

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*2111912036\*

Doc# 2111912036 Fee \$93.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 04/29/2021 12:05 PM PG: 1 OF 25

The property identified as: **PIN:** 33-07-420-006-0000

**Address:**

**Street:** 2933 198th Street

**Street line 2:**

**City:** Lynwood

**State:** IL

**ZIP Code:** 60411

**Lender:** American Portfolio Mortgage Corporation

**Borrower:** Excalibur Construction, Inc.

**Loan / Mortgage Amount:** \$320,000.00

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.

Old Republic Title  
9601 Southwest Highway  
Oak Lawn, IL 60453

2012 8513 2/2

S 4  
P 25  
S 41  
SC      
INT JP

**Certificate number:** 785B1743-6160-44ED-9F10-1E97D789769C

**Execution date:** 3/10/2021

# UNOFFICIAL COPY

**MORTGAGE; ASSIGNMENT OF  
LEASES AND RENTS;  
SECURITY AGREEMENT AND  
FIXTURE FILING  
CONSTRUCTION LOAN**

**MORTGAGOR:**

EXCALIBUR CONSTRUCTION, INC,  
an Illinois INCORPORATED company

**MORTGAGEE:**

AMERICAN PORTFOLIO MORTGAGE CORPORATION

Loan Number: 20128513

Address: 2933 198th Street Lynwood Cook COUNTY IL 60411

**THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND SECURITY AGREEMENT FIXTURE FILING** (his "Mortgage"), is made as of 10TH MARCH, 2021 by and between **EXCALIBUR CONSTRUCTION, INC**, an Illinois INCORPORATED company, (hereinafter referred to as "Mortgagor") and **AMERICAN PORTFOLIO MORTGAGE CORPORATION** (hereinafter referred to as "Mortgagee"):

**W I T N E S S E T H:**

**WHEREAS**, Mortgagor has executed and delivered to Mortgagee a Promissory Note (Variable Rate) in the principal amount of Three Hundred Twenty Thousand Dollars and No Cents DOLLARS (\$320,000.00) (which Promissory Note, together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified or extended, are hereinafter sometimes collectively called the "Note"), which Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due on Tuesday, March 01, 2022 unless extended pursuant to the terms of the Note; and

**WHEREAS**, Mortgagee is desirous of securing the prompt payment of the Note together with interest and prepayment fees, if any, thereon in accordance with the terms of the Note, and any additional indebtedness accruing to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee pursuant to the Note or this Mortgage and any additional sums with interest thereon which may be loaned to Mortgagor by Mortgagee or advanced under the Loan Documents (as hereinafter defined) (all hereinafter sometimes collectively referred to as the "indebtedness").

**NOW, THEREFORE**, Mortgagor, to secure payment of the indebtedness and the performance of the covenants and agreements herein contained to be performed by Mortgagor,

Loan Number: 20128513

Address: 2933 198th Street, Lynwood Cook COUNTY, IL 60411

Borrower: EXCALIBUR CONSTRUCTION, INC

Loan Amount: \$320,000.00

Page 1 of 24

# UNOFFICIAL COPY

for good and valuable consideration in hand paid, the receipt and sufficiency whereof are hereby acknowledged, hereby agrees and covenants that:

1. **GRANTING CLAUSES.** Mortgagor hereby irrevocably and absolutely does by these presents grant, mortgage, convey, transfer, assign, bargain and sell to Mortgagee, its successors and assigns, with all powers of sale (if any) and all statutory rights under the laws of the State of Illinois, all of Mortgagor's present and hereafter acquired estate, right, title and interest in, to and under, and grants to Mortgagee a security interest in, the following:

(a) The real property described in Exhibit A attached hereto and incorporated herein by this reference, together with all buildings, structures and improvements now or hereafter erected thereupon and together with the fixtures and personal property hereinafter describe (which real property, buildings, structures, improvements, fixtures and personal property is hereinafter sometimes referred to as the "Premises");

(b) All easements, rights of way, licenses, permits, rights of use or occupancy, privileges, tenements, appurtenances, hereditaments and appurtenances and other rights and privileges thereunto belonging or in any wise appertaining to the Premises, whether now or in the future, and all the rents, issues and profits therefrom;

(c) All right, title and interest, if any, of Mortgagor, in and to the land lying within a street, alley, avenue, roadway or right of way open or proposed or hereafter vacated in front of or adjoining the Premises; and all right, title and interest, if any, of Mortgagor in and to any strips and gores adjoining the Premises;

(d) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Premises, or any part thereof, or used or usable in connection with any construction on or any present or future operation of the Premises, now owned or hereafter acquired by Mortgagor, including without limiting the generality of the foregoing: all heating, lighting, refrigerating, ventilating, air-conditioning, air cooling, fire extinguishing, plumbing, cleaning, communications and power equipment, systems and apparatus; and all elevators, switchboards, motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all cranes and craneways, oil storage, sprinkler/fire protection and water service equipment; and also including any of such property stored on the Premises or in warehouses and intended to be used in connection with or incorporated into the Premises; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, and property are a part of the Premises and are declared to be a portion of the security for the indebtedness secured hereby (whether in single units or centrally controlled, and whether physically attached to said real estate or not), excluding, however, personal property owned by tenants of the Premises; and

(e) Any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to

# UNOFFICIAL COPY

the Premises as a result of: (1) the exercise of the right of eminent domain; or (2) the alteration of the grade of any street; or (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Premises, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagee, and of the reasonable counsel fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment. Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by Mortgagee to confirm such assignment to Mortgagee of any such award or payment.

**TO HAVE AND TO HOLD** the Premises with all rights, privileges and appurtenances thereunto belonging, and all rents, issues and profits therefrom, unto Mortgagee, its successors and assigns, forever, for the uses and purposes herein expressed.

2. **SECURITY.** This Mortgage is given to secure:

(a) Payment of the indebtedness;

(b) Payment of such additional sums with interest thereon which may hereafter be loaned to Mortgagor by Mortgagee or advanced under the Loan Documents, even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Note (provided, however, that the indebtedness secured hereby shall in no event exceed an amount equal to \$320,000.00 PLUS INTEREST.

(c) The due, prompt and complete performance of each and every covenant, condition and agreement contained in this Mortgage, the Note, and every other agreement, document and instrument to which reference is expressly made in this Mortgage or which at any time evidences or secures the indebtedness evidenced by the Note (this Mortgage, the Note and all such other instruments are hereinafter sometimes collectively referred to as the "Loan Documents").

3. **MAINTENANCE, REPAIR AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC.** Mortgagor shall: (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed, such buildings or improvements to be of at least equal value and substantially the same character as prior to such damage or destruction; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien (except the lien of current general taxes duly levied and assessed but not yet due and payable, and liens being contested as permitted hereunder); (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises (no such lien, except for current general taxes duly levied and assessed but not yet payable and liens being contested as permitted hereunder, to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon the Premises; (e) comply with all

# UNOFFICIAL COPY

requirements of law (including, without limitation, pollution control and environmental protection laws), ordinance or other governmental regulation in effect from time to time affecting the Premises and the use thereof, and covenants, easements and restrictions of record with respect to the Premises and the use thereof; (f) except as set forth in the Construction Loan Agreement ("Construction Loan Agreement") referred to in paragraph 35 hereof, make no alterations in the Premises; (g) suffer or permit no change in the general nature of the occupancy of the Premises, without Mortgagee's prior, written consent; (h) initiate or acquiesce in no zoning reclassification or variance without Mortgagee's prior, written consent; and (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note.

4. **PAYMENT OF TAXES.** Mortgagor shall pay before any penalty or interest attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor.

5. **TAX DEPOSITS.** To the extent provision is not made therefore in the Budget referred to in the Construction Loan Agreement, Mortgagor covenants and agrees to deposit with such depository as the Mortgagee from time to time may in writing appoint, and in the absence of such appointment, then at the office of Mortgagee with the address of 2401 S PLUM GROVE ROAD, SUITE 202, PALATINE IL 60067, commencing on the date of disbursement of the loan secured hereby and on the first any of each month following the month in which said disbursement occurred until the indebtedness secured by this Mortgage is fully paid, a sum equal to one twelfth ( $1/12^{\text{th}}$ ) of the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Such deposits are to be held without any allowance of interest and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. Upon demand by such depository, Mortgagor shall deliver and pay over to such depository from time to time such additional sums or such additional security as are necessary to make up any deficiency in the amount necessary to enable such depository to fully pay any of the items hereinabove mentioned as they become payable. If the funds so deposited exceed the amount required to pay such items hereinabove mentioned for any year, the excess shall be applied to a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee or such depository.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not covered by the lien of this Mortgage, then the computation of any amount to be deposited under this paragraph 5 shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

# UNOFFICIAL COPY

6. **MORTGAGEE'S INTEREST IN AND USE OF DEPOSITS.** In the event of a default in any of the provisions contained in this Mortgage or the Note secured hereby or any of the other Loan Documents and continuance of such default beyond any applicable notice, grace or cure period, Mortgagee may at its option, without being required to do so, apply any monies at the time on deposit pursuant to Paragraphs 5 and 8 hereof, on any of Mortgagor's obligations herein or in said Note or any of the other Loan Documents contained, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises. A security interest within the meaning of the Illinois Uniform Commercial Code is hereby granted to Mortgagee in and to any monies at any time on deposit pursuant to Paragraphs 5 and 8 hereof and such monies and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all as additional security for the indebtedness hereunder and shall in the absence of default hereunder be applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments and insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee or said depository in writing to make application of such funds to the payment of the particular taxes and assessments and insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes and assessments and insurance premiums. Neither Mortgagee nor any depository hereunder shall be liable for any act or omission taken in good faith or pursuant to the instruction of any party but only for its gross negligence or willful misconduct.

7. **INSURANCE.** Until the indebtedness secured hereby is fully paid, all buildings and improvements upon the Premises and all fixtures, equipment and property therein contained or installed and owned by Mortgagor or its beneficiary shall be kept continuously insured against loss and damage by such hazards, casualties and contingencies in such amounts and for such periods as may from time to time be reasonably required by Mortgagee. All insurance shall be written in policies and by insurance companies approved by Mortgagee. All policies of insurance and renewals thereof shall contain standard noncontributory mortgagee clauses or loss payable clauses to Mortgagee or naming Mortgagee as an additional insured and shall provide for at least 30 days prior written notice of cancellation to Mortgagee as well as a waiver of subrogation endorsement to the extent the same is available, all as required by Mortgagee, in form and content reasonably acceptable to Mortgagee. At Mortgagee's option all policies or binder certificates shall, with all premiums fully paid, be delivered to Mortgagee as issued at least ten (10) days before the expiration of old policies and shall be held by Mortgagee until all sums hereby secured are fully paid. Upon request by Mortgagee, Mortgagor shall furnish Mortgagee evidence of the replacement cost of the Premises. In case of sale pursuant to a foreclosure of this Mortgage or other transfer of title to the Premises and extinguishment of the indebtedness secured hereby, complete title to all policies held by Mortgagee and to all prepaid or unearned premiums thereon shall pass to and vest in the purchaser or grantee. Mortgagee shall not by reason of accepting, rejecting, approving or obtaining insurance incur any liability for payment of losses.

# UNOFFICIAL COPY

Without in any way limiting the generality of the foregoing, Mortgagor covenants and agrees to maintain insurance coverage on the Premises to include: (i) All risk coverage insurance (including vandalism and malicious mischief) for an amount equal to not less than the full replacement cost of the improvements and fixtures located on the Premises, written on a replacement cost basis and with a replacement cost endorsement (without depreciation) and an agreed amount endorsement pertaining to the co insurance clause, (If at any time a dispute arises with respect to replacement cost, Mortgagor agrees to provide at Mortgagor's expense, an insurance appraisal prepared by an insurance appraiser approved by Mortgagee, establishing the full replacement cost in a manner satisfactory to the insurance carrier); (ii) Loss of profits/business interruption insurance insuring against loss arising out of the perils insured against in the policy or policies referred to in Subsection (i) above, in an amount equal to not less than gross revenue from the Premises for 12 months from the operation of all improvements now or hereafter forming part of the Premises, less any allocable charges and expenses which do not continue during the period of restoration; (iii) Comprehensive general public liability and property damage insurance with a broad form coverage endorsement for an amount as reasonably required from time to time by Mortgagee but not less than ONE MILLION AND <sup>00</sup>/<sub>100</sub>THS DOLLARS (\$1,000,000.00) combined single limit for claims arising from any accident or occurrence in or upon the Premises; (iv) Flood insurance whenever in the opinion of Mortgagee such protection is necessary and is available; and (v) Such other insurance that may be reasonably required from time to time by Mortgagee.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder.

8. **INSURANCE PREMIUM DEPOSITS**. It is further covenanted and agreed that for the purpose of providing funds with which to pay the premiums as the same become due on the policies of insurance as herein covenanted to be furnished by Mortgagor, Mortgagor shall, to the extent that provision is not made therefore in the Budget referred to in the Construction Loan Agreement, deposit with Mortgagee or the depository referred to in paragraph 5 hereof, on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurred, an amount equal to the premiums that will next become due and payable on such policies less any amount then on deposit with Mortgagee or such depository, divided by the number of months to elapse prior to the date when such premiums become delinquent. No interest shall be allowed to Mortgagor on account of any deposit or deposits made hereunder and said deposits need not be kept separate and apart from any other funds of Mortgagee or such depository.

9. **ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE**. In case of loss or damage by fire or other casualty, Mortgagee is authorized: (a) to settle and adjust a claim under insurance policies which insure against such risks; or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss; however, Mortgagee will not enter into any settlement agreement with any insurance company without mortgagor's consent which will not be unreasonably withheld. In either case, Mortgagee is authorized to collect and receipt for any such insurance money. Such insurance proceeds, after deducting therefrom any expenses

# UNOFFICIAL COPY

incurred in the collection thereof, may, at the option of Mortgagee, be applied in the reduction of the indebtedness secured hereby, whether due or not, in such order as Mortgagee shall determine, or be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of buildings or improvements on the Premises. Notwithstanding anything to the contrary herein so long as there exists no Event of Default hereunder or under the Note such insurance proceeds, after deducting therefrom any expenses incurred in the collection thereof shall be used to reimburse the Mortgagor for the costs of rebuilding or restoration of buildings or improvements on the Premises. In the event that Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on the Premises, such proceeds shall be made available in the manner and under the conditions that Mortgagee may require. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the buildings and improvements can reasonably be expected to exceed the sum of 2/5 THS OF COST, then Mortgagee shall approve plans and specifications of such work before such work shall be commenced. If such proceeds are made available by Mortgagee to reimburse the Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said insurance proceeds after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto and under the conditions that Mortgagee may require. No interest shall be allowed to Mortgagor on any proceeds of insurance held by Mortgagee.

In case of loss or damage by fire or other casualty, Mortgagor shall immediately give Mortgagee and the insurance companies that have insured against such risks written notice of such occurrence.

10. **STAMP TAX.** If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note hereby secured, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note secured hereby.

11. **ASSIGNMENT OF LEASES AND RENTS.** As additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, Mortgagor, hereby assigns to Mortgagee all of Mortgagor's right, title and interest as landlord in and to all present and future leases of the Premises, and the rents, issues and profits therefrom.

Mortgagor will lease the property in accordance with its past business practices and will use the lease form approved in advance by Mortgagee. All leases of the Premises are subject to the approval of Mortgagee as to form and content. Any permitted lease shall require actual occupancy by the lessee thereunder.



# UNOFFICIAL COPY

Mortgagor will not, without Mortgagee's prior written consent: (i) execute an assignment or pledge of any rents of the Premises and/or any leases of the Premises; or (ii) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment.

Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay.

Mortgagor will not permit any lease of the Premises or any part thereof to become subordinate to any lien other than the lien hereof.

12. **EFFECT OF EXTENSIONS OF TIME.** If the payment of said indebtedness, or any part thereof, be extended or varied, or if any part of any security for the payment of the indebtedness be released, or if any person or entity liable for the payment of the indebtedness be released, or if Mortgagee takes other or additional security for the payment of the indebtedness, or if Mortgagee waives or fails to exercise any right granted herein, or in the Note secured hereby, or in any other instrument given to secure the payment hereof, all persons now or at any time hereafter liable for the payment of the indebtedness, or any part thereof, or interested in the Premises shall be held to assent to such extension, variation, release, waiver, failure to exercise or the taking of additional security, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, release, waiver, failure to exercise, or the taking of additional security.

13. **EFFECT OF CHANGES IN LAWS REGARDING TAXATION.** In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to adversely affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

14. **MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS.** In case of default herein which continues beyond any applicable notice, grace or cure period, Mortgagee

# UNOFFICIAL COPY

may, but need not, and whether electing to declare the whole of the indebtedness due and payable or not, and without waiver of any other remedy, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment or cure any default of landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in paragraphs 10 and 13 hereof or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate of interest set forth in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

15. **MORTGAGEE'S RELIANCE ON TAX BILLS, ETC.** Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) relating to insurance premiums, may do so according to any bill or statement procured from the appropriate company without inquiry into the accuracy of such bill or statement; or (c) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

16. **ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT.** If: (a) default be made in the due and punctual payment of the Note secured hereby, or any payment of principal or interest due in accordance with the terms thereof; or (b) any of the following events shall occur: (i) the entry of a decree or order for relief by a court having jurisdiction in respect of Mortgagor, the beneficiary or beneficiaries thereof, or any guarantor of the Note secured hereby, in any involuntary case under the Federal Bankruptcy Laws now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for Mortgagor, the beneficiary or beneficiaries thereof, or any guarantor of the Note secured hereby or any substantial part of the property of any such person or entity, or for the winding up or liquidation of the affairs of any such person or entity and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or (ii) the commencement by Mortgagor, the beneficiary or beneficiaries thereof, or any guarantor of the Note secured hereby or of a voluntary case under federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or any other similar laws or the consent by any such person or entity to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Mortgagor, the beneficiary or beneficiaries thereof, or any guarantor of the Note secured hereby or of any substantial part of the property of any such person or entity or the making by any such person or entity of an assignment for the benefit of creditors or the failure of

# UNOFFICIAL COPY

any such person or entity generally to pay the debts of any such person or entity as such debts become due, or the taking of action by any such person or entity in furtherance of any of the foregoing; (iii) the death of any guarantor of the Note secured hereby and Mortgagor fails to provide to Mortgagee within thirty (30) days following said guarantor's death a substitute guarantor that is acceptable to Mortgagee; or (c) default shall be made in the due observance or performance of any of the other covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor; or (d) default shall be made in the due observance or performance of any of the covenants, agreements or conditions contained and required to be kept or observed by Mortgagor or its beneficiary or beneficiaries in any other instrument given to secure the payment of the Note secured hereby; or (e) any warranty, representation, certification, financial statement, or other information furnished or to be furnished by or on behalf of Mortgagor, the beneficiary or beneficiaries thereof, or any guarantor of the Note to Mortgagee to induce Mortgagee to loan the money evidenced by the Note proves to have been inaccurate or false in any material respect when made, then and in every such case the whole of the indebtedness hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable without notice to Mortgagor. If, while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, as set forth in Paragraphs 9 or 22 hereof, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

17. **FORECLOSURE; EXPENSE OF LITIGATION.** When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and reasonable expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including appellate, probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceedings or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Mortgage.

# UNOFFICIAL COPY

18. **APPLICATION OF PROCEEDS OF FORECLOSURE SALE.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which may, under the terms hereof or of the Note or under any other instrument given to secure the Note, constitute indebtedness additional to that evidenced by the Note, with interest thereon as herein or therein provided and all principal and interest and other sums (including prepayment premiums, if any) remaining unpaid on the Note; and third, any excess to any party entitled thereto as their rights may appear.

19. **APPOINTMENT OF RECEIVER.** Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor, or any beneficiary or beneficiaries thereof, at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and in the case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

20. **RIGHTS CUMULATIVE.** Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

21. **MORTGAGEE'S RIGHT OF INSPECTION.** Mortgagee shall have the right to inspect the Premises at all reasonable times upon reasonable notice and access thereto shall be permitted for that purpose.

# UNOFFICIAL COPY

22. **CONDEMNATION.** Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or make said proceeds available for restoration or rebuilding of the Premises. In the event that Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on the Premises, such proceeds shall be made available in the manner and under the conditions that Mortgagee may require. In any event, the buildings and improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by Mortgagee. If the proceeds are made available by Mortgagee to reimburse Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall at the option of Mortgagee be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto. No interest shall be allowed to Mortgagor on the proceeds of any award held by Mortgagee.

23. **RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.** Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby including any prepayment charges provided for herein or in the Note secured hereby.

24. **GIVING OF NOTICE.** All notices required or permitted under this instrument shall be in writing and shall be by: (i) hand delivery to the address for notices; or (ii) delivery by overnight courier service to the address for notices; or (iii) by certified mail, return receipt requested, addressed to the address for notices by United States Mail, postage prepaid.

All notices shall be deemed received upon the earliest to occur of: (i) the hand delivery of such notice to the address for notices; (ii) one day after the deposit of such notice with any overnight courier service addressed to the address for notices; or (iii) three (3) days after depositing the notice in the United States Mail as set forth in (iii) above.

All notices shall be addressed to the following addresses:

Mortgagor:	EXCALIBUR CONSTRUCTION, INC 10649 W. 163RD PLACE ORLAND PARK, IL 60467
With a copy to:	EXCALIBUR CONSTRUCTION, INC 10649 W. 163RD PLACE ORLAND PARK, IL 60467
Mortgagee:	AMERICAN PORTFOLIO MORTGAGE CORPORATION 2401 S PLUM GROVE ROAD, SUITE 202, PALATINE IL 60067
With a copy to:	AMERICAN PORTFOLIO MORTGAGE CORPORATION 2401 S PLUM GROVE ROAD, SUITE 202, PALATINE IL 60067

# UNOFFICIAL COPY

or to such other person or at such other place as any party hereto may by notice designate as a place for service of notice.

25. **WAIVER OF DEFENSE.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

26. **WAIVER OF STATUTORY RIGHTS.** Mortgagor, or any beneficiary or beneficiaries thereof, shall not, and will not, apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. **Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, the trust estate and all persons beneficially interested therein and each and every person, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.**

27. **FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE.** Mortgagor covenants and agrees that it (or its beneficiary or beneficiaries if the owner of the Premises is an Illinois land trust) will keep and maintain books and records of account, or cause books and records of account to be kept and maintained in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained either:

- (a) In accordance with generally accepted accounting practices consistently applied; or
- (b) In accordance with a cash basis or other recognized comprehensive basis of accounting consistently applied.

Mortgagor covenants and agrees to furnish, or cause to be furnished to Mortgagee: (a) quarterly, within thirty (30) days of end of each fiscal quarter of Mortgagor (or its beneficiary or beneficiaries if the owner of the Premises is an Illinois land trust) financial and other information with regard to the Premises including without limitation operating statements, production reports and marketing reports; and (b) annually, within ninety (90) days of the end of each fiscal year of Mortgagor (or its beneficiary or beneficiaries if the owner of the Premises is an Illinois land trust), a copy of a report of the operations of the Mortgagor and its affiliates and of the improvements on the Premises, prepared by a certified public accountant reasonably satisfactory to Mortgagee, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. Mortgagor shall at any time, upon request of Mortgagee,

# UNOFFICIAL COPY

furnish within a reasonable time the current status of operations and other related information on the Premises and allow a representative of Mortgagee to audit the books and records of the operations of the Premises. A beneficiary of Mortgageor or such other person satisfactory to Mortgagee shall certify that each such report presents fairly the financial position of the Premises.

If Mortgageor omits to prepare and deliver promptly any report required by this paragraph 27, Mortgagee may elect, in addition to exercising any remedy for an event of default as provided for in this Mortgage, to make an audit of all books and records of Mortgageor and its affiliates (or its beneficiary or beneficiaries if the owner of the Premises is an Illinois land trust), including its bank accounts which in any way pertain to the Premises and to prepare the statement or statements which Mortgageor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent certified public accountant to be selected by Mortgagee. Mortgageor shall pay all expenses of the audit and other services, which expenses shall be secured hereby as additional indebtedness and shall be immediately due and payable with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Mortgage.

28. **FILING AND RECORDING FEES.** Mortgageor will pay all filing, registration or recording fees and all expenses incident to the execution and acknowledgement of this Mortgage and all federal, state, county and municipal taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage.

29. **BUSINESS PURPOSE.** It is understood and agreed that the Loan evidenced by the Note and secured hereby is a business loan pursuant to the provisions of 815 ILCS 205/4 (or any substitute, amended, or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of Mortgageor or, if Mortgageor is a trustee, for the purpose of carrying on or acquiring the business of the beneficiary or beneficiaries of Mortgageor as contemplated by said Section.

30. **MISCELLANEOUS.**

(a) This Mortgage and all provisions hereof shall extend to and be binding upon Mortgageor and its successors, grantees and assigns, any subsequent owner or owners of the Premises and all persons claiming under or through Mortgageor (but this clause shall not be construed as constituting the consent by Mortgagee to the transfer of any interest in the Premises), and the word "Mortgageor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee," when used herein, shall include the successors and assigns of Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby.

# UNOFFICIAL COPY

(b) In the event one or more of the provisions contained in this Mortgage or the Note secured hereby, or in any other security documents given to secure the payment of the Note secured hereby, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The validity and interpretation of this Mortgage and of all other documents evidencing or securing the indebtedness shall be construed in accordance with the laws of the State of Illinois.

(c) Mortgagor shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot or lots separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

(d) Mortgagor, on written request of Mortgagee, will, within ten (10) business days, furnish a signed statement of the amount of the indebtedness secured hereby and whether or not any default then exists hereunder and specifying the nature of such default.

(e) The Note secured hereby requires the payment of a late charge in the event any installment of principal or interest due thereunder and/or any escrow fund payment for taxes and insurance due hereunder shall become overdue. The Note requires the payment to Mortgagee of a late charge of TEN Dollars (\$10.00) for each day so overdue to defray part of the cost of collection. Said late charge shall be secured hereby as indebtedness, as that term is used herein.

(f) Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises. The failure to join any such tenant or tenants as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.



# UNOFFICIAL COPY

(g) At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or an award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the Office of the Recorder of Deeds or Registrar of Titles in and for the county wherein the Premises are situated, of a unilateral declaration to that effect.

(h) Mortgagor shall exert its best efforts to include a "no lien" provision in any property management agreement hereafter entered into by Mortgagor or its beneficiary or beneficiaries with a property manager for the Premises, whereby the property manager waives and releases any and all mechanics' lien rights that he, or anyone claiming through or under him, may have pursuant to Illinois law. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds or Registrar of Titles, of Cook County, Illinois, as appropriate.

31. **SECURITY AGREEMENT.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter in this paragraph referred to as the "Code") with respect to all sums on deposit with Mortgagee pursuant to paragraphs 5, 8, 9 and 22 hereof (the "Deposits") and with respect to any property included in the definition herein of the word "Premises," which property may not be deemed to form a part of the real estate described in Exhibit B or may not constitute a "fixture" (within the meaning of Section 9 313 of the Code), and all replacements of such property, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral," and that a security interest in and to the Collateral and the Deposits is hereby granted to Mortgagee and the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the indebtedness and to secure performance by Mortgagor of the terms, covenants and provisions hereof. In the event of a default under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have the option of proceeding with respect to the Collateral in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that, in the event Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, five (5) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other Collateral at least equal in value to the initial value to that disposed of and in such a manner so that said Collateral shall be subject to the security interest created hereby and so that the security interest of Mortgagee shall be first in priority, it being expressly understood and agreed that all replacements of the Collateral and any additions to the Collateral shall be and become

# UNOFFICIAL COPY

immediately subject to the security interest of this Mortgage and covered hereby. Mortgagor shall, from time to time, on request of Mortgagee, deliver to Mortgagee an inventory of the Collateral in reasonable detail. Mortgagor covenants and represents that all Collateral, and all replacements thereof, substitutions therefor or additions thereto, unless Mortgagee otherwise consents, now is and will be free and clear of liens, encumbrances or security interests of others. Mortgagor shall, upon demand, execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee, and will do all such acts and things as Mortgagee may at any time, or from time to time, reasonably request or as may be necessary or appropriate to establish and maintain a first perfected security interest in the Deposits and Collateral, subject to no liens, encumbrances or security interests of others.

32. **DUE ON SALE OR FURTHER ENCUMBRANCE.** Mortgagor covenants and agrees that Mortgagee, at its option, has the unqualified right to accelerate the maturity of the indebtedness evidenced by the Note and secured hereby causing the full principal balance and accrued interest under the Note, together with a prepayment premium in the amount, if any, required to be paid pursuant to the terms of the Note in the event of a prepayment at the time of such acceleration, to be immediately due and payable without notice to Mortgagor, in the event that:

(a) Mortgagor shall without the prior written consent of Mortgagee, sell, transfer, convey, or assign the legal or equitable title to all or any portion of the Premises, except for the sale of lots or single family homes on the Premises to repay the indebtedness pursuant to the Project Loan Agreement (as hereinafter defined), whether by operation of law, voluntarily, or otherwise or shall contract to do any of the foregoing, other than the sale of individual lots or single family homes in the ordinary course of its business as provided in the Construction Loan Agreement;

(b) The beneficiary (if any) of Mortgagor shall, without the prior written consent of Mortgagee, sell, transfer, convey, assign or create a security interest in the beneficial interest, or any part thereof, in Mortgagor, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing; or

(c) Mortgagor shall, without the prior written consent of Mortgagee, directly or indirectly, create, suffer or permit to be created or filed against the Premises, or any portion thereof, or against the rents, issues or profits therefrom (including, without limitation, any lien arising with respect to the payment of taxes, assessments and other charges described in paragraph 3 above), any mortgage lien, security interest, or other lien or encumbrance, except the lien of current general taxes duly levied and assessed but not yet due and payable and the lien of this Mortgage.

The foregoing provisions of this Paragraph 32 are for the purpose of:

(a) protecting Mortgagee's security, both of repayment of the indebtedness secured hereby and the value of the Premises;

# UNOFFICIAL COPY

- (b) giving Mortgagee the full benefit of its bargain with the Mortgagor;
  - (c) allowing Mortgagee to raise the interest rate and collect assumption fees;
- and
- (d) keeping the Premises and the beneficial interest in Mortgagor free of subordinate financing liens or security interests, except as permitted herein.

### 33. ENVIRONMENTAL MATTERS; NOTICE; INDEMNITY.

- (a) Mortgagor will not, and Mortgagor's beneficiary (if any) will not, install, use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Premises, nor transport to or from the Premises, any Hazardous Substance (as defined below) nor allow any other person or entity to do so except in minor amounts and under conditions permitted by applicable laws, regulations and ordinances.
- (b) Mortgagor and Mortgagor's beneficiary (if any) will keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of, any Environmental Law (as defined below).
- (c) Mortgagor or Mortgagor's beneficiary (if any) will give prompt written notice to Mortgagee of:
  - (1) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Premises or the migration thereof to or from adjoining property;
  - (2) all claims made or threatened by any individual or entity against Mortgagor or Mortgagor's beneficiary or the Premises relating to any loss or injury allegedly resulting from any Hazardous Substance; and
  - (3) the discovery by Mortgagor or Mortgagor's beneficiary of any occurrence or condition on any real property adjoining or in the vicinity of the Premises which might cause the Premises or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Premises under any Environmental Law.
- (d) Mortgagee shall have the right and privilege to: (i) join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the Premises; and to (ii) have all costs and expenses thereof (including without limitation Mortgagee's attorneys' fees and costs) paid by Mortgagor.
- (e) Mortgagor and Mortgagor's beneficiary (if any), shall protect, indemnify and hold Mortgagee and its directors, officers, employees, agents, successors and assigns

# UNOFFICIAL COPY

harmless from and against any and all loss, damage, cost, expense and liability (including without limitation attorneys' fees and costs) directly or indirectly arising out of or attributable to the installation, use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a Hazardous Substance on, under or about the Premises, including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup or detoxification of the Premises; and (iii) the preparation and implementation of any closure, remedial or other required plans. This indemnity shall survive the satisfaction, release or extinguishment of the lien of this Mortgage, including without limitation any extinguishment of the lien of this Mortgage by foreclosure or deed in lieu thereof.

(f) If any investigation, site monitoring, containment, clean-up, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, ground water, surface water or soil vapor at, on, about, under or within the Premises or portion thereof, Mortgagor or Mortgagor's beneficiary shall within thirty (30) days after written demand for the performance by Mortgagee (or within such shorter or longer time as may be required or permitted under applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work to the extent required by law. All Remedial Work shall be performed by contractors approved in advance by Mortgagee and under the supervision of a consulting engineer approved in advance by Mortgagee. All costs and expenses of such Remedial Work (including without limitation the reasonable fees and expenses of Mortgagee's counsel) incurred in connection with monitoring or review of the Remedial Work shall be paid by Mortgagor. If Mortgagor shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, Mortgagee may (but shall not be required to) cause such Remedial Work to be performed; and all costs and expenses thereof, or incurred in connection therewith (including, without limitation, the fees and expenses of Mortgagee's counsel), shall be paid by Mortgagor to Mortgagee forthwith after demand and shall be a part of the indebtedness secured hereby.

- (g) (1) The term "Environmental Law" means and includes, without limitation, any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Premises, including without limitation each of the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"); the Federal Hazardous Materials Transportation Act, as amended; the Toxic Substance Control Act, as amended; the Illinois

# UNOFFICIAL COPY

Environmental Protection Act, as amended; the Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency, the Illinois Environmental Protection Agency and the County in which the Premises is located and of all other agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Premises or the use or operation thereof.

- (2) The term "Hazardous Substance" means and includes, without limitation: (i) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in any of the Environmental Laws; (ii) those substances listed in the U.S. Department of Transportation Table or amendments thereto or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances; (iii) those other substances, materials and wastes which are or become regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and (iv) any material, waste or substance which is any of the following: (A) asbestos; (B) polychlorinate biphenyl; (C) designated or listed as a "hazardous substance" pursuant to the Clean Water Act; (D) explosive; or (E) radioactive.

34. **CONSTRUCTION MORTGAGE.** This Mortgage secures an obligation incurred for the construction of improvements on the land mortgaged herein and constitutes a "construction mortgage" within the meaning of Section 5/2A-309(1)(d) of the Illinois Uniform Commercial Code (810 ILCS 5/2A-309(1)(d)).

The proceeds of the loan secured hereby are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in a Construction Loan Agreement between Mortgagor and Mortgagee, dated of even date herewith (the "Construction Loan Agreement"). All advances and indebtedness arising and accruing under the Construction Loan Agreement from time to time, shall be secured hereby to the same extent as though the Construction Loan Agreement were fully incorporated in this Mortgage and the occurrence of any event of default under the Construction Loan Agreement shall constitute a default under this Mortgage entitling Mortgagee to all of the rights and remedies conferred upon Mortgagee by the terms of this Mortgage or by law, as in the case of any other default. In the event of conflict between this Mortgage and the Construction Loan Agreement, the Construction Loan Agreement shall prevail.

# UNOFFICIAL COPY

35. — ~~**REVOLVING CREDIT.**~~ The total amount of indebtedness secured hereby is in the nature of a revolving loan and, as a result, the total principal amount outstanding may increase or decrease from time to time, but in no event shall said total principal amount outstanding at any one time exceed the maximum principal amount of \$ \_\_\_\_\_, plus any such additional advances and interest thereon.

36. — ~~**PARTIAL RELEASE.**~~ The Mortgagee agrees to grant Mortgagor partial releases of this Mortgage for the lots sold on the Premises in accordance with Section 5.8(b), (c) and (d) of the Construction Loan Agreement.

37. **SECURITY AGREEMENT; FIXTURE FILING.**

(a) This Mortgage is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code as adopted and enacted by the State where the Premises are located (as amended, modified or replaced from time to time, the “UCC”). The Premises include both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Premises. Mortgagor hereby grants to Mortgagee, as security for the indebtedness and obligations hereunder, a security interest in the Premises to the full extent that the Premises may be subject to the UCC (said portion of the Premises so subject to the UCC, the “UCC Collateral”). Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing, continuation or other statements signed only by Mortgagee, as secured party, in connection with the UCC Collateral.

(b) From the date of its recording, this Mortgage further constitutes a financing statement filed as a fixture filing and covers goods, which are or are to become fixtures on the Premises. For this purpose, Mortgagor is the “Debtor,” and its name and mailing address are set forth herein. Mortgagee is the “Secured Party,” and its name and mailing address also are set forth in this Mortgage. This document covers goods, which are or are to become fixtures and personal property. The statement describing the portion of the Premises comprising the fixtures and personal property secured hereby is set forth as Paragraph 1(d) of this Mortgage.

38. **EXCULPATORY.** [INTENTIONALLY OMITTED]

IN WITNESS WHEREOF, Mortgagor has executed this instrument as of the date first above written.

# UNOFFICIAL COPY

**EXCALIBUR CONSTRUCTION, INC,**  
an Illinois INCORPORATED company

By:   
CHRISTOPHER FLOOD, Manager

By:   
EXCALIBUR CONSTRUCTION, INC

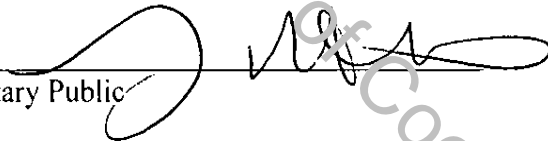
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS)  
  ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that CHRISTOPHER FLOOD and EXCALIBUR CONSTRUCTION, INC, Managers of EXCALIBUR CONSTRUCTION, INC, an Illinois INCORPORATED company personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said company as aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10 day of March 2021.

Notary Public 



This document prepared by and  
after recording return to:  
AMERICAN PORTFOLIO MORTGAGE CORPORATION  
TYLER TOMCZAK  
2401 S PLUM GROVE ROAD, SUITE 202, PALATINE IL 60067



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

33-07-420-006-0000

LOT 75 IN ESTATES OF LYNWOOD PHASE TWO, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 7, TOWNSHIP 35 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 26, 2005 AS DOCUMENT NUMBER 0526919114, IN COOK COUNTY, ILLINOIS. ~~ORT Form 4690 6/06 Rev. 8-1-16 ALTA Commitment for Title Insurance~~

Address: 2933 198th Street, Lynwood Cook COUNTY, IL 60411

Property of Cook County Clerk's Office