

Illinois Anti-Predatory
Lending Database
Program

Doc#: 2126633063 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 09/23/2021 01:08 PM Pg: 1 of 42

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 07-13-100-027-0000**

Address:

Street: 447 N Milwaukee Avenue

Street line 2:

City: Vernon Hills

State: IL

ZIP Code: 60061

Lender: Johnson Bank

Borrower: E & K Land LLC

Loan / Mortgage Amount: \$13,500,000.00

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

Certificate number: F2C3882D-E598-47DB-9ECA-2E55A70E719C

Execution date: 9/21/2021

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*This document prepared by;
After recording return to:*

Michael D. Orgeman
Lichtsinn & Haensel, s.c.
111 E. Wisconsin Avenue, Suite 1800
Milwaukee, WI 53202

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

This document serves as a Fixture Filing under the Illinois Uniform Commercial Code, Chapter 810 ILCS 5/1-101, et seq.

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "*Security Instrument*") is made as of September 21, 2021, by E & K Land, LLC, E&K Land Acquisition 2, LLC, and E&K Land Bolingbrook, LLC, all Wisconsin limited liability companies (collectively, "*Mortgagor*"), whose address is 10505 Corporate Drive, Suite 101, Pleasant Prairie, WI 53158, in favor of JOHNSON BANK, its successors and assigns ("*Lender*"), whose address is 100 East Wisconsin Avenue, Suite 2400, Milwaukee, WI 53202. Capitalized terms used in this Security Instrument without definition have the meanings given to them in the Loan Agreement referred to below.

1. GRANT AND SECURED OBLIGATIONS.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 hereof, Mortgagor hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages, warrants, and assigns to Lender, with power of sale (to the extent permitted by applicable law) and with right of entry and possession, all estate, right, title and interest that Mortgagor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "*Property*"):

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1.1.1 The real property located in the Counties of Lake and Will, State of Illinois, as described in EXHIBIT A attached hereto, together with all existing and future easements and rights affording access to it (the "**Premises**");

1.1.2 All buildings, structures, and improvements now located or later to be constructed on the Premises (the "**Improvements**") and, together with the Premises, the "**Project**");

1.1.3 All existing and future appurtenances, privileges, easements, franchises, and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium, and other commercially valuable substances that may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant), and water stock, and any portion of the Premises lying in the streets, roads or avenues currently existing or later constructed;

1.1.4 Subject to, and without in any way limiting the absolute assignment in Section 2 hereof, all existing and future leases, subleases, subtenancies, licenses, rental agreements, occupancy agreements, and concessions relating to the use and enjoyment of or affecting all or any part of the Premises or Improvements, any and all guaranties, extensions, renewals, replacements and modifications thereof, and all other agreements relating to or made in connection therewith, and any agreement (written or oral) between Mortgagor or its agents, and any tenant, lessee, occupant, licensee, guest or invitee pursuant to which Mortgagor, or its agent, agrees to permit such tenant, lessee, occupant, licensee, guest or invitee to park in or at the Project (each a "**Lease**", and collectively, the "**Leases**");

1.1.5 All real property and improvements on such real property, and all appurtenances and other property and interests of any kind or character, whether described in EXHIBIT A or not that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises or Improvements;

1.1.6 All goods, materials, supplies, chattels, furniture, fixtures, equipment, and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises or Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration, and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Security Instrument and any manufacturer's warranties with respect thereto;

1.1.7 All building materials, equipment, work in process and other personal property of any kind, whether stored on the Premises or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements;

1.1.8 All of Mortgagor's interest in and to all operating accounts, the Loan funds, whether disbursed or not, all reserve accounts, impound accounts, and any other bank accounts of Mortgagor relating to the Project or the operation thereof;

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1.1.9 All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Lender), that arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally;

1.1.10 All insurance policies and the proceeds thereof pertaining to the Premises, the Improvements, or any other property described in this Section 1.1, and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any property described in this Section 1.1 into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding or any settlement in lieu thereof, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described in this Section 1.1, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

1.1.11 All of Mortgagor's right, title, and interest in and to any and all units, common elements, declarant rights, development rights, and any other rights relating to the Premises or the Improvements, whether now existing or subsequently arising, under any and all condominium declarations, covenants, conditions, and restrictions, development agreements, or other agreements or declarations now existing or later executed relating to the Premises or Improvements, and all Laws now existing or later enacted relating to the Premises or Improvements, including those relating to condominiums, and all rights of Mortgagor in connection with any owner's association, condominium association, architectural control committee, or similar association or committee, established in connection with the Project, including Mortgagor's rights and powers to elect, appoint, and remove officers and directors of any such associations or committees;

1.1.12 All of Mortgagor's right, title, and interest in and to any swap transaction or interest rate agreement or interest rate hedging program through the purchase by Mortgagor of an interest rate swap, cap, or such other interest rate protection product (an agreement evidencing any such arrangement, an "*Rate Management Agreement*"), all whether now or hereafter entered into by Mortgagor with respect to the Loan, including any and all amounts payable to Mortgagor, any deposit account or accounts with Lender in the name of Mortgagor for deposit of payments to Mortgagor in connection with any Rate Management Agreement or swap transaction, and any and all funds now or hereafter on deposit therein;

1.1.13 All of Mortgagor's right, title, and interest in and to (i) all agreements (except for Leases), commitments, and options now or hereafter existing with respect to the construction, ownership, maintenance, operation, management, or use of the Premises or Improvements (i); (ii) all plans, specifications, drawings, and reports now existing or hereafter prepared with respect to the Premises or Improvements, including architectural and engineering plans, specifications and drawings, soils reports, environmental reports, and all other property reports; (iii) the Project Licenses (hereinafter defined); (iv) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clauses (i)

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through (iii) of this Section 1.1.13; and (v) any and all guarantees, warranties (including building or manufacturer's warranties) and other undertakings (including payment and performance bonds) now existing or hereafter entered into or provided with respect to any of the items described in clauses (i) through (iv) of this Section 1.1.13 (collectively, the "**Contracts**");

1.1.14 All of Mortgagor's right, title, and interest in and to all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Premises or Improvements;

1.1.15 To the fullest extent not prohibited by applicable Laws, all of Mortgagor's rights in all building permits, governmental permits, licenses, variances, applications, conditional or special use permits, and other authorizations now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing or use of the Premises or Improvements (the "**Project Licenses**");

1.1.16 All books, records, and data pertaining to any and all of the property described above, however recorded, stored, or maintained, including digital, electronic, and computer-readable data and any computer hardware or software necessary to access and process such data ("**Books and Records**"); and

1.1.17 All products, profits, rents, proceeds of, additions and accretions to, substitutions, and replacements for, and changes in any of the property described above.

1.2 Secured Obligations.

1.2.1 Mortgagor makes the grant, conveyance, assignment, and mortgage set forth above, and grants the security interests and liens set forth below for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Lender may choose:

1.2.1.1 Payment of all obligations at any time owing under a Mortgage Note payable by E & K Land, LLC, E&K Land Acquisition 2, LLC, E&K Land Bolingbrook, LLC, E & K Pewaukee, LLC, University E & K, LLC, and 15550 West National, LLC (collectively, "Borrower"), as maker, in the stated principal amount of **Thirteen Million Five Hundred Thousand and No/100 Dollars (\$13,500,000.00)**, and a Mortgage Note, payable by Borrower, as maker, in the stated principal amount of **Nine Million and No/100 Dollars (\$9,000,000.00)** to the order of Lender (as they may be amended, restated, modified, or extended, the "**Notes**");

1.2.1.2 Payment and performance of all obligations of Mortgagor under this Security Instrument;

1.2.1.3 Payment and performance of all obligations of Mortgagor under a Loan Agreement of even date herewith between Mortgagor and Lender (as it may be amended, restated, or modified, the "**Loan Agreement**");

1.2.1.4 Payment and performance of any obligations of Mortgagor under any Loan Documents that are executed by Mortgagor, including any obligations of Mortgagor under any guaranty of the Secured Obligations or any separate indemnity agreement

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executed in connection with the Loan (each an “*Indemnity Agreement*”), including any environmental, hazardous materials, or building access indemnity agreement;

1.2.1.5 Payment and performance of all obligations of Mortgagor under any Rate Management Agreement, all whether now or hereafter entered into by Mortgagor with respect to the Loan;

1.2.2 Payment and performance of all other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform for the benefit of Lender, when a writing evidences the parties’ agreement that the advance or obligation is secured by this Security Instrument;

1.2.2.1 Payment and performance of all modifications, amendments, restatements, extensions, and renewals, however evidenced, of any of the foregoing Secured Obligations, and

1.2.2.2 Payment and performance of all future advances with respect to any of the foregoing Secured Obligations.

1.2.3 All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Notes or the Loan Agreement that permit borrowing, repayment and re-borrowing, or that provide for a change in the interest rate of any Secured Obligation.

1.2.4 This Security Instrument shall not secure any obligations of guarantors or other third parties under any guaranties of the Secured Obligations or any Indemnity Agreement.

1.2.5 Eligible Contract Participant Savings Clause. Notwithstanding anything herein to the contrary, the Secured Obligations shall not include any Excluded Rate Management Obligations. “Excluded Rate Management Obligations” means obligations under any Rate Management Agreement, if and to the extent that all or a portion of the agreement obligating a Mortgagor to pay, or the grant by Mortgagor of a security interest to secure, such obligation (or any guarantee thereof) is or becomes impermissible under the Commodity Exchange Act (7 U.S.C. §1, *et seq.*, as amended from time to time, and any successor statute) for any reason, including by virtue of Mortgagor’s failure to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time such Rate Management Agreement becomes effective with respect to such obligation.

2. ABSOLUTE ASSIGNMENT OF LEASES AND RENTS.

2.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently, and unconditionally transfers, assigns, and conveys to Lender all of the right, title and interest of Mortgagor in and to (a) the Leases; and (b) all rents, issues, profits, security or other deposits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Property (collectively, “*Rents*”), including minimum rents, additional rents, advance rents, termination payments, bankruptcy claims, forfeited security deposits, common area maintenance charges, parking revenues, entrance fees, service fees, damages following default, and all proceeds

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payable under any policy of insurance covering loss of rents resulting from untenability due to destruction or damage to the Property; together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due; together with any award or other payment that Mortgagor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any Tenant (hereinafter defined) under the Leases; together with any and all payments made by or on behalf of any Tenant of any part of the Property in lieu of rent; together with all rights and claims of any kind that Mortgagor may have against any tenant, resident, occupant, lessee, or licensee under the Leases (each a "**Tenant**," and collectively, "**Tenants**") or against any other occupant of the Premises or Improvements. This is a present and absolute assignment of the Leases and Rents, not an assignment for security only. Notwithstanding any language to the contrary in this Security Instrument, so long as no Event of Default shall have occurred and continue uncured, the Mortgagor shall have the right to occupy the Property/Premises as landlord or otherwise, to collect, use and enjoy the rents, profits and other sums payable and by virtue of all of the leases, and to enforce the covenants of all leases, it being agreed that the assignment made hereby is conditioned by the occurrence and continuance of an Event of Default hereunder or under any of the Loan Documents.

2.2 Grant of License. Lender hereby confers upon Mortgagor an exclusive license (the "**License**") to retain possession of the Leases and collect and retain the Rents as they become due and payable, unless or until an Event of Default (hereinafter defined) exists. Upon the occurrence of and during the continuation of an Event of Default, the License shall automatically terminate without notice to Mortgagor and without prejudice to Lender. Lender may thereafter, without taking possession of the Property, take possession of the Leases and collect the Rents. Lender and Mortgagor agree that the mere recording of this Security Instrument entitles Lender immediately to collect and receive Rents upon the occurrence of an Event of Default without first taking any enforcement action under applicable laws, such as, but not limited to, providing notice to Mortgagor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Upon any cure of the Event of Default, the License granted to Mortgagor shall be automatically reinstated.

2.3 No Encumbrance. Mortgagor shall not assign, sell, pledge, transfer, mortgage, hypothecate, or otherwise encumber its interests in any of the Leases or Rents.

2.4 Collection and Application of Rents.

2.4.1 Right to Collect; Attorney-in-Fact. Subject to the License granted to Mortgagor above, Lender has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Lender its attorney-in-fact, coupled with an interest, at such times as Lender in its sole discretion may so choose, (a) to demand, receive and enforce payment of any and all Rents, including past due and unpaid Rents; (b) to give receipts, releases and satisfactions for any and all Rents; (c) to sue either in the name of Mortgagor or in the name of Lender for any and all Rents; (d) to perform any obligation, covenant or agreement of Mortgagor under any of the Leases, and, in exercising any of such obligations, pay all necessary costs and expenses, employ counsel and incur and pay attorneys' fees; (e) to delegate any and all rights and powers given to Lender by the assignment of Leases and Rents provided for herein; (f) to appear in any bankruptcy, insolvency or reorganization proceeding involving any Tenant under the Leases and to collect any award or payment due Mortgagor pursuant to any such proceeding; and/or (g) to use such measures, legal or equitable, in its discretion to carry out and effectuate the terms and

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intent of the assignment of Leases and Rents provided for herein. All such actions shall be taken at the expense of Mortgagor, who agrees to reimburse Lender, upon demand, for all amounts expended, including reasonable attorneys' fees, together with interest thereon from the date of expenditure at the Default Rate applicable to the Loan, and the obligation to perform such actions shall be secured by this Security Instrument. Notwithstanding any other provision of this Security Instrument, all awards or payments received by Lender shall be applied to the Secured Obligations in such order as Lender may elect in its sole discretion.

2.4.2 Mortgagor as Trustee. From and after the occurrence of and during the continuation of an Event of Default, Mortgagor shall be the agent of Lender in collection of the Rents, and any Rents so collected by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Lender, and Mortgagor shall, within one (1) Business Day after receipt of any Rents, pay the same to Lender to be applied by Lender as set forth in Section 2.9 herein for the "Application of Rents."

2.4.3 Possession of Property Not Required. Lender's right to the Rents does not depend on whether or not Lender takes possession of the Property. In Lender's sole discretion, Lender may choose to collect Rents either with or without taking possession of the Property. If an Event of Default exists while Lender is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Security Instrument, Lender and any receiver appointed for all or any portion of the Property shall nevertheless be entitled to exercise and invoke every other right and remedy afforded any of them under this Security Instrument and at law and in equity.

2.5 Lender Not Responsible. Under no circumstances shall Lender have any duty to produce Rents from the Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Premises and Improvements, unless Lender agrees in writing to the contrary, or the extent due to the gross negligence, fraud, bad faith or willful misconduct of Lender, Lender is not and shall not be deemed to be:

- 2.5.1** Responsible for the control, care, management or repair of the Property;
- 2.5.2** A "mortgagee in possession" for any purpose;
- 2.5.3** Responsible for performing any of the obligations of the lessor under any Lease;
- 2.5.4** Responsible for any waste committed by Tenants or other occupants of the Property or any other parties, any dangerous or defective condition of the Property or any negligence in the management, upkeep, repair, or control of the Property;
- 2.5.5** Responsible for any loss sustained by Mortgagor resulting from Lender's failure to lease the Premises or Improvements or from any other act or omission of Lender in managing the Property or administering the Leases; or
- 2.5.6** Liable in any manner for the Property or the use, occupancy, enjoyment, or operation of all or any part of it.

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2.6 Consent to Payment of Rents Directly to Lender. At any time, Lender may, at its option, notify any Tenant or other parties of the existence of the assignment of Leases and Rents provided for herein. Mortgagor hereby specifically authorizes, instructs and directs each and every present and future Tenant of all or any part of the Premises or Improvements to pay all unpaid and future Rents directly to Lender upon receipt of demand from Lender to so pay the same, and Mortgagor hereby agrees that each such present and future Tenant may rely upon such written demand from Lender to so pay the Rents without any inquiry into whether there exists an Event of Default hereunder or under the other Loan Documents or whether Lender is otherwise entitled to the Rents. No proof of the occurrence of an Event of Default shall be required. Mortgagor hereby waives any right, claim or demand that Mortgagor may now or hereafter have against any present or future Tenant by reason of such payment of Rents to Lender, and any such payment shall discharge such Tenant's obligation to make such payment to Mortgagor.

2.7 Leasing. Mortgagor shall not lease the Premises or Improvements except in accordance with the provisions of the Loan Agreement. If Mortgagor becomes aware that any Tenant proposes to do, or is doing, any act or thing that may give rise to any right to set-off against rent, Mortgagor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (b) notify Lender thereof and of the amount of said set-offs, and (c) within twenty (20) days after such accrual, reimburse the Tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

2.8 Further Actions. Mortgagor shall punctually observe, perform, and discharge all obligations, terms, covenants, conditions, and warranties to be performed by Mortgagor pursuant to the Leases. Mortgagor agrees to execute and deliver, at its sole cost and expense, upon Lender's written request, any documents necessary to cause the specific assignment of any particular Lease or any other document or instrument, the assignment of which is necessary, proper or desirable in Lender's judgment to carry out the purposes of the assignment of Leases and Rents provided for herein, including any consents to such assignment of Leases and Rents. In addition, Mortgagor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or any Tenant thereunder, and shall pay on demand all costs and expenses, including attorneys' fees that Lender may incur in connection with Lender's appearance, voluntary or otherwise, in any such action or proceeding, together with interest thereon at the Default Rate from the date incurred by Lender until repaid by Mortgagor.

2.9 Application of Rents. All Rents collected following an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Mortgagor under the Leases, and then to the Secured Obligations. Lender or the receiver shall be liable to account only for those Rents actually received by Lender or the receiver.

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3. SECURITY ASSIGNMENT OF CONTRACTS.

3.1 Assignment. To the fullest extent not prohibited by applicable Laws, Mortgagor hereby grants, assigns, and pledges to Lender all of Mortgagor's right, title and interest in and to all of the Contracts as security for the Secured Obligations.

3.2 Mortgagor's Covenants. Mortgagor hereby covenants and represents to Lender as follows:

3.2.1 Mortgagor shall punctually observe, perform, and discharge each and every obligation, covenant, condition, and agreement of the Contracts to be performed by Mortgagor.

3.2.2 Mortgagor shall enforce performance by the other part(y)(ies) to any Contract, of each and every obligation, covenant, condition and agreement to be performed by such other part(y)(ies).

3.2.3 Mortgagor shall not assign, sell, pledge, transfer, mortgage, hypothecate or otherwise encumber its interests in any Contract. In addition, Mortgagor shall not consent to, suffer or permit any future assignment or transfer of any material Contract by any party without Lender's prior written consent in each instance.

3.2.4 Except as provided in the Loan Agreement, Mortgagor shall not materially alter, amend, modify or terminate any of the Contracts without the prior written consent of Lender, except for service contracts entered into in the ordinary course of business; provided that Mortgagor may terminate any Contract if the other party thereunder is in default.

3.2.5 Upon Lender's request at any time an Event of Default exists, Mortgagor shall deliver to Lender all of the original Contracts and all modifications, extensions, renewals, amendments, and other agreements relating thereto.

3.2.6 Mortgagor shall execute and deliver, at its sole cost and expense, upon Lender's written request, any documents necessary to cause the specific assignment of any particular Contract or any other document or instrument, the assignment of which is necessary, proper or desirable in Lender's judgment to carry out the purposes of the assignment of Contracts provided for herein, including any consents to such assignment of Contracts.

3.2.7 Mortgagor represents and warrants that, except as set forth in any environmental report delivered to Lender or as otherwise disclosed to Lender in writing, the Property: (i) contains no facilities that are subject to reporting (by either Mortgagor or any tenant or lessee thereof or other person or entity in possession or occupancy of any portion thereof) under Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11022); (ii) is not the site of any underground storage tanks for which notification is required under 42 U.S.C. § 6991a and other applicable law; and (iii) is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) (42 U.S.C. § 9616). Any part of the Property may be released by Lender from the lien created by this Security Instrument. Any such partial release is at the sole option of Lender; Lender is not obligated to grant partial releases. Any such partial release will not affect the lien created by this Security Instrument as to the remainder of the Property.

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3.3 Lender's Remedies upon Default. Upon the occurrence of and during the continuation of an Event of Default, Lender, at its sole option, and without any notice whatsoever to Mortgagor, and without assuming any of the obligations of Mortgagor under the Contracts, shall have the right (but not the obligation) and is hereby authorized to: (a) cure any default of Mortgagor in such manner and to such extent as Lender may deem necessary to protect the security hereof; (b) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; (c) demand, receive, and enforce payment of all amounts that may be or become payable to Mortgagor under any of the Contracts; (d) exercise and enforce by suit or otherwise any remedies against other parties to the Contracts for breaches of the terms and conditions of the Contracts; (e) enter into other contracts or agreements, in the name of either Mortgagor or Lender, with such third parties as Lender may in its discretion select, and upon such terms and conditions as Lender in its reasonable discretion may determine; (f) compromise amounts due under the Contracts; (g) maintain or dismiss suits with respect to the Contracts; (h) delegate any and all rights and powers given to Lender by the assignment of Contracts provided for herein; (i) perform any obligation, covenant or agreement of Mortgagor under any of the Contracts, and, in exercising any such powers, paying all necessary costs and expenses, employing counsel and incurring and paying attorneys' fees; (j) appear in any bankruptcy, insolvency or reorganization proceeding involving any party to the Contracts and collect any award or payment due Mortgagor pursuant to any such proceeding; and/or (k) use such measures, legal or equitable as in its discretion may carry out and effectuate the terms and intent of the assignment of Contracts provided for herein. All such actions shall be taken at the expense of Mortgagor.

3.4 No Liability of Lender. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Contracts, or by reason of the assignment of Contracts provided for herein. Further, nothing in this Security Instrument shall obligate Lender to assume any obligations under any Contract, unless and until Lender becomes the owner of the Property and affirmatively assumes a particular Contract in writing.

3.5 Instructions to Contracting Parties. Upon an Event of Default, the assignment of Contracts provided for herein constitutes an irrevocable direction to and full authority from Mortgagor to any other party to any Contract to pay directly to Lender, upon Lender's request, all amounts that may be or become due to Mortgagor. No proof of the occurrence of an Event of Default shall be required. Any such contracting party is hereby authorized by Mortgagor to rely upon and comply with any notice or demand by Lender for the payment to Lender of any amounts that may be or become due under its Contract, or for the performance of any obligations under such Contract.

3.6 Application of Income. Notwithstanding any other provision of this Security Instrument, the payments, proceeds and income collected by Lender with respect to the Contracts may be applied, in whatever order Lender in its discretion may determine, to the payment of any costs and expenses, to the payment of taxes, special assessments and insurance premiums that become due and delinquent on the Property, to the Secured Obligations, or to any liens or encumbrances on the Property or any personal property of Mortgagor.

3.7 Interpretation. The terms of any separate assignment of Contracts or assignment of construction documents shall supersede and control over any inconsistent terms of the assignment of Contracts provided for herein.

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4. SECURITY AGREEMENT AND FINANCING STATEMENT.

4.1 Security Agreement. The parties intend for this Security Instrument to create a lien on and security interest in the Property, an absolute assignment of the Leases and Rents, and a security assignment of Contracts, all in favor of Lender. The parties acknowledge that some of the Property and some or all of the Leases, Rents and Contracts may be determined under applicable Laws to be personal property or fixtures. To the extent that any Property (including the Leases, Rents, or Contracts), is or may be determined to be personal property or fixtures, Mortgagor, as debtor, hereby grants to Lender, as secured party, a lien on and security interest in all such Property to secure payment and performance of the Secured Obligations. This Security Instrument constitutes a security agreement under Article 9 of the Uniform Commercial Code of the state in which the Premises are located, as amended or recodified from time to time (the "*Project State UCC*"), covering all such Property.

4.2 Financing Statement.

4.2.1 Mortgagor hereby irrevocably authorizes Lender, at any time and from time to time, to prepare and file, in any filing office in any Uniform Commercial Code jurisdiction necessary to perfect the security interests granted herein, any financing statements and amendments thereto that (a) indicate the "collateral" (i) as all assets of Mortgagor related to the Project or words of similar effect, regardless of whether any particular asset included in the collateral falls within the scope of Article 9 of the Project State UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information for the sufficiency of the filing or acceptance of any financing statement or amendment by the filing office. Mortgagor agrees to furnish any such information to Lender promptly upon Lender's request.

4.2.2 Mortgagor shall pay all fees and costs that Lender may incur in filing one or more financing statements and such other documents as Lender may from time to time require to perfect or continue the perfection of Lender's security interest in any Property and in obtaining such record searches as Lender may reasonably require to confirm the perfection and priority of the security interests granted herein.

4.2.3 Mortgagor shall cooperate with Lender in any way necessary to perfect and continue the perfection of Lender's security interest in any part of the Property.

4.2.4 If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Security Instrument as a lien on the Property or the rights or obligations of the parties under it.

4.2.5 Mortgagor shall not terminate any financing statement filed to perfect Lender's security interest without Lender's express written consent.

4.3 Fixture Filing. This Security Instrument constitutes a financing statement filed as a fixture filing under Article 9 of the Project State UCC, covering any Property that now is or later may become fixtures attached to the Premises or Improvements.

4.4 Representations, Warranties, and Covenants.

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4.4.1 Mortgagor represents and warrants to Lender that (a) Mortgagor's exact legal name is as set forth on the signature page of this Security Instrument, which name is stated to be Mortgagor's name on the public organic record most recently filed with Mortgagor's jurisdiction of organization; (b) Mortgagor is an organization of the type, and is organized in the jurisdiction, set forth on the signature page of this Security Instrument; (c) Mortgagor's organizational identification number, if any, is set forth on the signature page of this Security Instrument; (d) Mortgagor's address set forth in the preamble of this Security Instrument is its principal place of business and the location of its chief executive offices and the address at which it will keep its Books and Records.

4.4.2 Mortgagor shall not, without prior written notice to Lender: (a) change the location of its principal place of business or chief executive office from that specified in the preamble of this Security Instrument; (b) change its name, identity or corporate structure in a manner that would affect the perfection or priority of Lender's financing statement(s) against all or any portion of the Property without further action by Lender; or (c) change the jurisdiction of its incorporation or organization. In addition, Mortgagor shall keep all Property that is personal property, to the extent not delivered to Lender, at the Project or such other locations as have been disclosed in writing to Lender, and Mortgagor shall not remove the personal property from such locations without providing written notice to Lender of the new location of such personal property.

4.4.3 Mortgagor will fully and punctually perform any duty required of it under or in connection with any of the Property that is personal property, and will not take any action that would impair, damage or destroy Lender's rights to such Property or the value thereof. Mortgagor will timely take any and all action reasonably required to maintain the continued performance by every other party to any agreement comprising the Property.

4.5 Uniform Commercial Code Remedies. If an Event of Default exists, Lender may exercise any or all of the remedies granted to a secured party under the Project State UCC.

4.6 Construction Mortgage. As this Security Instrument secures advances to be used either for the acquisition of the Premises or the construction or renovation of improvements thereon, or both, this Security Instrument also constitutes a "construction mortgage" or "construction deed of trust" under the Uniform Commercial Code in effect in the state where the Premises are located.

5. RIGHTS AND DUTIES OF THE PARTIES.

5.1 Representations and Warranties. Mortgagor represents, warrants, and covenants that:

5.1.1 Mortgagor lawfully possesses and holds indefeasible fee simple title to all of the Premises and Improvements, subject only to the Permitted Exceptions (as set forth in Exhibit B attached hereto and by this reference incorporated herein);

5.1.2 Mortgagor has or will have good title to all Property other than the Premises and Improvements, free and clear of any security agreements, reservations of title, or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office, except for Permitted Exceptions;

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5.1.3 True, correct and complete copies of the Contracts and Leases have been delivered to Lender, including all amendments, modifications, exhibits and addenda thereto;

5.1.4 Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Leases, Rents, and Contracts; there are no outstanding assignments of the Leases, Rents, or Contracts; Mortgagor is the absolute owner of the landlord's interest in the Leases; and Mortgagor has performed no act or executed any other instrument that might prevent Lender from enjoying and exercising any of its rights and privileges evidenced by this Security Instrument with respect to the Leases, Rents, and Contracts;

5.1.5 No Rents have been discounted, released, waived, compromised or otherwise discharged except for prepayment of Rent of not more than one (1) month prior to the accrual thereof;

5.1.6 To Mortgagor's knowledge, no default exists under any of the Leases or Contracts by any party and no fact or circumstance exists under any of the Leases or Contracts that, with the lapse of time or giving of notice or both, would constitute a default by any party under such Leases or Contracts;

5.1.7 The Leases and Contracts were duly executed, are in full force and effect, and are the valid and binding obligations of the parties thereto and are enforceable in accordance with their respective terms.

5.1.8 Upon recording of this Security Instrument in the real estate records of the county where the Premises are located and the filing of a UCC financing statement in the applicable Uniform Commercial Code jurisdiction, this Security Instrument will create a first and prior lien on the Property;

5.1.9 The Property includes all property and rights that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; and

5.1.10 To Mortgagor's knowledge, the Project Licenses held by Mortgagor include all licenses and permits necessary for the occupancy and operation of the Project; the Project Licenses are in full force and effect; Mortgagor has at all times complied with all material terms and requirements of the Project Licenses, and Mortgagor has received no notices contrary to the foregoing; no suspension, revocation or cancellation of the Project Licenses is threatened, and no event has occurred, nor do any circumstances exist that may (a) constitute or result in a violation of or a failure to comply with any material term or requirement of any Project License, or (b) result in the revocation, withdrawal, suspension, cancellation or termination of any Project License; and all applications required to have been filed for the renewal of any Project License have been duly filed on a timely basis with the appropriate authority, and all other required filings have been made with respect to the Project Licenses on a timely basis with the appropriate authority.

5.2 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

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5.3 Use of Property. Unless required by applicable Laws or unless Lender has otherwise agreed in writing, Mortgagor shall not allow changes in the use for which all or any part of the Property was intended at the time this Security Instrument was executed. Mortgagor shall not initiate or acquiesce to a change in the zoning classification of the Property without Lender's prior written consent. Mortgagor shall not consent to the submission of the Property, or any portion thereof, to any condominium regime or improvement district.

5.4 Taxes, Assessments, Liens, Charges and Encumbrances. Mortgagor shall pay, prior to delinquency, all taxes, levies, charges, assessments, water and sewer rates, rents insurance premiums, charges and impositions, attributable to the Property. Mortgagor shall immediately discharge any lien on the Property that is not a Permitted Exception, and promptly notify Lender if a mechanic's lien is filed against the Property. Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim if Mortgagor posts a statutory lien bond that removes such lien from title to the Project within twenty (20) days after the earlier of (a) Mortgagor's knowledge that the lien exists or (b) written notice by Lender to Mortgagor of the existence of the lien. Failure to remove the lien from title to the Project within such twenty-day period shall constitute an immediate Event of Default.

5.5 Damages and Insurance and Condemnation Proceeds. In the event of any casualty or condemnation of the Property, the applicable provisions of the Loan Agreement shall govern.

5.6 Maintenance and Preservation of Property.

5.6.1 Mortgagor shall insure the Property as required by the Loan Agreement and keep the Property, including improvements, fixtures, equipment, machinery and appliances, in good repair and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Mortgagor when necessary to keep such items in good condition and repair.

5.6.2 Neither Mortgagor nor any Tenant shall remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other land use classification that affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Lender's express prior written consent in each instance.

5.6.3 If all or part of the Improvements becomes damaged or destroyed, Mortgagor shall promptly and completely repair and/or restore the Improvements in a good and workmanlike manner in accordance with sound building practices, regardless of whether Net Claims Proceeds are available for disbursement pursuant to the terms of the Loan Agreement.

5.6.4 Mortgagor shall take all action necessary to keep the Property at all times in compliance with: (a) all applicable Laws and all orders of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen, including the Americans with Disabilities Act; and (b) all public and private covenants, conditions, restrictions and equitable servitudes affecting the Property. Mortgagor shall not bring or keep any article on the Property or cause or allow any condition to exist on the Property if doing so could invalidate or would be prohibited by any insurance coverage required to be maintained by Mortgagor on the Property or any part of it under the Loan Agreement.

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5.6.5 Mortgagor shall not commit waste or permit impairment or deterioration of the Property.

5.6.6 Mortgagor shall not abandon the Property.

5.6.7 Mortgagor shall give notice in writing to Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Security Instrument or the rights or powers of Lender, except for any such action or proceeding caused by the gross negligence, fraud, or intentional misconduct by Lender.

5.6.8 Mortgagor shall perform all other acts that from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.7 Preservation of Project Licenses.

5.7.1 Mortgagor shall, within twenty (20) days after demand by Lender, deliver to Lender a written statement certifying any condition or state of facts in connection with the Project Licenses that is reasonably requested by Lender;

5.7.2 Mortgagor shall not take any action or make any omission that would (a) constitute or result in a violation of or a failure to comply with any material term or requirement of any Project License, or (b) result in the revocation, withdrawal, suspension, cancellation or termination of any Project License;

5.7.3 Mortgagor shall cause all filings for the renewal of any Project License to be made on a timely basis with the appropriate authority; and

5.7.4 Mortgagor shall notify Lender immediately of any notice or claim known to Mortgagor alleging a material violation of any Project License or threatening to revoke, withdraw, suspend, cancel or terminate any Project License, and Mortgagor shall take all action necessary to defend such allegation and, as applicable, reinstate such Project License.

5.8 Releases, Extensions, Modifications and Additional Security. From time to time, Lender may perform any of the following acts without incurring any liability, giving notice to any person, or prejudicing its rights under this Security Instrument or any other Loan Document:

5.8.1 Release any person liable for payment of any Secured Obligation;

5.8.2 Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

5.8.3 Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

5.8.4 Alter, substitute or release any property securing the Secured Obligations;

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5.8.5 Consent to the making of any plat or map of the Property or any part of it;

5.8.6 Join in granting any easement or creating any restriction affecting the Property;

5.8.7 Join in any subordination or other agreement affecting this Security Instrument or the lien of it;

5.8.8 Apply any other security for the Secured Obligations held by Lender; and

5.8.9 Release the Property or any part of it.

5.9 Protection of Lender's Security.

5.9.1 If an Event of Default exists under this Security Instrument or the other Loan Documents, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Lender therein, including eminent domain, insolvency, enforcement of local Laws, or arrangements or proceedings involving a debtor in bankruptcy or a decedent, then Lender, at Lender's option, may cure any breach or default of Mortgagor, make such appearances, disburse such sums, enter upon the Premises and Improvements, and/or take such action as Lender deems necessary, in its sole discretion to protect Lender's security and the first priority lien of this Security Instrument. Such actions may include, without limitation: (a) appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Lender under, this Security Instrument; (b) paying, purchasing, contesting, or compromising any encumbrance, tax, assessment, charge, lien or claim of lien that is or, in Lender's reasonable judgment may be, senior in priority to this Security Instrument, such judgment of Lender to be conclusive as among the parties to this Security Instrument; (c) purchasing fuel and providing utilities; (d) obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; (e) otherwise caring for and incurring expenses to protect any and all of the Property; (f) employing counsel, accountants, contractors, and other appropriate persons to assist Lender; and/or (g) such other actions reasonably necessary to protect Lender's security.

5.9.2 Nothing contained in this Security Instrument shall require Lender to incur any expense or take any action hereunder.

5.9.3 The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of the right of Lender to accelerate the maturity of any of the Secured Obligations. Lender's receipt of any Claims Proceeds shall not operate to cure or waive any Default or Event of Default.

5.9.4. As used in the following statutory notice, the terms "you" and "your" shall refer to Mortgagor and the terms "we" and "us" shall refer to the Lender. The following notice is given pursuant to the Illinois Collateral Protection Act (815 ILCS 180/1 et seq.) as the same may be amended or restate from time to time.

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UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY YOUR AGREEMENT WITH US, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTERESTS IN YOUR COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT YOUR INTERESTS. THE COVERAGE THAT WE PURCHASE MAY NOT PAY ANY CLAIM THAT YOU MAKE OR ANY CLAIM THAT IS MADE AGAINST YOU IN CONNECTION WITH THE COLLATERAL. YOU MAY LATER CANCEL ANY INSURANCE PURCHASED BY US, BUT ONLY AFTER PROVIDING US WITH EVIDENCE THAT YOU HAVE OBTAINED INSURANCE AS REQUIRED BY OUR AGREEMENT. IF WE PURCHASE INSURANCE FOR THE COLLATERAL, YOU WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES WE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO YOUR TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE YOU MAY BE ABLE TO OBTAIN ON YOUR OWN.

5.10 Release and Reconveyance. In addition to Mortgagor's rights to a Partial Release of Mortgage as set forth in the Loan Agreement, when all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under this Security Instrument and the other Loan Documents have been received, Lender shall release this Security Instrument and release the lien created hereby, and release all notes and instruments evidencing the Secured Obligations.

5.11 Compensation, Exculpation, Indemnification.

5.11.1 Compensation.

5.11.1.1 Mortgagor agrees to pay or reimburse Lender for all reasonable amounts advanced by Lender in connection with Section 5.9 and Section 5.10 hereof.

5.11.1.2 Mortgagor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Lender when the law provides no maximum limit, for any services that Lender may render in connection with this Security Instrument, including exercising their rights with respect to the Leases, Rents, and Contracts, providing a statement of the Secured Obligations, or releasing the lien of this Security Instrument. Mortgagor also agrees to pay or reimburse all of Lender's reasonable costs and expenses that may be incurred in rendering any such services, including all costs of administering the Leases and Contracts.

5.11.1.3 Whether or not any lawsuit is filed, Mortgagor agrees to pay or reimburse Lender, as applicable, for all reasonable costs, expenses, or other advances that may be incurred or made by Lender in any litigation or proceeding affecting this Security Instrument, the Loan Documents, or the Property (including probate, discretionary review, bankruptcy, and on appeal), and any efforts to enforce any terms of this Security Instrument, exercise any rights or remedies afforded to Lender hereunder, under the other Loan Documents, or at law or in equity,

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or defend any action or proceeding arising under or relating to this Security Instrument, including attorneys' fees and other Legal Expenses, receiver's fees, and any cost of evidence of title.

5.11.1.4 Mortgagor further agrees to pay all costs, expenses, and other advances that may be incurred or made by Lender in connection with one or more Foreclosure Sales (hereinafter defined) of the Property.

5.11.1.5 All such expenditures, advances, costs, and expenses made or incurred by Lender shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, and shall be secured by this Security Instrument.

5.11.2 Exculpation. Lender shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following, and Mortgagor expressly waives and releases all liability of the types described below, and agrees not to assert or impose any such liability against or upon Lender:

5.11.2.1 Lender's exercise of or failure to exercise any rights, remedies or powers granted to Lender in this Security Instrument or any of the other Loan Documents;

5.11.2.2 Lender's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Security Instrument, including any of the Leases or Contracts; or

5.11.2.3 Any loss sustained by Mortgagor or any third party resulting from Lender's failure to lease the Property, or from any other act or omission of Lender in managing the Property, after an Event of Default, unless the loss is caused solely by the gross negligence, willful misconduct or bad faith of Lender.

5.11.3 Indemnification. MORTGAGOR AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY LENDER FROM AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER COSTS AND EXPENSES THAT EITHER OF THEM MAY SUFFER OR INCUR (EXCEPT TO THE EXTENT ARISING FROM LENDER'S GROSS NEGLIGENCE, FRAUD, BAD FAITH, OR WILLFUL MISCONDUCT):

5.11.3.1 In performing any act required or permitted by this Security Instrument or any of the other Loan Documents or by law or in equity;

5.11.3.2 Arising out of or resulting from the assignment of Leases and Rents as set forth above, including claims or demands for security deposits from Tenants deposited with Mortgagor, and from and against any and all claims and demands whatsoever that may be asserted against Lender to satisfy any obligations of the landlord under the Leases;

5.11.3.3 Arising out of or resulting from the assignment of Contracts as set forth above, including the exercise or enforcement of any of the rights of Mortgagor thereunder;

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5.11.3.4 Because of any failure of Mortgagor to perform any of its obligations;

5.11.3.5 Because of any alleged obligation of or undertaking by Lender to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than the Loan Documents;

5.11.3.6 By reason of (a) suspension, revocation, cancellation, or termination of any Project License or (b) any alleged obligation or undertaking on the part of Lender to perform or discharge any of the terms of, or any agreements or Laws pertaining to, the Project Licenses; or

5.11.3.7 By reason of Lender's security interest in the Project Licenses.

Such indemnity shall include all reasonable costs, expenses and attorneys' fees incurred by Lender in connection with such matters, together with interest on the indemnified liabilities at the Default Rate from the date paid or incurred by Lender until repaid by Mortgagor, and shall be immediately due and payable to Lender by Mortgagor upon demand and shall be secured by this Security Instrument. This agreement by Mortgagor to hold harmless, indemnify, and defend Lender shall survive the release and cancellation of any or all of the Secured Obligations, the full or partial release of this Security Instrument, and any foreclosure or other enforcement of this Security Instrument, or transfer by deed in lieu thereof.

5.11.4 Payment by Mortgagor. Mortgagor shall satisfy all obligations to pay money arising under this Security Instrument and the other Loan Documents immediately upon demand by Lender. Each such obligation shall be added to, and considered to be part of, the principal of the Notes, and shall bear interest at the Applicable Rate or Default Rate, as applicable, from the date the obligation arises.

5.12 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Security Instrument and the rights and powers of Lender created under it, against all adverse claims. Mortgagor shall give Lender prompt notice in writing if any claim is asserted that does or could affect any such matters, or if any action or proceeding is commenced that alleges or relates to any such claim.

5.13 Subrogation. Lender shall be subrogated to the liens of all encumbrances, whether released of record or not, that are discharged in whole or in part by Lender in accordance with this Security Instrument or with the proceeds of any loan secured by this Security Instrument.

5.14 Site Visits, Observation and Testing. Lender and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property, including Phase I environmental assessments. Lender has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Lender, its agents or representatives shall impose any liability on any of Lender, its agents or representatives. In no event shall any site visit, observation or testing by Lender, its agents or representatives be a representation that Hazardous Material is or is not

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present in, on or under the Property, or that there has been or shall be compliance with any Laws pertaining to Hazardous Material or any other applicable Laws. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by any of Lender, its agents or representatives. Neither Lender, nor its agents or representatives owe any duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Prior to an Event of Default, Lender shall give Mortgagor reasonable notice before entering the Property, and Lender shall make reasonable efforts to avoid interfering with Mortgagor's use of the Property in exercising any rights provided in this Section. Mortgagor shall bear all expense of any site visit, observation or testing.

5.15 Books and Records. Mortgagor agrees to maintain full and accurate records and books of account prepared in a manner reasonably acceptable to Lender covering any of the Property and to deliver, upon request, to Lender such of the books as relate to the Property, including all invoices, shipping documents, contracts, orders, order acknowledgments, correspondence and other instruments and papers in Mortgagor's possession. Lender shall at all reasonable times have free access to Mortgagor's ledgers, books of account and other written records evidencing or relating to the Property and the right to make and retain copies or memoranda of the same.

6. ENVIRONMENTAL AND BUILDING LAWS.

6.1 Definitions.

6.1.1 "Building Laws" means the Fair Housing Act of 1968, as amended from time to time, the Americans With Disabilities Act of 1990, as amended from time to time, all government and private covenants, conditions, and restrictions relating to the Site (hereinafter defined), building code requirements and Laws affecting construction or renovation of improvements on the Site, and all other Laws relating to construction, operation, and maintenance of the Improvements and the marketing and use of the Premises and Improvements in a non-discriminatory manner.

6.1.2 "Environmental Laws" means the Federal Resource Conservation and Recovery Act of 1976; the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980; the Federal Hazardous Materials Transportation Control Act; the Federal Clean Air Act; the Federal Water Pollution Control Act, Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978; the Federal Endangered Species Act; the Federal Toxic Substances Control Act; the Federal Safe Drinking Water Act; and all other federal, state and local laws, statutes, codes, ordinances, regulations, judgments, orders, injunctions, decrees, covenants, restrictions and standards presently in effect or that may be promulgated in the future relating to (a) the use, release, handling, storage, transportation, clean-up, or other disposal of Hazardous Material, (b) the water quality, air quality, soils quality, or other environmental quality of real property and improvements constructed upon real property, (c) Wetlands, or (d) or related to the protection of endangered species, as amended from time to time.

6.1.3 "Environmental Proceeding" means any lawsuit or proceeding, whether civil (including actions by private parties), criminal, or administrative, relating to the environmental condition of the Site or any Wetlands located thereon, the presence, generation,

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treatment, storage, or use of Hazardous Material on or about the Site, or the release, disposal, or discharge of Hazardous Material from the Site.

6.1.4 "Hazardous Material" means any waste, pollutants, contaminants, gasoline, crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, petroleum or petroleum products, asbestos, tremolite, anthophyllite or actinolite, polychlorinated biphenyls, explosives, radioactive materials, or other chemical, substance, or material that: (a) after release into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains will, or may reasonably be anticipated to, cause death, disease, bodily injury, birth defects, behavior abnormalities, cancer, or genetic abnormalities, or (b) is now or at any time in the future becomes regulated under, or is defined, classified or designated as hazardous, toxic, radioactive or dangerous, or other similar term or category under, any Law applicable to the Site.

6.1.5 "Nearby Site" means real property or bodies of water adjacent to or near the Site that could cause contamination of the Site or could become contaminated with Hazardous Material as a result of construction, operations, or other activities involving Hazardous Material on, over, or under the Site.

6.1.6 "Remedial Work" means all actions necessary or desirable to clean up any Hazardous Material affecting the Site or Nearby Site, including removal, treatment, containment, or any other remedial action required by Governmental Authorities or as otherwise required to restore the Site or Nearby Site to a safe condition in compliance with applicable Laws, including Environmental Laws, and all actions necessary or desirable to modify the Site or marketing materials to comply with applicable Laws, including Building Laws.

6.1.7 "Site" means, for the purposes of this Section, the Premises and all improvements, fixtures, and personal property now or hereafter located thereon, the soil and groundwater thereof, any streams crossing or abutting the Premises, and any aquifer underlying the Premises.

6.1.8 "Wetlands" has the meaning given in 33 C.F.R. Part 328.3, as amended from time to time.

6.2 Representations and Warranties. Mortgagor makes the following representations and warranties to Lender, which representations and warranties shall be continuing so long as any amount remains owing under the Secured Obligations or Lender retains any interest in the Property:

6.2.1 Environmental Laws. Except for any contamination or environmental condition that may be disclosed in any Environmental Report obtained by Lender prior to the date hereof or that has otherwise been disclosed in writing by Mortgagor to Lender, Mortgagor has no knowledge of: (a) the presence of any Hazardous Material on the Site; (b) any spills, releases, discharges, or disposal of Hazardous Material that have occurred or are presently occurring on or into the Site (whether originating from the Site or Nearby Site) or occurring on or into the Nearby Site (and originating from the Site); (c) any failure of the Site to comply fully with all applicable Environmental Laws; or (d) any present, past, or threatened investigation, inquiry, or Environmental Proceeding or other proceeding relating to the environmental condition of the Site or any Wetlands located thereon, or any event that could give rise to any such investigation,

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inquiry, or proceeding. To the best of Mortgagor's knowledge, Mortgagor's intended uses of the Site, including any construction, comply fully with all Environmental Laws.

6.2.2 Building Laws. Except for any non-compliance that has been disclosed in writing by Mortgagor to Lender, Mortgagor has no actual knowledge of any failure of the Site or the plans and specifications for any improvements on the Site to comply fully with all applicable Building Laws. To Mortgagor's actual knowledge, Mortgagor's intended uses of the Site, including any construction and any plan for marketing the Improvements constructed on the Site comply fully with all Building Laws.

6.3 No Waivers of Other Indemnifications Relating to Environmental Condition. Mortgagor has not and will not release or waive the liability of any past or current owner, lessee, Tenant, or operator of the Site, any party who performs work on the Site, or any party who may be responsible for the presence of or removal of Hazardous Material on or from the Site or the Nearby Site. Except as set forth herein or in any separate indemnity agreement executed by Mortgagor in connection with the Loan, Mortgagor has made no prior promises of indemnification to any party relating to the existence or non-existence of Hazardous Material on the Site.

6.4 Obligation to Comply with Environmental and Building Laws. Mortgagor shall construct, operate, and maintain the Site in compliance with any and all Laws relating to public safety and the condition of the environment, including Environmental Laws and Building Laws. Mortgagor covenants that, so long as Mortgagor owns any interest in the Property, Mortgagor and Mortgagor's agents, contractors, authorized representatives, and employees shall not engage in any of the following prohibited activities, and Mortgagor shall use diligent efforts to assure that Mortgagor's invitees and Tenants, and such Tenant's employees, agents, and invitees shall not: (a) cause or permit any release or discharge of Hazardous Material on the Site other than in full compliance with all Environmental Laws; (b) cause or permit any manufacturing, storage, holding, handling, usage, placement, transporting, spilling, leaking, discharging, or dumping of Hazardous Material in or on any portion of the Site other than in full compliance with all Environmental Laws; (c) suffer or permit any other act upon or concerning the Property that would result in a violation of any Environmental Laws or require any alterations or improvements to be made on the Site under any Environmental Laws, or (d) suffer or permit any other act upon or concerning the Property that would result in a violation of any Building Laws or require any alterations or improvements to be made on the Site under any of the Building Laws.

6.5 Obligation to Cure Non-Compliance.

6.5.1 Notice. If Mortgagor at any time becomes aware of (a) any Hazardous Material on, or other environmental problem or liability with respect to, the Site or any Nearby Site (and originating from the Site or relating to the development, construction, or operation of the Site), (b) any failure of the Site to comply with any of the Environmental Laws, (c) any failure of the Site or the Improvements, or the marketing efforts and other operations undertaken with respect thereto, to comply with any Building Laws, (d) any lien, action, or notice resulting from a violation of any Environmental Laws or Building Laws, or (e) any Environmental Proceeding affecting the Site, Mortgagor shall immediately notify Lender, and shall thereafter exercise due diligence to ascertain the scope and nature of such condition and provide all notices that applicable Laws require.

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6.5.2 Remediation. If, upon giving any notice required by Law or for any other reason, one or more Governmental Authorities having jurisdiction over the Site or Nearby Site (as applicable) requires removal or treatment of Hazardous Material from or on the Site or Nearby Site (as applicable) or the making of alterations to the Site (including any Improvements) to conform to Building Laws or Environmental Laws, or such removal, treatment, or alteration is required by Environmental Laws or Building Laws, Mortgagor will: (a) perform or cause to be performed any Remedial Work necessary to comply with Environmental Laws or Building Laws or otherwise required in response to any Environmental Proceedings, and/or (b) attempt, through appropriate legal or administrative proceedings, to appeal, contest, or obtain a stay of enforcement proceedings if Mortgagor believes in good faith that Mortgagor is not required by Law to cure such Hazardous Material condition or to make alterations to comply with Building Laws. Mortgagor shall provide Lender with copies of all reports, analyses, notices, licenses, approvals, orders, correspondence, and other written materials in its possession or control relating to the environmental condition of the Site and the Nearby Site or Environmental Proceedings immediately upon receipt, completion, or delivery of such materials.

6.5.3 Liability. Except for removal or treatment of any Hazardous Material deposited on the Site by Lender, Mortgagor agrees that the amelioration, treatment, containment, or removal of all Hazardous Material that may be discovered on the Site shall be at Mortgagor's sole expense, reserving to Mortgagor any claims for contribution or indemnity that Mortgagor may have against other parties who may be held liable therefor.

6.6 Remedial Work.

6.6.1 All Remedial Work shall be conducted:

6.6.1.1 in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer;

6.6.1.2 pursuant to a detailed written plan for the Remedial Work approved by any public or private agencies or persons with a legal or contractual right to such approval;

6.6.1.3 with such insurance coverage pertaining to liabilities arising out of the Remedial Work as is then customarily maintained with respect to such activities; and

6.6.1.4 only following receipt of any required permits, licenses or approvals.

6.6.2 The selection of the Remedial Work contractors and consulting environmental engineer, the contracts entered into with such parties, any disclosures to or agreements with any public or private agencies or parties relating to Remedial Work, and the written plan for the Remedial Work (and any changes thereto) shall each be subject to Lender's prior written approval, which shall not be unreasonably withheld or delayed. In addition, Mortgagor shall submit to Lender, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, contracts and similar information prepared or received by Mortgagor in connection with any Remedial Work or Hazardous Material relating to the Site.

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6.7 Remedies on Default. A default by Mortgagor under any of the covenants, representations, or warranties set forth in this Article shall, upon the expiration of any applicable cure period, constitute an Event of Default entitling Lender to exercise all of the rights and remedies available to Lender; *provided, however*, that such Event of Default shall not form the basis for any claim for damages or indemnification hereunder by Lender against Mortgagor except to the extent of sums actually advanced by Lender pursuant to the terms of this Security Instrument as a consequence of such default prior to the date on which this Security Instrument is fully and finally foreclosed (judicially or non-judicially) or a conveyance in lieu thereof has become effective and has been recorded in the county where the Premises are located.

6.8 Indemnification. Mortgagor shall hold harmless, indemnify, and defend Lender (with counsel selected by Lender in its sole discretion) from and against any and all claims, demands, damages (direct or indirect), losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and costs and expenses (including Legal Expenses) that result in actual cost and expense to Lender to maintain and protect Lender's security hereunder prior to the date on which this Security Instrument is fully and finally foreclosed (judicially or non-judicially) or a conveyance in lieu thereof has become effective and has been recorded in the county where the Premises are located, and arise directly or indirectly from or out of, or in any way are connected with:

6.8.1 the inaccuracy of the representations contained herein;

6.8.2 the discovery and/or clean-up of Hazardous Material existing on or in the Site at the time when Mortgagor first acquired ownership, or any clean-up, remediation, monitoring or other actions required as a result thereof;

6.8.3 any activities on the Site during Mortgagor's ownership, possession, or control of the Site that directly or indirectly result in the existence of Hazardous Material on or in the Site or any Nearby Site in violation of any applicable Environmental Laws, or any clean-up, remediation, monitoring or other actions required as a result thereof; and

6.8.4 any alleged or actual failure of any Improvements now or hereafter constructed on the Site to continuously comply with all Building Laws for any reason whatsoever, or any modification or correction of any of the Improvements so as to comply fully with Building Laws.

6.9 Scope. The foregoing indemnification does not apply to any deposit or release of Hazardous Material on the Site caused solely by Lender, its agents, representatives, or employees (if acting in their capacities as agents, representatives or employees of Lender), or by any receiver for the Site or Property appointed at the request of Lender. Mortgagor acknowledges that as between Mortgagor and Lender, Mortgagor will be solely responsible for all costs and expenses relating to the clean-up of Hazardous Material from the Site or from any Nearby Site or to the modification and correction of any of the Improvements to comply fully with all Building Laws.

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7. ACCELERATING TRANSFERS, DEFAULT AND REMEDIES.

7.1 Accelerating Transfers.

7.1.1 *“Accelerating Transfer”* means any Transfer not expressly permitted under the Loan Agreement.

7.1.2 Mortgagor acknowledges that Lender is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Mortgagor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Lender’s reliance, Mortgagor agrees that Mortgagor shall not make any Accelerating Transfer without Lender’s prior express written consent to the particular transaction and the transferee. Lender may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Lender, in its sole discretion, may declare all of the Secured Obligations to be immediately due and payable, and Lender may invoke any rights and remedies provided by this Security Instrument and any of the other Loan Documents.

7.2 **Events of Default.** Mortgagor will be in default under this Security Instrument upon the occurrence of any one or more of the following events (each an *“Event of Default”* and some or all, collectively, *“Events of Default”*).

7.2.1 Failure of Mortgagor to (a) make any payment required under the Notes or this Security Instrument within ten (10) days after demand, if due on demand, or when otherwise due, or (b) perform or observe any agreement, covenant, or condition required under this Security Instrument or the Loan Agreement within thirty (30) days after written notice from Lender to Mortgagor to do so.

7.2.2 An *“Event of Default”* occurs under the Notes, Loan Agreement or any other Loan Document.

7.2.3 Any default by Mortgagor under any Permitted Exception that is not cured within any applicable cure period therefor.

7.2.4 Any breach or default by Mortgagor under the Leases or under any material Contract that has continued beyond any applicable cure period therefor.

7.3 **Remedies.** At any time an Event of Default exists, Lender shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Lender under the Loan Documents, at law, or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

7.3.1 **Acceleration.** Lender may declare any or all of the Secured Obligations to be due and payable immediately.

7.3.2 **Additional Advances.** Lender may terminate any commitment to make any additional advances under the Loan or any other loan secured by this Security Instrument.

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7.3.3 Receiver. Lender shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under, or through Mortgagor, and without regard to the solvency or insolvency of Mortgagor or the then-value of the Property or any other collateral for the Secured Obligations, be entitled to have a general or custodial receiver appointed for all or any part of the Property, and the proceeds, issues and profits thereof. Such receiver shall have all powers and duties prescribed by applicable Laws, all other powers that are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, the right and power to sell the Property, such rights and powers as Lender would have, upon entering and taking possession of the Property, and such other rights and powers as the court making such appointment shall confer. Mortgagor hereby irrevocably consents and agrees to the appointment of such receiver with such rights and powers and shall not oppose any such appointment.

7.3.4 Entry; Protection of Security.

7.3.4.1 Lender, in person, by agent or by court-appointed receiver, with or without bringing any action or proceeding, may do the following: (a) enter, take possession of, manage, and operate all or any part of the Property, including taking possession of the then-owner's Books and Records; (b) terminate Mortgagor's right and license to collect the Rents and administer the Leases, and thereafter collect the Rents, enter into, enforce, modify, or cancel Leases on such terms and conditions as Lender may consider appropriate, evict Tenants, fix and modify Rents, and employ managers and other personnel to administer the Leases; (c) exercise all of Mortgagor's rights with respect to the Contracts, and employ managers and other personnel to administer the Contracts; (d) complete construction on and make repairs, replacement and alterations to the Premises and Improvements and to the fixtures, equipment and personal property located in or on the Premises or Improvements; (e) purchase and pay for such additional furniture and equipment as in the reasonable discretion of Lender may be necessary to maintain a proper rental income from the Property; (f) otherwise care for and incur expenses to protect any and all of the Property; (g) take any action permitted under Section 5.9 hereof; (h) take any other action Lender may, in its reasonable discretion, consider necessary and appropriate to protect the security of this Security Instrument; and (i) employ counsel, accountants, contractors and other appropriate persons to assist Lender in any of the foregoing.

7.3.4.2 If Lender so requests, Mortgagor shall assemble all of the Property not then located at the Premises and make all of it available to Lender at the site of the Premises.

7.3.4.3 Mortgagor hereby irrevocably constitutes and appoints Lender as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Lender in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

7.3.4.4 Lender may take any of the actions permitted under this Section either with or without giving notice to any person.

7.3.5 Lawsuits; Foreclosure.

7.3.5.1 Lender may commence and maintain an action or actions, at law or in equity, in any court of competent jurisdiction, to enforce the payment and/or

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performance of the Secured Obligations (including to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy).

7.3.5.2 Lender shall have the right, in one or several concurrent or consecutive proceedings, to judicially or non-judicially (to the extent permitted by applicable law) foreclose the lien hereof upon the Property or any part thereof (each such proceeding, a "**Foreclosure Sale**"), for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable Laws.

7.3.5.3 In addition to the right to appoint a receiver upon an Event of Default, Lender may also, at any time after the filing of a complaint to foreclose this Security Instrument, request appointment of a receiver of the Property by the court in which such complaint is filed, and Mortgagor hereby consents to such appointment.

7.3.5.4 If this Security Instrument is foreclosed by judicial action, and the Property sold at a Foreclosure Sale, the purchaser may, during any redemption period allowed, make such repairs or alterations on the Premises and to the Improvements as may be reasonably necessary for the proper operation, care, preservation, protection, and insuring thereof. Any sums so paid together with interest thereon at the Default Rate, shall be added to and become a part of the amount required to be paid for redemption from such sale.

7.3.5.5 To the maximum extent permitted by applicable Laws, Lender will be entitled to a judgment providing that, if the Foreclosure Sale proceeds are insufficient to satisfy the judgment, execution may issue for the deficiency.

7.3.6 Other Remedies. In addition to, but not in lieu of, any other rights and remedies hereunder, Lender shall have the right to institute suit and obtain a protective or mandatory injunction against Mortgagor to prevent an Event of Default, as well as the right to damages occasioned by any Event of Default. Lender may exercise all rights and remedies contained in this Security Instrument (including all rights and remedies with respect to the assignments of Leases and Contracts provided for herein) or any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Lender in connection with the Secured Obligations or any part thereof, without prejudice to the right of Lender thereafter to enforce any appropriate remedy against Mortgagor. Lender shall have the right to pursue all remedies afforded to a Lender under applicable Laws, and shall have the benefit of all of the provisions of such applicable Laws, including all amendments thereto that may become effective from time to time after the date hereof.

7.3.7 Sale of Personal Property. Lender shall have the discretionary right to cause some or all of the Property that constitutes personal property to be sold or otherwise disposed of in any combination and in any other manner permitted by applicable Laws.

7.3.7.1 For purposes of this power of sale, Lender may elect to treat as personal property any Property that is intangible or that can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Lender may dispose of any personal property in any manner permitted by Article 9 of the Project State UCC, including any public or private sale, or in any manner permitted by any other applicable Laws.

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7.3.7.2 In connection with any sale or other disposition of such Property, Mortgagor agrees that the following procedures constitute a commercially reasonable sale: Lender shall mail written notice of the sale to Mortgagor not later than thirty (30) days prior to such sale. Lender will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Lender will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Lender shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

7.3.8 Single or Multiple Foreclosure Sales.

7.3.8.1 If the Property consists of more than one lot, parcel or item of property, Lender may (a) designate the order in which the lots, parcels and/or items are to be sold or disposed of or offered for sale or disposition; and (b) elect to dispose of the lots, parcels and/or items through a one Foreclosure Sale or multiple Foreclosure Sales.

7.3.8.2 If Lender chooses to have more than one Foreclosure Sale, Lender, at its option, may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Lender may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Security Instrument on any part of the Property that has not been sold, until all of the Secured Obligations have been paid in full.

7.4 Purchase at Foreclosure Sale.

7.4.1 At any Foreclosure Sale, any person, including Mortgagor or Lender, may bid for and acquire the Property or any part of it to the extent permitted by then applicable Laws.

7.4.2 To the fullest extent not prohibited by applicable Laws, the sales price of any Property sold at a Foreclosure Sale shall include all costs and expenses that may be paid or incurred by or on behalf of Lender in connection with such Foreclosure Sale and enforcement of this Security Instrument and the other Loan Documents, including attorneys' fees and other Legal Expenses, survey charges, appraiser's fees, inspecting engineer's or architect's fees, fees for environmental studies and assessments, and all additional expenses incurred by Lender with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication and recording costs, and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title. To the fullest extent not prohibited by applicable Laws, the foregoing costs and expenses may be estimated as to items to be expended after entry of any sale decree or judgment or recording or publication of any notice of sale.

7.4.3 Instead of paying cash for such Property, Lender may credit the sales price of the Property against the Secured Obligations in such order as Lender in its sole discretion may choose.

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7.4.4 Mortgagor hereby covenants to warrant and defend the title of any purchaser at a Foreclosure Sale.

7.5 Fair Value. To the extent the applicable Laws require that the “fair market value” or “fair value” of the Property be determined as of the foreclosure date in order to enforce a deficiency against Mortgagor or any other party liable for repayment of the Secured Obligations, the term “fair market value” or “fair value” shall include those matters required by applicable Laws and the additional factors set forth below, and Mortgagor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

7.5.1 The Property shall be valued “as is” and “with all faults” and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the Foreclosure Sale.

7.5.2 An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including brokerage commissions, title policy expenses, tax prorations, escrow fees, and other common charges that are incurred by the seller of real property.

7.6 Tenants. Lender shall have the right, at its option, to foreclose this Security Instrument subject to the rights of any Tenant of the Property.

7.7 Application of Foreclosure Sale Proceeds. Lender may apply the proceeds of any Foreclosure Sale in any manner and in any order permitted by applicable Laws.

8. MISCELLANEOUS PROVISIONS.

8.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties’ agreement regarding the matters mentioned in or incidental to this Security Instrument. The Loan Documents also grant further rights to Lender and contain further agreements and affirmative and negative covenants by Mortgagor that apply to this Security Instrument and to the Property.

8.2 No Waiver or Cure.

8.2.1 Each waiver by Lender must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Lender to take action on account of any default of Mortgagor. Consent by Lender to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Lender’s consent to be obtained in any future or other instance.

8.2.2 If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Security Instrument or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this

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Security Instrument; or prejudice Lender or any receiver in the exercise of any right or remedy afforded any of them under this Security Instrument; or be construed as an affirmation by Lender of any tenancy, lease or option, or a subordination of the lien of this Security Instrument.

8.2.2.1 Lender, its agent or a receiver takes possession of all or any part of the Property in the manner provided herein.

8.2.2.2 Automatic termination of the License to collect Rents and administer the Leases.

8.2.2.3 Lender exercises any of its rights under the assignment of Leases and Rents or collects and applies Rents as permitted hereunder, either with or without taking possession of all or any part of the Property or assuming any of the Leases.

8.2.2.4 Lender exercises any of its rights under the assignment of Contracts provided for herein or collects and applies any amounts due under the Contracts, either with or without taking possession of all or any part of the Property or assuming any of the Contracts.

8.2.2.5 Lender takes any action to preserve its security hereunder or cure any default of Mortgagor under the Leases or Contracts.

8.2.2.6 Lender receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Lender under this Security Instrument.

8.2.2.7 Lender makes a site visit, observes the Property and/or conducts tests as permitted under the Loan Documents.

8.2.2.8 Lender receives any sums under this Security Instrument or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

8.2.2.9 Lender or any receiver invokes any right or remedy provided under this Security Instrument.

8.3 Powers of Lender.

8.3.1 If Lender performs any act that it is empowered or authorized to perform under this Security Instrument, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Security Instrument on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Lender grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Lender shall not be required to comply with any demand by the original Mortgagor that Lender refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

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8.3.2 Lender may take any of the actions permitted under this Security Instrument regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Security Instrument.

8.3.3 From time to time, Lender may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Security Instrument. Lender may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

8.4 Assignment. All rights of Lender hereunder shall inure to the benefit of its successors and assigns, and all obligations of Mortgagor shall bind its successors and assigns and any subsequent owner of the Property. All rights of Lender in, to and under this Security Instrument shall pass to and may be exercised by any assignee of such rights of Lender. Mortgagor hereby agrees that if Lender gives notice to Mortgagor of an assignment of said rights, upon such notice the liability of Mortgagor to the assignee of Lender shall be immediate and absolute. Mortgagor will not set up any claim against Lender or any intervening assignee as a defense, counterclaim, or setoff to any action brought by Lender or any intervening assignee for any amounts due hereunder or for possession of or the exercise of rights with respect to the Leases, Rents, or Contracts.

8.5 No Offset. Mortgagor's obligation to timely pay and perform all obligations under the Notes, this Security Instrument, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Mortgagor or any guarantor may have or claim against Lender or any other person or entity. The foregoing shall not constitute a waiver of any claim or demand which Mortgagor or any guarantor may have in damages or otherwise against Lender or any other person or entity if Mortgagor maintains a separate action thereon.

8.6 Intentionally Omitted.

8.7 Merger. No merger shall occur as a result of Lender's acquiring any other estate in or any other lien on the Property unless Lender consents to a merger in writing.

8.8 Joint and Several Liability. If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Security Instrument.

8.9 Successors in Interest. The terms, covenants and conditions of this Security Instrument shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section does not waive any prohibitions on assignment or transfer of the Property provided herein or in any of the other Loan Documents.

8.10 Interpretation.

8.10.1 Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other

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gender. The captions of the sections of this Security Instrument are for convenience only and do not define or limit any terms or provisions.

8.10.2 The word “include(s)” means “include(s), without limitation,” and the word “including” means “including, but not limited to.”

8.10.3 The word “or” has the inclusive meaning represented by the phrase “and/or.”

8.10.4 No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Security Instrument. The Exhibits to this Security Instrument are hereby incorporated in this Security Instrument.

8.11 In-House Counsel Fees. Whenever Mortgagor is obligated to pay or reimburse Lender for any attorneys’ fees, those fees shall include the allocated costs for services of in-house counsel.

8.12 Intentionally Omitted.

8.13 Severability. If any provision of this Security Instrument is held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Security Instrument except that if such provision relates to the payment of any monetary sum or has a material adverse effect on Lender’s security for the Secured Obligations, then Lender may, at its option, declare all Secured Obligations immediately due and payable.

8.14 Notices. Any notice, demand, request or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given when made as provided in the Loan Agreement.

8.15 Lender’s Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Security Instrument secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Lender not to exceed the maximum amount secured hereby.

8.16 WAIVER OF TRIAL BY JURY. MORTGAGOR AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS SECURITY INSTRUMENT, THE NOTES, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR LENDER. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS SECURITY INSTRUMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, ENTER INTO THIS SECURITY INSTRUMENT AND EACH OF THE OTHER LOAN DOCUMENTS,

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AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

8.17 Inconsistencies. In the event of any inconsistency between this Security Instrument and the Loan Agreement, the terms hereof shall be controlling to the extent necessary to create, preserve, and/or maintain a valid security interest upon the Property; otherwise the provisions of the Loan Agreement shall be controlling.

8.18 Applicable Law. The creation, perfection, and enforcement of the lien of this Security Instrument shall be governed by the Laws of the state in which the Premises are located. In all other respects, this Security Instrument shall be governed by the substantive Laws of the jurisdiction governing the Loan Agreement.

8.19 State-Specific Provisions. The following state-specific terms and conditions shall control over any inconsistent provisions of this Security Instrument:

8.19.1 Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate as defined in 735 ILCS 5/15-1201 of the Act, or residential real estate (as defined in 735 ILCS 15/1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under 735 ILCS 5/15-1601 of the Act, and to the full extent permitted by law, waives the benefits of all present and future valuation, appraisalment, homestead, exemption, stay, extension or redemption, right to notice of election to accelerate the Secured Obligations, and moratorium laws under any state or federal law.

8.19.1 Mortgagor certifies and agrees that the proceeds of the Notes secured by this Security Instrument will be held for the purposes specified in Section 4 of the Illinois Interest Act (815 ILCS 205/1 et seq.), and that the principal obligation secured thereby constitutes a "business loan" within the definition and purview of that section.

8.19.2 In the event that any provision in this Security Instrument shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq. herein called the "*Act*"), the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. If any provision of this Security Instrument shall grant to Lender any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under 735 ILCS 5/15-1510 and 735 ILCS 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Secured Obligations.

8.19.4 Lender may institute one or more actions of foreclosure on this Mortgage or to institute other proceedings according to law for foreclosure, and prosecute the same to judgment, execution and sale, for the collection of the Secured Obligations and all costs and expenses of such proceedings, including reasonable attorneys' fees and actual attorneys' expenses. Except as varied by a court of law, all advances, disbursements and expenditures made

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or incurred by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the mortgage or the Loan Agreement or by the Act (collectively "*Protective Advances*"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Loan Agreement. This Mortgage shall be a lien of all Protective Advances as to subsequent purchases and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(5) of Section 5/15-1302 of the Act.

8.19.5 Notwithstanding anything to the contrary contained herein, in no event will the Secured Obligations exceed an amount equal to Fifty Million and no/100 Dollars (\$50,000,000), provided, however, in no event will the Lender be obligated to advance funds in excess of the face amount of the Notes.

8.20 Counterparts. This Security Instrument may be executed in any number of counterparts and by different signatories hereto in separate counterparts, each of which when so executed shall be deemed to be an original but all of which taken together shall constitute one and the same instrument with the same effect as if all signatories hereto had signed the same signature page. Any signature page of this Security Instrument may be detached from any counterpart of this Security Instrument without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Security Instrument identical in form hereto but having attached to it one or more additional signature pages.

8.21 Notice of Indemnification. MORTGAGOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS SECURITY INSTRUMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY MORTGAGOR OF LENDER FROM CLAIMS OR LOSSES ARISING AS A RESULT OF LENDER'S OWN NEGLIGENCE.

8.22 Incorporation of Exhibits and Riders. The following Exhibits and Riders attached to this Security Instrument are incorporated herein and expressly made a part hereof by this reference:

8.22.1 Exhibit A – Legal Description

8.22.2 Exhibit B – Permitted Exceptions

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES
APPEAR ON THE FOLLOWING PAGE]

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Executed as of the date of this Security Instrument.

MORTGAGOR/DEBTOR:

E & K LAND, LLC

By: [Signature]
Justin Borchardt, General Manager

STATE OF WISCONSIN)
Kenosha COUNTY) ss

Personally came before me his 15 day of September, 2021, the above named Justin Borchardt, the General Manager of E & K Land, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

[Signature]
Name: Jenna Kuehl
Notary Public, State of WI
My Commission expires: 04-10-2023

JENNA KUEHL
Notary Public
State of Wisconsin

Property of Cook County Clerk's Office

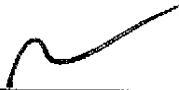
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Executed as of the date first written above.

MORTGAGOR/DEBTOR:

E&K LAND ACQUISITION 2, LLC

By: E & K Land, LLC, its Sole Member

By: 
Justin Borchardt, General Manager

STATE OF WISCONSIN)

Kenosha COUNTY) ss

Personally came before me this 15 day of September, 2021, the above named Justin Borchardt, General Manager of E & K Land, LLC, the Sole Member of E&K Land Acquisition 2, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.



Name: Jenna Kuehl
Notary Public, State of WI
My Commission expires: 04-10-2023

JENNA KUEHL
Notary Public
State of Wisconsin

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Executed as of the date first written above.

MORTGAGOR/DEBTOR:

E&K LAND BOLINGBROOK, LLC
By: E & K Land, LLC, its Sole Member

By: [Signature]
Justin Borchardt, General Manager

STATE OF WISCONSIN)
Kenosha COUNTY) ss

Personally came before me this 15 day of September, 2021, the above named Justin Borchardt, the General Manager of E & K Land, LLC, the Sole Member of E&K Land Bolingbrook, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

[Signature]
Name: Jenna Kuehl
Notary Public, State of WI
My Commission expires: 04-10-2023

JENNA KUEHL
Notary Public
State of Wisconsin

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EXHIBIT A DESCRIPTION OF PREMISES

ILLINOIS PROPERTIES

PARCEL 1 – Vernon Hills Panera (owned by E & K Land, LLC):

OUTLOT 'B' IN THE MARKETPLACE OF VERNON HILLS SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTION 3, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 12, 1993 AS DOCUMENT 3312952, IN LAKE COUNTY, ILLINOIS.

PARCEL 2 – Vernon Hills Panera Easement (owned by E & K Land, LLC):

PERMANENT, MUTUAL, RECIPROCAL AND NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE RECIPROCAL EASEMENT AND OPERATION AGREEMENT MADE BY AND BETWEEN VERNON HILLS III LIMITED PARTNERSHIP, CIRCUIT CITY STORES, INC., AND MAX AND ERMA'S RESTAURANTS, INC., DATED APRIL 8, 1993 AND RECORDED APRIL 12, 1993 AS DOCUMENT 3312964 AS AMENDED BY INSTRUMENT DATED DECEMBER 11, 2000 AND RECORDED DECEMBER 27, 2000 AS DOCUMENT 4624322, IN LAKE COUNTY, ILLINOIS; FOR INGRESS AND EGRESS, PARKING, VEHICULAR OR PEDESTRIAN TRAFFIC, UPON OR ACROSS THE PARKING AREAS, ENTRANCES, EXITS, DRIVEWAYS, WALKS OR SERVICE DRIVES LOCATED WITHIN THE COMMON AREAS, AS DEFINED THEREIN, AND FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF SANITARY SEWERS, STORM DRAINS, RETENTION BASINS, WATER, ELECTRIC AND GAS LINES, TELEPHONE LINES, VAULTS, CONDUITS AND TRANSFORMERS AND OTHER UTILITY LINES AND RELATED FACILITIES, ALL UPON, ACROSS AND UNDER LOTS 1, 2 AND OUTLOT 'A' IN THE MARKETPLACE AT VERNON HILLS SUBDIVISION, RECORDED APRIL 12, 1993 AS DOCUMENT 3312952, IN LAKE COUNTY, ILLINOIS.

For informational purposes only:

Property Address: 447 N. Milwaukee Avenue, Vernon Hills, IL 60061

Tax Key Number: 15-03-102-010 (Parcels 1 and 2)

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PARCEL 3 – Schaumburg (owned by E&K Land Acquisition 2, LLC):

LOT 1 IN MEACHAM POINT IN THE WEST HALF OF THE NORTHWEST 1/4 OF SECTION 13 IN TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SUBDIVISION RECORDED JUNE 25, 2015 AS DOCUMENT NUMBER 1517629042.

PARCEL 4 – Schaumburg Easement (owned by E&K Land Acquisition 2, LLC):

NON-EXCLUSIVE, PERPETUAL, AND RECIPROCAL EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JUNE 25, 2015 AS DOCUMENT NUMBER 1517629042 AND RE-RECORDED AS DOCUMENT NUMBER 1519755070, FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS; UTILITIES; STORM WATER DISCHARGE; MAINTENANCE EASEMENT LICENSE, REPAIR EASEMENT LICENSE OVER AND UPON COMMON AREAS LOCATED ON LOT 2 IN AFORESAID SUBDIVISION.

For informational purposes only:

Property Address: 1310 American Lane, Schaumburg, IL 60173

Tax Key Number: 07-13-100-027-0000 (Parcels 3 and 4)

PARCEL 5 - Bolingbrook (owned by E&K Land Bolingbrook, LLC):

That part of the North 1/2 of Section 1, Township 37 North, Range 10 East of the Third Principal Meridian described as follows: Commencing at the Southeast Corner of the Northwest 1/4 of Said Section 1; Thence North 86 degrees 02 minutes 50 seconds East along the South line of the North 1/2 of said Section 1, a distance of 279.09 feet to a point on the West Line of Janes Avenue, according to the Plat thereof recorded as document number R2001-168319, thence Northerly along said West Line being a curved line concave Southwesterly, having a radius of 866.73 feet, an arc distance of 180.04 feet (the chord thereof bearing North 09 degrees 53 minutes 31 seconds West) to a point of non-tangency and the point of beginning; thence South 68 degrees 56 minutes 12 seconds West, a distance of 307.30 feet; thence North 35 degrees 31 minutes 09 seconds West, a distance of 216.65 feet to a point on the Southerly line of Boughton road, according to the Plat thereof recorded as document number R2001-168319; thence Northeasterly along said Southerly line for the following two (2) courses; (1)thence Northeasterly along a curved line concave Northwesterly, having a radius of 2371.83 feet; an arc distance of 268.59 feet (the chord thereof bearing North 51 degrees 14 minutes 15 seconds East) to a point of non-tangency; (2) Thence North 48 degrees 03 minutes 30 seconds East, a distance of 24.02 feet to the Northwest Corner of Janes Avenue, aforesaid; thence Southerly along said Janes Avenue for the following three (3) Courses; (1) Thence South 81 degrees 56 minutes 29 seconds East, a distance

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of 77.13 feet; (2)thence South 31 degrees 56 minutes 27 seconds East, a distance of 20.37 feet to a point of curvature; (3) thence Southerly along a curved line concave Southwesterly, having a radius of 866.73 feet, an arc distance of 243.52 feet (the chord thereof bearing South 23 degrees 53 minutes 30 seconds East) to the point of beginning, all in Will County, Illinois.

For informational purposes only:

Property Address: 693-699 E. Boughton Road, Bolingbrook, IL 60440

Tax Key Number: 12-02-01-200-035 (Parcel 5)

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EXHIBIT B PERMITTED EXCEPTIONS

1. 2021 real estate taxes not yet due and payable.

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