

# UNOFFICIAL COPY



\*1935316097\*

Doc# 1935316097 Fee \$88.00

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING SHOULD  
BE RETURNED TO:  
Mary Ann Murray, Esq.  
QUARLES & BRADY LLP  
300 N. LaSalle Street, Suite 4000  
Chicago, Illinois 60654

STAMP FEE: \$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 12/19/2019 12:28 PM PG: 1 OF 8

## NEGATIVE PLEDGE AGREEMENT

As of December 18, 2019, this Negative Pledged Agreement ("Agreement") is made by and between **Ballpark Partners, LLC**, an Illinois limited liability company ("Pledgor"), with its office located at 2495 Pembroke Avenue, Hoffman Estates, Illinois 60169, and **OLD SECOND NATIONAL BANK**, an Illinois state banking corporation ("Bank"), with offices at 33 S. River Street, Aurora, Illinois 60506, pursuant to that certain Limited Guaranty of Payment, Performance and Obligations dated as of even date herewith between the Pledgor and Bank and that certain Loan and Security Agreement dated of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") between Level 10 Holdings Co., an Illinois corporation, and Level 10 LLC, a Minnesota limited liability company (jointly and severally, the "Borrower") and Bank

### Recitals:

- A. Pledgor owns certain real property in the County of Cook, State of Illinois, legally described on Exhibit A attached hereto (the "Property").
- B. Pledgor acknowledges that it has and will continue to derive substantial and direct benefit from Bank entering into the Loan Agreement and making the Loans (as defined therein) to Borrower.
- C. Bank requires as a condition to making the Loans to Borrower that Pledgor enter into this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Pledgor represents, warrants and covenants to Bank that Pledgor has good and indefeasible title to the entire Property in fee simple and with full power to sell, mortgage and convey it, and the Property is free of all easements, restrictions, liens, leases and encumbrances whether now existing or later created, except those matters listed on attached Exhibit B attached hereto (if any).

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JA

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2. Pledgor covenants and agrees that it shall not, without the prior written consent of Bank, (a) sell, convey, lease, mortgage, encumber or otherwise transfer the Property or any part thereof, or any interest therein, or create or permit to exist any lien or encumbrance thereon, or (b) enter into or become subject to any agreement (other than this Agreement) (i) prohibiting the creation or assumption of any lien or encumbrance upon the Property or any part thereof or any interest therein, or (ii) requiring an obligation to become secured (or further secured) by a lien or other encumbrance on the Property if another obligation is secured or further secured by a lien or other encumbrance on the Property. Any sale, conveyance, lease, mortgage, encumbrance, transfer or agreement made without such consent shall be null and void and of no force or effect.
  
3. Upon the earlier of (a) the occurrence of an event of default (an "Event of Default") under any instrument or agreement evidencing any existing or future indebtedness or obligations of Borrower to Bank or Pledgor to Bank (collectively, "Indebtedness"), and at any time thereafter, or (b) the time required in the Loan Agreement, Pledgor shall immediately upon demand by Bank authorize Bank to record the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing with respect to the Property in form and substance satisfactory to Bank and as executed by the Pledgor as of the date hereof (the "Mortgage"), for recording in the real estate records for the county where the Property is located. If Bank records the Mortgage, Pledgor shall:
  - (a) Pay to Bank on demand all costs and expenses necessary to record the Mortgage, including without limitation, all recording costs and intangible, documentary and/or stamp taxes and charges, if any, and
  - (b) Furnish to Bank, at Bank's request and at Pledgor's sole cost and expense, the following, all of which shall be in form and substance satisfactory to Bank: (i) an ALTA/ACSM survey of the Property, (ii) a mortgage title policy in an amount acceptable to Bank, insuring the Mortgage to be a valid first priority mortgage lien on the Property, together with such endorsements as Bank may require, (iii) an environmental assessment of the Property from an environmental firm acceptable to Bank, (iv) evidence of fire and extended coverage insurance designating Bank as mortgagee under a standard mortgagee's clause, in an amount satisfactory to Bank, and evidence of flood insurance if required by Bank, (v) evidence of public liability insurance providing at coverage satisfactory to Bank, and (vi) such other documents and information as the Bank may reasonably require with respect to the Property and the Mortgage, including but not limited to an environmental indemnity agreement in form and substance satisfactory to Bank.

If Pledgor fails to comply with any of its obligations under paragraphs (a) or (b) above, then Bank may, without being under any obligation to do so, pay and perform Pledgor's obligations thereunder, but without waiving any Event of Default, and Pledgor shall reimburse Bank on demand for the cost thereof, and until paid such amounts shall bear interest at the highest rate of interest permitted under the Loan Agreement.
  
4. Pledgor agrees to execute, from time to time, such documents as Bank may deem necessary or desirable to effectuate the purpose and intent of this Agreement. Pledgor hereby irrevocably appoints Bank attorney-in-fact for Pledgor to execute on Pledgor's behalf any and all such documents.

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5. Bank may record this Agreement in the real estate records for the county where the Property is located to give record notice of the existence hereof.
6. The recitals hereto are incorporated herein by this reference.
7. No single or partial exercise, or delay in the exercise, of any right or power under this Agreement, shall preclude other or further exercise of the rights and powers under this Agreement. The unenforceability of any provision of this Agreement shall not affect the enforceability of the remainder. This Agreement constitutes the entire agreement of Pledgor and Bank with respect to the subject matter of this Agreement. No amendment of this Agreement shall be effective unless the same shall be in writing and signed by Pledgor and an authorized officer of Bank. This Agreement shall be binding on Pledgor and Bank and on Pledgor's and Bank's successors and assigns including, without limit, any debtor in possession or trustee in bankruptcy for Pledgor. This shall not be deemed a consent by Bank to a conveyance by Pledgor of all or part of the Property or of any ownership interest in Pledgor. This Agreement remains effective whether the Indebtedness is from time to time reduced and later increased or entirely extinguished and later reincurred, and may be terminated only in a writing signed by Bank. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Illinois.
8. Promptly upon the request of Bank, Pledgor shall execute, acknowledge and deliver all further documents, and do all further acts as Bank may require in its sole discretion to confirm and protect the rights of Bank under this Agreement and the lien of the Mortgage (upon recording thereof) or otherwise to accomplish the purposes of this Agreement.
9. Nothing in this Agreement shall be construed to preclude Bank from pursuing any available remedy provided by law for the collection of the Indebtedness or enforcement of its rights upon an Event of Default. No waiver of default or consent to any act by Pledgor shall be effective unless in writing and signed by an authorized officer of Bank. No waiver of any default or forbearance on the part of Bank in enforcing any of its rights under this Agreement shall operate as a waiver of any other default or of the same default on a future occasion or of any rights.
10. All notices and demands required or permitted to be given to Pledgor shall be deemed given when delivered to Pledgor or when placed in an envelope addressed to Pledgor at the address above, or at such other address as Bank may have on its records, and deposited, with postage, in a depository under the custody of the United States Postal Service or delivered to an overnight delivery courier. The mailing may be certified, first class or overnight delivery mail.
11. To the extent that any of the Indebtedness is payable upon demand, nothing contained in this Agreement shall modify the terms and conditions of that Indebtedness nor prevent Bank from making demand, without notice and with or without reason, for immediate payment of any or all of that Indebtedness at any time(s), whether or not an Event of Default has occurred.
12. Notwithstanding any prior revocation, termination or discharge of this Agreement, (except as to the rights of subsequent intervening bona fide purchasers or lienholders) the effectiveness of this Agreement shall automatically continue or be reinstated in the event that (a) any payment received or credit given by Bank in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of trust funds, or otherwise under any applicable law, in which case this Agreement shall be enforceable as if the returned, disgorged or rescinded payment or credit had not been received or given, whether or not Bank relied upon this payment or credit or changed its position as a consequence of it; or (b) any

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liability is sought to be imposed against Bank relating to any matter as to which Pledgor agreed to indemnify Bank under this Agreement, in which case this Agreement shall be enforceable to the extent of all liability, costs and expenses (including, without limit, attorney fees) incurred by Bank as the direct or indirect result thereof. In the event of continuation or reinstatement of this Agreement, Pledgor agrees upon demand by Bank to execute and deliver to Bank those documents which Bank determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of Pledgor to do so shall not affect in any way the reinstatement or continuation. If Pledgor does not execute and deliver to Bank upon demand such documents, Bank and each employee of Bank is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of Pledgor (with full power of substitution) to execute and deliver such documents in the name and on behalf of Pledgor.

13. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same original instrument.
14. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PLEDGOR AND BANK EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. PLEDGOR AND BANK AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.
15. JURISDICTION AND VENUE. MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR, IF BANK INITIATES SUCH ACTION, ANY COURT IN WHICH BANK SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY BANK IN ANY OF SUCH COURTS. MORTGAGOR WAIVES ANY CLAIM THAT COOK COUNTY, ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY BANK OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY BANK OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVE THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

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**PLEDGOR:****BALLPARK PARTNERS LLC,**  
an Illinois limited liability companyBy: NA  
Name: Christine L. Pruban  
Title: ManagerBy: John J. Pruban  
Name: John J. Pruban  
Title: ManagerSTATE OF Illinois )  
  ) ss  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT ~~Christine L. Pruban~~ and John J. Pruban, personally known to me to be the Managers of Ballpark Partners, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Managers he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said company on behalf of said company, for the uses and purposes therein set forth.

Alexander Rodriguez  
NOTARY PUBLIC, STATE OF ILLINOIS  
Alexander Rodriguez  
(Print, Type of Stamp Commissions Name of Notary  
Public)Commission No. 896142  
My Commission Expires: June 7, 2023

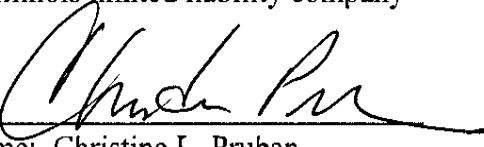
(SEAL)

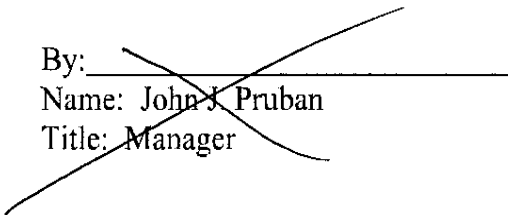


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**PLEDGOR:**

**BALLPARK PARTNERS LLC,**  
an Illinois limited liability company

By:   
Name: Christine L. Pruban  
Title: Manager

By:   
Name: John J. Pruban  
Title: Manager

STATE OF Illinois )  
COUNTY OF Cook ) ss

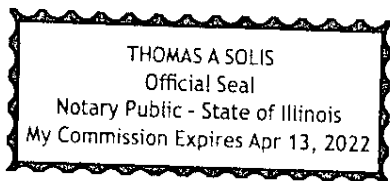
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Christine L. Pruban and John J. Pruban, personally known to me to be the Managers of Ballpark Partners, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Managers he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said company on behalf of said company, for the uses and purposes therein set forth.

  
NOTARY PUBLIC, STATE OF ILLINOIS

Thomas Solis  
(Print, Type of Stamp Commissions Name of Notary Public)

Commission No. N/A  
My Commission Expires: 4/13/2022

(SEAL)



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**BANK:**

**OLD SECOND NATIONAL BANK**

By: *Peter B. Harrison, Jr.*  
 Name: Peter B. Harrison, Jr.  
 Title: Senior Vice President

STATE OF Illinois)  
 ) SS  
 COUNTY OF Cook)

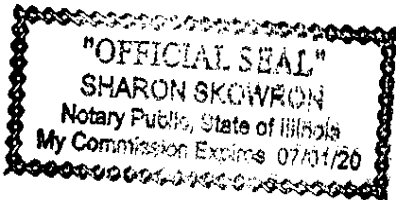
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Peter B. Harrison, Jr. personally known to me to be a Senior Vice President of Old Second National Bank, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Senior Vice President he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of said bank on behalf of said bank, for the uses and purposes therein set forth.

*Sharon Skowron*

NOTARY PUBLIC, STATE OF ILLINOIS

Sharon Skowron

(Print, Type or Stamp Commission Name of Notary Public)



Commission No. 666161

My Commission Expires 7-1-2020

(SEAL)

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## EXHIBIT A

### DESCRIPTION OF REAL ESTATE

LOT 18 IN THE BARRINGTON SQUARE INDUSTRIAL CENTER UNIT 2, BEING A SUBDIVISION OF PARTS OF FRACTIONAL SECTION 6, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 17, 1971 AS DOCUMENT 21588415 IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 2495 PEMBROKE AVE, HOFFMAN ESTATES, IL 60169

PERMANENT INDEX NUMBER: 07-06-102-011-0000