PARCEL 4:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS, AND SIGNAGE EASEMENT AS CREATED BY ACCESS AND SIGNAGE EASEMENT AGREEMENT RECORDED DECEMBER 11, 2013 AS DOCUMENT NUMBER 1334519045 AND RE-RECORDED FEBRUARY 20, 2014 AS DOCUMENT NUMBER 1405116026.

UNOFFICIAL COPY

Loan No. 1018346

PARCEL 5:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY RECIPROCAL EASEMENT AND COVENANT AGREEMENT RECORDED DECEMBER 13, 2013 AS DOCUMENT NUMBER 1334719088 AND AS AMENDED BY FIRST AMENDMENT TO RECIPROCAL EASEMENT AND COVENANT AGREEMENT RECORDED AUGUST 22, 2017 AS DOCUMENT NUMBER 1723419118.

NAI-1503919487v4

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**