

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



2032240108

Doc# 2032240108 Fee \$88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 11/17/2020 03:57 PM PG: 1 OF 18

CC#172005750 LT 1 of 2 CFC

The property identified as: PIN: 20-23-211-006-0000

Address:

Street: 6511 S Woodlawn Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60637

Lender: Community Vision Capital & Consulting

Borrower: Cullen Davis

Loan / Mortgage Amount: \$343,000.00

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

Certificate number: 448630DE-832E-48BD-BE5F-C1645B78A608

Execution date: 11/10/2020

S
P
S
M
SC
E
INT

UNOFFICIAL COPY

Recording Requested By
And When Recorded Mail To:

Community Vision Capital & Consulting
870 Market Street, Suite 677
San Francisco, California 94102
Attention: Director of Loan Closing and
Administration

Re: Butterfly Gardens-- Loan #649

Space Above For Recorder's Use

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

Loan Documents Date: November 10, 2020
Loan Amount: \$343,000
Mortgagor: Cullen J. Davis

Mortgagor's Address:
Street: 7370 N. Lincoln Avenue, Suite A
City/State: Lincolnwood, IL 60712
Attention: Name:
Title:

Property Address:
Street: 6511 S. Woodlawn Avenue
City/State/Zip: Chicago, IL 60637

Defined terms used herein shall be defined as they are defined above and herein. Terms used but not defined herein shall be defined as they are in the Loan Agreement.

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage"), is made as of the Loan Documents Date by CULLEN DAVIS, an individual, (the "MORTGAGOR") to COMMUNITY VISION CAPITAL & CONSULTING, a California nonprofit public benefit corporation, (the "MORTGAGEE") with offices located at 870 Market Street, Suite 677 San Francisco, California.

WITNESSETH, that to secure the payment of an indebtedness in the principal sum of the \$343,000 evidenced by the promissory note secured by mortgage executed by UPH Butterfly Gardens, L.P., a California limited partnership, (the "Borrower") an entity affiliated with Mortgagee, to the order of Mortgagee (as amended, supplemented, renewed, extended, amended and restated or otherwise modified from time to time, the "Note") and that certain Loan and Disbursement Agreement by and between Borrower and Mortgagee (as amended, supplemented, renewed, extended, amended and restated or otherwise modified from time to time, the "Loan Agreement"), both dated as of the Loan Documents Date, which sum, with interest thereon is to be

UNOFFICIAL COPY

paid by Borrower to Mortgagee in accordance with the terms of the Note and Loan Agreement; and to further secure the performance of each covenant, term and provision by Borrower to be performed pursuant to this Mortgage, the Note, the Loan Agreement and any other document executed by Borrower in connection with the Loan (as that term is defined in the Loan Agreement, the "Loan") (this Mortgage, the Note, the Loan Agreement, the Guaranty (as that term is defined in the Loan Agreement), and such other documents evidencing and securing the Loan to be collectively referred to as the "Loan Documents") (the "Secured Obligations"), Mortgagor hereby mortgages, warrants, grants, bargains, sells, releases, conveys, assigns, transfers, confirms, and grants a security interest in and to Mortgagee, its successors and assigns, the following described property, rights, interests and estates (the "Mortgaged Property") whether now owned or held or hereafter acquired, for the benefit of Mortgagee, its successors and assigns, together with the rents, issues, and profits, for the purpose of securing payment of the indebtedness:

ALL THAT TRACT OR PARCEL OF LAND located at the Property Address, being the same premises described in Exhibit "A" hereto annexed and made a part hereof (the "Premises").

ALL RIGHT, TITLE AND INTEREST of Mortgagor in and to any and all buildings, structures and improvements, including without limitation, the foundations and footings thereof and any fixtures attached thereto, now or at any time erected, constructed or situated upon all or any part of the Premises (the "Improvements").

TOGETHER with all right, title and interest, if any, of Mortgagor in and to the bed of any street, road or avenue, opened or proposed, in front of, adjoining or abutting upon the Premises to the center line thereof.

TOGETHER with any and all awards made to any owner of the Premises by any governmental or other lawful authorities for the taking by eminent domain of the whole or any part of the Premises, or any easement therein, including any awards for any changes of grade of streets, which awards are assigned to Mortgagee.

TOGETHER with any and all proceeds from and rights to (including, without limitation, payments, judgments, awards, settlements, contract rights, profits, general intangibles, rebates and benefits and rights at law and in equity) any insurance policies now or hereafter in effect with respect to the Mortgaged Property, including, without limitation, casualty insurance, rental loss or business interruption insurance and flood and earthquake insurance, whether or not such policies contain a mortgage clause/lender's loss payable endorsement in favor of Mortgagee and whether or not such policies are required to be maintained by Mortgagor pursuant to the Loan Documents, and all insurance proceeds.

TOGETHER with all right, title and interest, if any, of Mortgagor to all personal property (both tangible and intangible) that is contained in or used in connection with the Premises and Improvements, including all Equipment, General Intangibles, Payment Intangibles, Software, Accounts, Securities, Investment Property, Financial Assets and Securities Entitlements (each as defined in the Uniform Commercial Code), licenses, certificates of occupancy, contracts, management agreements, operating agreements, operating covenants, franchise agreements, permits and variances relating to the Premises or the Improvements.

TOGETHER with all leases, subleases, licenses, franchises, concessions or grants of other possessory interests, tenancies, and any other agreements affecting the use, possession or occupancy of the Premises and Improvements or any part thereof, whether now or hereafter

UNOFFICIAL COPY

existing or entered into (including, without limitation, any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code entitled "Bankruptcy" as amended from time to time, or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Premises and Improvements) and all guarantees, amendments, modifications, supplements, extensions or renewals thereof, whether now or hereafter existing (collectively, the "Leases").

TOGETHER with all rents, including without limitation percentage rent and additional rent (including tenant tax and operating expense reimbursements), moneys payable as damages or in lieu of rent, revenues, parking revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, income, receipts, royalties, receivables, and termination payments, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and Improvements, including all such amounts paid under or arising from any of the Leases (collectively, the "**Rents**").

TOGETHER with, all interests, estate or other claims in law and in equity which Mortgagor now has or may hereafter acquire in the Premises.

TOGETHER with, all easements, rights-of-way and rights pertaining thereto or as a means of access thereto, and all tenements, hereditaments and appurtenances thereto.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, its successors and assigns, PROVIDED ALWAYS that if Mortgagor shall repay to Mortgagee the Loan together with all interest and other amounts owed under the Loan Documents, the Mortgaged Property and the estate hereby granted shall terminate.

AND Mortgagor covenants with Mortgagee as follows:

1. Representations. Mortgagor hereby represents and warrants to Mortgagee as follows:

(a) Mortgagor owns the Mortgaged Property in fee simple free and clear of all liens and encumbrances, except for the matters set forth in that certain title policy furnished to and accepted by Mortgagee pursuant to the Loan Agreement (the "**Encumbrances**"). The Encumbrances do not materially interfere with the use or occupancy of the Mortgaged Property as of the date of this Mortgage. This Mortgage is and will remain a valid and enforceable second (2nd) lien on the Mortgaged Property, subject only to the Encumbrances.

(b) Mortgagor has sufficient rights of way or easements for ingress and egress to and from the Mortgaged Property for the use of the Mortgaged Property and for all utilities required to serve the Mortgaged Property.

(c) The Mortgaged Property has not been materially damaged or injured and has not been the subject of any taking, and to the knowledge of Mortgagor, no taking is pending or contemplated.

(d) Mortgagor has no defenses or offsets to the Mortgage or the indebtedness secured by the Note.

UNOFFICIAL COPY

(e) Mortgagor has not executed any contract or caused or permitted any work to be initiated with respect to the Mortgaged Property regarding architectural, engineering, environmental, contracting, or legal work which could result in a lien on the Mortgaged Property.

(f) There are no judgments against the Mortgagor or the Guarantor, which may have a material adverse impact on the Mortgaged Property.

(g) Neither Mortgagor, nor any of its constituents or affiliates, are in violation of any laws relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (the “**Executive Order**”) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the “**Patriot Act**”).

(h) Neither Mortgagor, nor any of its constituents or affiliates, any of its brokers or other agents acting or benefiting in any capacity in connection with the Loan is a “**Prohibited Person**” which is defined as follows:

- (i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to the Executive Order;
- (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) a person or entity with whom Mortgagee is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering Law, including the Executive Order and the Patriot Act;
- (iv) a person or entity who commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order;
- (v) a person or entity that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <https://www.treasury.gov/ofac/downloads/sdnlist.pdf> or at any replacement website or other replacement official publication of such list; and
- (vi) a person or entity who is affiliated with a person or entity listed above.

(i) Neither Mortgagor, nor any of its affiliates or constituents, any of its brokers or other agents acting in any capacity in connection with the Loan or to Mortgagor’s knowledge as of the date hereof the seller of the Mortgaged Property (if any portion of the Mortgaged Property is being acquired with proceeds of the Loan), is or will (i) conduct any business or engage in any transaction or dealing with any Prohibited Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act.

UNOFFICIAL COPY

(j) Mortgagor acknowledges that the Mortgaged Property does not include "agricultural real estate" or "residential real estate" as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219.

(k) The proceeds of the obligations secured hereby shall be used solely for business purpose, and the entire principal obligations secured by this Mortgage constitute (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).

2. Intentionally Deleted.

3. Alterations. No Improvements or personal property located on the Mortgaged Property shall be removed, demolished or materially altered without the prior written consent of Mortgagee.

4. Assignment of Leases. Mortgagor hereby assigns any and all current and future Leases and Rents of the Mortgaged Property to Mortgagee absolutely and unconditionally and not merely as additional collateral or security for the payment and performance of the obligations under the Loan Documents. The Leases and Rents are subject to a revocable license back to Mortgagor of the right to collect, receive, use and enjoy the Rents (excluding however any Lease termination, cancellation, option or similar payments, which Mortgagor agrees shall be held in trust and turned over to Mortgagee to be applied in accordance with the Loan Documents) unless and until an Event of Default (defined in Section 21 below) occurs, at which time the license will terminate automatically and Mortgagee shall immediately be entitled to possession of all Rents and sums due under any Leases, whether or not Mortgagee enters upon or takes control of the Premises. Mortgagor agrees to collect and hold all Rents in trust for Mortgagee and to use the Rents for the payment of the cost of operating and maintaining the Premises and for the payment of the indebtedness in accordance with the Note before using the Rents for any other purpose. This assignment shall not constitute any permission to Mortgagor on behalf of Mortgagee to enter into any such Leases without the consent of the Mortgagee in its discretion, as set forth in Subsection 9(a). Mortgagor hereby authorizes and directs the lessees named in the Leases or any other future lessees or occupants of the Premises to pay over to Mortgagee or to such other party as Mortgagee directs all Rents and all sums due under any Leases upon receipt from Mortgagee of written notice to the effect that Mortgagee is then the holder of this Mortgage and that an Event of Default exists, and to continue so to do until otherwise notified by Mortgagee.

5. Security Agreement and Fixture Filing.

(a) The Mortgaged Property includes both real and personal property, and this Mortgage is a real property mortgage and also a personal property "security agreement" and a "financing statement" within the meaning of the Uniform Commercial Code. By executing and delivering this Mortgage, Mortgagor grants to Mortgagee, as additional collateral for the obligations secured by this Mortgage, a security interest in all such personal property to the full extent that any of the Mortgaged Property may be subject to the Uniform Commercial Code.

(b) Certain of the Mortgaged Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Premises, described or referred to in this Mortgage, and this Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon

UNOFFICIAL COPY

such of the Mortgaged Property that is or may become fixtures. For purposes of this fixture filing, "Debtor" is Mortgagor and the "Secured Party" is Mortgagee. Mortgagor is the record owner of the Premises.

6. Appointment of Receiver. Mortgagee in any action to foreclose this Mortgage shall be entitled, to the extent permitted by law, without notice and as a matter of right and without regard to the adequacy of any security of the indebtedness as provided in the Note or the Loan Agreement or the solvency of Mortgagor, upon application to any court having jurisdiction, to the appointment of a receiver of the Rents, income and profits of the Mortgaged Property.

If an Event of Default occurs under this Mortgage and the repayment of the Loan has been accelerated, as a matter of right and without regard to the adequacy of any security for the Note, the Mortgagor, upon demand of the Mortgagee, shall surrender the possession of all or any part of the Mortgaged Property and/or shall hold, operate and manage the same, and from time to time make all needed repairs and improvements as Mortgagee shall deem reasonably prudent; and Mortgagee may sell the Mortgaged Property or any part thereof, or institute proceedings for the complete or partial foreclosure of the lien of this Mortgage on the Mortgaged Property, or lease the Premises or any part thereof in the name and for the account of the Mortgagor or Mortgagee and collect, receive and sequester the Rents, revenues, earnings, income, products and profits therefrom, and out of the same and any other monies received hereunder pay or provide for the payment of all proper and reasonable costs and expenses of taking, holding, leasing, selling and managing the same, including reasonable compensation to Mortgagee, its agents and counsel, and any charges of Mortgagee hereunder, and any taxes and other charges prior to the lien of this Mortgage which Mortgagee may deem it reasonably prudent to pay.

7. Statement of Amount Due. If requested by Mortgagor, Mortgagee shall provide a written statement of the amounts due under this Mortgage. If requested by Mortgagee, Mortgagor shall provide the requesting party a written statement describing any offsets or defenses that exist against the indebtedness, or if none, so state.

8. Sale in One Parcel or Separate. Should the Premises consist of more than one parcel, in the event of a foreclosure of this Mortgage or any mortgage at any time consolidated with this Mortgage, Mortgagor agrees that Mortgagee shall be entitled to a judgment directing the referee appointed in the foreclosure proceeding to sell all of the parcels constituting the Premises at one foreclosure sale, either as a group or separately and that the Mortgagor expressly waives any right that it may have to (i) request or require that the parcels be sold separately or (ii) request, if Mortgagee has elected to sell parcels separately, that there be a determination of any deficiency amount after any such separate sale or otherwise require a calculation of whether said parcel or parcels separately sold were conveyed for their "fair market value".

9. Covenants.

(a) Mortgagor shall not without the written consent of Mortgagee: (i) sell, convey or encumber all or any part of the Mortgaged Property, (ii) lease all or any portion of the Mortgaged Property or (iii) make any new or additional mortgage or enter into any other loan secured by all or any portion of the Mortgaged Property.

(b) Mortgagor shall not abandon the Mortgaged Property. Mortgagor shall keep the Mortgaged Property in good, safe and insurable condition and shall make all reasonably necessary repairs.

UNOFFICIAL COPY

(c) Mortgagor shall comply with all mortgages, agreements, promissory notes, covenants, restrictions, easements and other matters affecting the Mortgaged Property and the requirements of any insurance company insuring the Mortgaged Property.

(d) Mortgagor shall not initiate, join in, or consent to any changes to any covenants, easements or other matters, limiting or defining the uses of all or any portion of the Mortgaged Property without the written consent of the Mortgagee.

(e) Mortgagor shall cause the Mortgaged Property to comply with all laws, rules and regulations applicable to the Mortgaged Property.

(f) Mortgagor shall keep this Mortgage as a valid and enforceable second (2nd) mortgage lien upon the Mortgaged Property, subject only to the Encumbrances, and shall not allow any other liens or encumbrances upon any part of the Mortgaged Property without first obtaining the consent of Mortgagee.

(g) Mortgagor will pay all taxes and assessments (including sewer rates or water rates) assessed against the Mortgaged Property prior to delinquency. Mortgagor shall pay any and all taxes imposed against the Mortgage.

(h) Mortgagor shall maintain insurance policies with respect to the Mortgaged Property as required under the Loan Agreement and any other Mortgagee approved mortgage.

(i) Mortgagor shall not commit or permit waste, impairment, or deterioration of the Mortgaged Property.

10. Books and Records. Mortgagor shall keep and maintain complete books of accounts and records of the Mortgaged Property and copies of all written contracts, leases and other agreements which affect the Mortgaged Property. Mortgagor shall, upon one (1) business days' notice, provide Mortgagee with reasonable access to such books, records, contracts, Leases and other agreements.

11. Casualty and Restoration.

(a) Mortgagor shall promptly notify Mortgagee of any damage or destruction of the Improvements ("**Casualty**"). The notice shall describe in reasonable detail the nature and extent of the Casualty, the work required to restore the Improvements and the Mortgagor's estimate of the cost of the restoration. Following a Casualty, the Mortgagor shall promptly take all necessary action to preserve the undamaged portion of the Improvements and to protect against personal injury or property damage.

(b) After any Casualty, Mortgagor shall promptly commence and pursue to completion the restoration of the Improvements. In the event of a Casualty, that Mortgagee in its sole discretion deems to be substantial, Mortgagee shall have the right to waive this requirement and apply the proceeds to the outstanding principal balance of the Loan and accrued interest.

(c) After any Casualty, the Mortgagor shall promptly make a claim under its applicable insurance policies and pursue to conclusion its claim for any insurance proceeds. If Mortgagee receives any insurance proceeds on account of a Casualty, Mortgagee shall deposit the proceeds in a restoration account to be established for such purpose by Mortgagee. So long as no Event of Default has occurred and is continuing, Mortgagee shall make the insurance proceeds (less

UNOFFICIAL COPY

any costs incurred by Mortgagee in collecting proceeds) available for restoration of the Mortgaged Property if and only if Mortgagor first provides proceeds in the amount of any applicable deductible and if, following restoration, Mortgagee will be returned to the same position as Mortgagee occupied before the Casualty occurred. If any proceeds remain in the account after the restoration is completed, so long as no Event of Default has occurred and is continuing, the excess shall be paid to Mortgagor.

12. Condemnation. Any and all awards made to Mortgagor and all subsequent owners of the Mortgaged Property by any governmental or other lawful authorities for the taking by eminent domain of the whole or any part of the Mortgaged Property or any easement therein, including any awards for any changes of grade of streets, are hereby assigned to Mortgagee. Mortgagee is authorized to collect and receive the proceeds of any such awards from such authorities, to give proper receipts and acquittances therefor and to apply the same toward the payment of the amount owing on account of this Mortgage and said indebtedness, notwithstanding the fact that the amount owing thereon may not then be due and payable. Mortgagor agrees, upon request, to execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid awards to Mortgagee free of all encumbrances. Mortgagor shall continue to make all payments required by the Note until any such award shall have been actually received by Mortgagee. Mortgagor authorizes Mortgagee, at Mortgagee's option, and Mortgagor hereby appoints Mortgagee as attorney in fact for Mortgagor, coupled with an interest, to commence, appear in and prosecute in Mortgagor's or Mortgagee's name, any action or proceeding relating to any condemnation or other taking of the Mortgaged Property and to settle or compromise any claim in connection with such condemnation or other taking.

13. Access. Mortgagee shall, upon one (1) business day's prior notice to Mortgagor, have the right to enter upon the Mortgaged Property during reasonable business hours.

14. Performance of Mortgagor's Covenants by Mortgagee. Upon the occurrence and during the continuance of any Event of Default under this Mortgage (other than clause (g) of Section 21), Mortgagee may, at the option of Mortgagee, after providing ten (10) days' prior written notice to Mortgagor, perform any obligations not being performed by Mortgagor, and the reasonable cost (with interest at the Default Rate as provided in the Note), to perform shall immediately be due from Mortgagor to Mortgagee and secured by this Mortgage.

15. Remedies. The rights and remedies herein afforded to Mortgagee shall be cumulative and supplementary to and not exclusive of any other rights and remedies afforded the holder of this Mortgage or the other Loan Documents. Mortgagee shall have all rights and remedies available to a Mortgagee as a matter of law in the State where the Mortgaged Property is located. Mortgagee shall have the right from time to time to take action to recover any amounts of past due principal indebtedness and interest thereon, or any installment of either, or any other sums required to be paid under the covenants, terms and provisions of this Mortgage or the Note, as the same become due, whether or not the principal indebtedness secured, or any other sums secured by the Note or this Mortgage shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for default or defaults by Mortgagor existing at the time such earlier action was commenced.

16. Additional Acts and Documents. Mortgagor agrees that it will do, execute, acknowledge, deliver, file and/or record, or cause to be recorded every and all such further acts, deeds, conveyances, advances, mortgages, transfers and assurances, in law as Mortgagee shall reasonably require for the better assuring, conveying, transferring, mortgaging, assigning and confirming unto Mortgagee all and singular the Mortgaged Property.

UNOFFICIAL COPY

17. Successors. All of the provisions of this Mortgage shall inure to the benefit of Mortgagee and of any subsequent holder of this Mortgage and shall be binding upon Mortgagor and each subsequent owner of the Mortgaged Property.

18. Effect of Releases. Mortgagee, without notice, may release any part of the security, or any person or entity liable for any indebtedness (including any guaranties) secured hereby without in any way affecting the lien upon the part of the security not expressly released. Mortgagee may agree with any party obligated on such indebtedness to extend the time for payment of any part or all of such indebtedness without releasing or impairing the lien of this Mortgage.

19. Waivers. Mortgagor waives the benefit of any laws relating to appraisal, valuation, stay, extension, marshalling of assets, redemption, reinstatement, moratorium, homestead, and exemption rights. Without limiting the generality of the previous sentence, Mortgagor hereby irrevocably waives, pursuant to 735 ILCS 5/15-1601, any and all rights of reinstatement (including, without limitation, all rights provided in 735 ILCS 5/15-1602) or redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage (including, without limitation, all rights provided in 735 ILCS 5/15-1603) or under any power contained in this Mortgage or under any sale pursuant to any statute, order, decree or judgment of any court. No course of action or delay or omission of Mortgagee in exercising any right or remedy shall constitute or be deemed a condition of exercising any right or remedy and a waiver on one occasion shall not operate as a bar to or a waiver of any such right or remedy on any further occasion.

20. Mortgagee Not Obligated. Mortgagee may, after providing Mortgagor with ten (10) days' prior written notice, pay any overdue tax, assessments or insurance premium with respect to the Mortgaged Property. However, Mortgagee shall have no obligations to make such payment and Mortgagee shall not be liable in any way for loss or damage resulting from the non-payment of any such insurance premiums, taxes or assessments.

21. Events of Default. The outstanding principal balance of the Loan and accrued interest, and all other sums due and payable under the Loan Documents shall become due, at the option of Mortgagee, if one or more of the following events (each an "Event of Default") shall happen:

(a) The occurrence beyond any applicable notice and/or cure periods of an Event of Default under any of the Loan Documents;

(b) Any misrepresentation made by Mortgagor in this Mortgage;

(c) The removal, demolition or material alteration, in whole or in material part, of any Improvement or personal property on the Mortgaged Property other than in accordance with Section 3;

(d) Failure of Mortgagor to comply with any statute, requirement, or decree of any governmental authority relating to the use of the Mortgaged Property;

(e) Failure of Mortgagor, in the event of the entry of a final judgment for the payment of money in excess of \$25,000 against Mortgagor, to discharge such judgment or to have it stayed pending appeal within sixty (60) days' from its date of entry or if such judgment is affirmed on appeal, failure to discharge such judgment within sixty (60) days' from the date of entry of such affirmance;

UNOFFICIAL COPY

(f) Failure of Mortgagor to perform any and all obligations provided for under any documents and/or instruments evidencing any other mortgage or other agreement affecting the Mortgaged Property and/or the existence of a “default”, “event of default” or “Event of Default” under any such documents and/or instruments;

(g) Failure of Mortgagor within five (5) days’ of notice and demand to allow Mortgagee to inspect the Mortgaged Property;

(h) Default in the observance or performance of any covenant or agreement under Section 3 or under clauses (a), (b) or (f) of Section 9;

(i) Default in the observance or performance of any covenant or agreement under this Mortgage which is not susceptible to cure, or default for thirty (30) days’ after notice and demand in the observance or performance of any other covenant or agreement under this Mortgage;

(j) The commencement by the Guarantor of any proceeding relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors; or

(k) The commencement against the Guarantor of any proceeding seeking winding-up, liquidation, dissolution, or other relief with respect to Guarantor’s debts.

22. Interest to Accrue. All sums advanced by Mortgagee pursuant to this Mortgage and all other sums advanced or costs incurred by Mortgagee to enforce or defend its rights and remedies under the Loan Documents, preserve or protect its interest in the Mortgaged Property or foreclose this Mortgage, including reasonable attorneys’ fees, shall bear interest at the Default Rate and shall be added to the indebtedness secured hereunder.

23. Terms. It is understood and agreed that the words “Mortgagor” and “Mortgagee” herein shall include the respective heirs, successors and assigns of Mortgagor and Mortgagee.

24. Entire Agreement. This Mortgage and the other Loan Documents constitute the entire understanding between Mortgagor and Mortgagee with respect to the Loan.

25. Governing Law; Severability. This Mortgage shall be governed by and construed in accordance with the laws of the State in which the Premises is located. If any provision of this Mortgage shall be illegal, invalid or unenforceable, such finding shall not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such illegal, invalid or unenforceable provision had never been herein.

26. Environmental Matters.

(a) Mortgagor may have furnished, or may be required in the future to furnish, an environmental report respecting the presence of Hazardous Substances at, upon, under or within the Mortgaged Property or any contiguous real estate. Mortgagor represents that, except as specifically disclosed in such report or reports delivered by Mortgagor to Mortgagee, (i) it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (each a “**Hazardous Substance**”), as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the “**Hazardous Waste Laws**”), at, upon, under or within the Mortgaged

UNOFFICIAL COPY

Property or any contiguous real estate, and (ii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substance at, upon, under or within the Mortgaged Property or on any contiguous real estate.

(b) Mortgagor further represents that it has not been nor will be involved in operations at, upon, under or within the Mortgaged Property, which operations could lead to the imposition of liability on Mortgagor or on any subsequent or former owner of the Mortgaged Property or the creation of a lien on the Mortgaged Property under the Hazardous Waste Laws.

(c) Mortgagor shall comply in all respects with the requirements of the Hazardous Waste Laws and shall notify Mortgagee promptly in the event of any discharge or discovery of any Hazardous Substance at, upon, under or within the Mortgaged Property. Mortgagor shall promptly forward to Mortgagee copies of all orders, notices, permits, applications or other communications in connection with any discharge or the presence of any Hazardous Substance or any other matters relating to the Hazardous Waste Laws as they may affect the Mortgaged Property.

(d) Mortgagor acknowledges that Mortgagee has agreed to make the Loan in reliance upon the representations and covenants of the Mortgagor in this Section 26. All of the representations and covenants of this Section 26 shall survive the repayment of the Note and/or the release of the lien of the Mortgage from the Mortgaged Property and shall survive the transfer of any or all right, title and interest in and to the Mortgaged Property by Mortgagor to any party. Notwithstanding anything set forth herein to the contrary, this Mortgage does not secure that certain Unsecured Environmental Indemnity Agreement of even date herewith executed by Mortgagor and Guarantor.

27. Venue Waiver of Jury Trial. In connection with any suit, action or proceeding arising out of or relating to this Mortgage, Mortgagor (i) irrevocably consents and submits to the jurisdiction of the courts of the State where the Mortgaged Property is located and the federal courts located in such state and (ii) waives any rights it may have to trial by jury.

28. Satisfaction of Mortgage. Upon the payment in full of all of the amounts due under the Note and the other Loan Documents, Mortgagor is entitled to obtain from Mortgagee any and all instruments necessary to discharge the lien of this Mortgage.

29. Notices. Any notices required or permitted to be given hereunder shall be given as provided in the Loan Agreement.

30. Payment of Expenses. Mortgagor agrees to pay on demand all third party fees, costs and expenses (including reasonable attorney's fees) incurred by Mortgagee in enforcing or collecting this Mortgage or any other Loan Document, whether or not any proceeding is filed by Mortgagee. Mortgagor agrees to pay on demand all fees, costs or expenses (including reasonable attorneys' fees) incurred by Mortgagee or any third parties acting on its behalf in performing any obligations of Mortgagor (including the payment of any amounts due by Mortgagor) under any Loan Document in accordance with the provisions of such Loan Document. Without limiting the previous sentence, Mortgagee shall be entitled to collect all costs and expenses incurred in pursuing judicial foreclosure or other remedies, including attorney's fees, costs of documentary evidence, abstracts, and title reports, any of which may be estimated to reflect the costs and expenses to be incurred after the judicial foreclosure process concludes.

31. Future Advances. This Mortgage is granted to secure the full amount of the Note (plus interest, including interest assessed at the Default Rate, and other amounts as provided in the Loan

UNOFFICIAL COPY

Documents) whether such amounts are advanced in full at the opening of the Loan or are in part the subject of future advances made by Mortgagee to Borrower. Mortgagor acknowledges and agrees that all future advances shall be a lien from the date this Mortgage is recorded, as provided in 735 ILCS 5/15-1302 (b)(l).

32. Maximum Amount. The total amount of the indebtedness shall not at any time exceed one hundred sixty-five percent (165%) of the original principal amount of the Note including all interest and all monies advanced by Mortgagee in accordance with the terms of this Mortgage to (i) preserve or restore the Premises, (ii) preserve the lien of this Mortgage or the priority thereof, or (iii) enforce this Mortgage.

33. Illinois Mortgage Foreclosure.

(a) It is the express intention of Mortgagor and Mortgagee that the rights, remedies, powers and authorities conferred upon the Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5/15-1101 et seq.) (herein called the "IMFL") and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage shall be inconsistent with any provision in the IMFL, the provisions of the IMFL shall take precedent over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMFL.

(b) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether provided for in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

(c) The powers, authorities and duties conferred upon the Mortgagee, in the event that the Mortgagee takes possession of the Premises, and upon a receiver hereunder, shall also include all such powers, authority and duties as may be conferred upon a Mortgagee in possession or receiver under and pursuant to the IMFL. To the extent the IMFL may limit the powers, authorities and duties purportedly conferred hereby, such power, authorities and duties shall include those allowed, and be limited as proscribed by IMFL at the time of their exercise or discharge.

34. Protective Advances.

(a) All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Loan Documents or by the IMFL (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the IMFL, including those provisions of the IMFL hereinbelow referred to:

i. all advances by Mortgagee in accordance with the terms of the Loan Documents to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (B) preserve the lien of this Mortgage or the priority hereof; or (C) enforce this Mortgage, each as referred to in subsection (b)(5) of Section 5/15-1302 of the IMFL;

UNOFFICIAL COPY

ii. payments by Mortgagee of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by this Mortgage; or (C) 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 5/15-1505 of the IMFL;

iii. advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

iv. attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d)(2) and 5/15-1510 of the IMFL; (B) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action related to this Mortgage or the Property;

v. Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the IMFL;

vi. expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the IMFL;

vii. expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (B) 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; (C) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Property imposed by subsection (c)(1) of Section 5/15-1704 of the IMFL; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (F) 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; (G) if either Loan is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; and (H) pursuant to any lease or other agreement for occupancy of the Property for amounts required to be paid by Mortgagor;

viii. all Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with

UNOFFICIAL COPY

interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Loan Documents;

ix. this Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 5/15-1302 of the IMFL; and

x. 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 IMFL, apply to and be included in:

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

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

(c) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the IMFL;

(d) application of income in the hands of any receiver or Mortgagee in possession; and

computation of any deficiency judgment pursuant to Section 5/15-1511 of the IMFL.

35. Non-Borrower Mortgagor Provisions.

(a) Conditions To Exercise Of Rights. Mortgagor hereby waives any right it may now or hereafter have to require Mortgagee, as a condition to the exercise of any remedy or other right against Mortgagor hereunder or under any other document executed by Mortgagor in connection herewith: (1) to proceed against Borrower or other person, or against any other collateral assigned to Mortgagee by Mortgagor or any Borrower or other person; (2) to pursue any other right or remedy in Mortgagor's power; and (3) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or any collateral (other than the Property) for any Secured Obligation.

(b) Waiver of Defenses. Mortgagor hereby waives any defense it may now or hereafter have that relates to: (1) any disability or other defense of Borrower or other person; (2) the cessation, from any cause other than full performance, of the obligations of Borrower or any other person; (3) the application of the proceeds of any Secured Obligation, by Borrower or other person, for purposes other than the purposes represented to Mortgagor by any Borrower or otherwise intended or understood by Mortgagor or Borrower; (4) any act or omission by Mortgagee which directly or indirectly results in or contributes to the release of Borrower or other person or any collateral for any Secured Obligation; (5) the unenforceability or invalidity of any collateral assignment (other than this Mortgage) or guaranty with respect to any Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien hereof) which secures any Secured Obligation; (6) any failure of Mortgagee to marshal assets in favor of Mortgagor or any other person; (7) any modification of any Secured Obligation, including any

UNOFFICIAL COPY

renewal, extension, acceleration or increase in interest rate; (8) any and all rights and defenses arising out of an election of remedies by Mortgagee; (9) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (10) any failure of Mortgagee to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (11) the election by Mortgagee, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (12) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (13) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (14) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Mortgagor further waives any and all rights and defenses that Mortgagor may have because Borrower's debt is secured by real property; this means, among other things, that: (i) Mortgagee may collect from Mortgagor without first foreclosing on any real or personal property collateral pledged by Borrower; (ii) if Mortgagee forecloses on any real property collateral pledged by Borrower, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Mortgagee may collect from Mortgagor even if Mortgagee, by foreclosing on the real property collateral, has destroyed any right Mortgagor may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Mortgagor may have because Borrower's debt is secured by real property. Notwithstanding the foregoing, Mortgagor does not waive any rights it may have (i) in connection with statutes of limitations or (ii) under the 1963 Government Code Tort Claims Act.

(c) Reinstatement Of Lien. Mortgagee's rights hereunder shall be reinstated and revived, and the enforceability of this Mortgage shall continue, with respect to any amount at any time paid on account of any Secured Obligation which Mortgagee is thereafter required to restore or return in connection with a bankruptcy, insolvency reorganization or similar proceeding with respect to Borrower.

(d) Subordination. Until all of the Secured Obligations have been fully paid and performed; (1) Mortgagor hereby agrees that all existing and future indebtedness and other obligations of Borrower to Mortgagor (collectively, the "Subordinated Debt") shall be and are hereby subordinated to all Secured Obligations which constitute obligations of the applicable Borrower, and the payment thereof is hereby deferred in right of payment to the prior payment and performance of all such Secured Obligations; and (2) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, any Borrower with respect to any Subordinated Debt is received by Mortgagor after an Event of Default by Mortgagor hereunder or by Borrower under the Loan Agreement, such payment or distribution shall be held by Mortgagee in an interest bearing account until all Secured Obligations have been fully paid and performed.

(e) Lawfulness And Reasonableness. Mortgagor warrants that all of the waivers in this Mortgage are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Mortgagor may destroy or impair rights which Mortgagor would otherwise have against Mortgagee, Borrower and other persons, or against collateral. Mortgagor agrees that all such waivers are reasonable under the circumstances.

[signature page follows]

UNOFFICIAL COPY

EXHIBIT A

Description of Premises

The land referred to is situated in the County of Cook, City of Chicago, State of Illinois, and is described as follows:

LOT 6 IN THE SUBDIVISION OF LOTS 1 TO 6 INCLUSIVE IN BLOCK 1 OF WAIT AND MUNRO'S ADDITION TO HYDE PARK IN THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 6511 S. Woodlawn Avenue, Chicago, IL 60637

Parcel Number : 26-23-211-006-0000

Property of Cook County Clerk's Office