



Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud 844-768-1713

Doc# 2128708053 Fee \$88.00

TRHSP FEE: \$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 10/14/2021 03:37 PM PG: 1 OF 25

The property identified as: PIN: 13-17-105-109-0000

Address:

Street: 6009 & 6017 West Lawrence Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60630

Lender: Cedar Rapids Bank and Trust Company

Borrower: 6001 Lawrence, LP

Loan / Mortgage Amount: \$1,000,000.00

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: 91B409C7-5DB2-4A70-BE5C-CEE3AA8D5371

Execution date: 10/13/2021

# UNOFFICIAL COPY

6

213065

THIS INSTRUMENT WAS PREPARED BY:

Winthrop & Weinstein, P.A. (PDM)  
225 South Sixth Street, Suite 3500  
Minneapolis, Minnesota 55402-4629

## SWAP MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT

NAME OF  
MORTGAGOR:

6001 LAWRENCE, LP

NAME OF  
MORTGAGEE:

CEDAR RAPIDS BANK AND TRUST COMPANY

**AFTER RECORDING, RETURN TO:**

**TITLE SERVICES, INC.  
610 E. ROOSEVELT ROAD  
SUITE 201  
WHEATON, IL 60187**

# UNOFFICIAL COPY

## SWAP MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT

THE PARTIES TO THIS SWAP MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT (“**Mortgage**”), made as of October 13, 2021, are 6001 LAWRENCE, LP, an Illinois limited partnership (“**Mortgagor**” or “**Borrower**”) and CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation (“**Mortgagee**” or “**Lender**”).

### ARTICLE 1. GRANT

1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Mortgage, Borrower irrevocably grants, conveys, assigns and mortgages to Lender, all of that real property located in the County of Cook, State of Illinois, described on Exhibit A attached hereto (the “**Land**”), together with all buildings and other improvements, fixtures and equipment now or hereafter located on the real property, all right, title, interest, and privileges of Borrower in and to all streets, roads, and alleys used in connection with or pertaining to such real property, all water and water rights, minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, all appurtenances, easements, rights and rights of way appurtenant or related thereto, and all air rights, development rights and credits, licenses and permits related to the real property. All interest or estate which Borrower may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing are collectively referred to herein as the “**Property**.” The listing of specific rights or property shall not be interpreted as a limit of general terms.

### ARTICLE 2. OBLIGATIONS SECURED

2.1 **OBLIGATIONS SECURED.** Borrower makes this Mortgage for the purpose of securing: (a) the performance of the obligations contained herein and in that certain ISDA Master Agreement dated as of October 12, 2021 and all schedules attached to and referenced therein (collectively, “**Swap Agreement**”), and that certain Commitment for Permanent Financing dated as of the date hereof by and between Mortgagor and Mortgagee (“**Commitment**”, and together with the Swap Agreement and any and all documents executed in connection therewith, the “**Swap Documents**”) in the amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00); (b) any and all extensions, renewals, amendments, modifications, or replacements of the Swap Agreement, whether the same be in greater or lesser amounts; and (c) payment and performance of any future advances (subject to Section 7.10 hereof) and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when such future advance or obligation is evidenced by a writing which recites that it is secured by the Mortgage (collectively the “**Secured Obligations**”). The Secured Obligations mature on March 19, 2039, or such earlier date as set forth in the Swap Documents.

2.2 **INCORPORATION.** The term “obligations” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges,

# UNOFFICIAL COPY

prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations. The obligations of Borrower under any environmental or hazardous indemnity agreement do not constitute Secured Obligations. The obligations of any guarantor under any guarantee of, or of any of Borrower's obligations under, the Swap Documents, including but not limited to any repayment guarantee or completion guarantee, do not constitute Secured Obligations. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and the rate of interest on one or more Secured Obligations may vary from time to time.

## ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

3.1 **ASSIGNMENT**. Borrower hereby assigns to Lender all of Borrower's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property, whether such leases, licenses and agreements are now existing or entered into after the date hereof together with all guarantees therefor and any extensions or renewals thereof (collectively, the "Leases"), and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Borrower under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for any lessee's performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. Lender's right to the Leases and Payments is not contingent upon and may be exercised without possession of the Property.

3.2 **GRANT OF LICENSE**. Although it is the intention of the parties that the assignment of leases and rents shall be a present assignment, it is expressly understood and agreed that, anything herein contained to the contrary notwithstanding, the Mortgagee shall not exercise any of the rights and powers conferred upon it herein and the Borrower shall have a license to receive Payments from lessees under the Leases until a Default shall occur and be continuing, and nothing herein contained shall be deemed to affect or impair any rights which the Mortgagee may have under the Swap Documents, this Mortgage or any other document or agreement related hereto or thereto. Upon the occurrence and during the continuance of a Default, all payments thereafter collected by Borrower shall be held by Borrower as trustee under a constructive trust for the benefit of Lender. Borrower hereby irrevocably authorizes and directs lessees under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rental or other sums which may at any time become due under the Leases or for the performance of lessee's undertakings under the Leases, and lessees shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Borrower hereby relieves any and all lessees under the Leases from any liability to Borrower by reason of relying upon and complying with any such notice or written demand by Lender. Lender may apply, in its sole discretion, any Payments so collected by Lender against any Secured Obligation under the Swap Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Lender shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

3.3 **EFFECT OF ASSIGNMENT**. The foregoing assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or

# UNOFFICIAL COPY

repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by any lessee under the Leases or any other parties, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; (d) responsible for or under any duty to produce rents or profits; or (e) directly or indirectly liable to Borrower or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Lender hereunder or to perform or discharge any obligation, duty or liability of Borrower arising under the Lease.

## ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

4.1 **SECURITY INTEREST.** Borrower hereby grants and assigns to Lender a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described property in which Borrower now or at any time hereafter has any interest (collectively, the “Collateral”):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software therein, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all rents (to the extent, if any, they are not real property); all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing or operation of the Property or any business now or hereafter conducted thereon by Mortgagor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Borrower with respect to the Property; all advance payments of insurance premiums made by Borrower with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender and/or any of its affiliate banks, whether or not disbursed; all funds deposited with Lender and/or any of its affiliate banks pursuant to any loan agreement; and all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described Collateral which is or which hereafter becomes a “fixture” under applicable law, this Mortgage is intended to constitute a fixture filing within the Uniform Commercial Code, as amended or recodified from time to time, for the state wherein the Property is located (“UCC”).

4.2 **RIGHTS OF LENDER.** Upon the occurrence of a Default (as hereinafter defined) Lender shall have all the rights of a “Secured Party” under the UCC. In addition to such rights,

# UNOFFICIAL COPY

Lender may, but shall not be obligated to, at any time without notice and at the expense of Borrower: (a) give notice to any person of Lender's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Lender therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Borrower under or from the Collateral. Lender may: (i) upon written notice and compliance with all applicable laws, require Borrower to assemble any or all of the Collateral and make it available to Lender at a place designated by Lender; (ii) without prior notice but subject to the rights of tenants under Leases, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Lender at Borrower's expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Lender be deemed to have accepted any property other than cash in satisfaction of any obligation of Borrower to Lender unless Lender shall make an express written election of said remedy under the UCC or other applicable law.

Borrower acknowledges and agrees that a disposition of the Collateral in accordance with Lender's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten days prior written notice of such disposition is commercially reasonable notice. Borrower further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Lender first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations.

4.3 **FIXTURE FILING.** This instrument shall be deemed to be a Fixture Filing within the meaning of the Illinois Uniform Commercial Code, and for such purpose, the following information is given:

- |    |  |   |
|----|--|---|
| a. | Name and address of Debtor:  | 6001 Lawrence, LP<br>c/o Full Circle Communities, Inc.<br>310 S. Peoria, Ste 500<br>Chicago, IL 60607                           |
| b. | Name and address of Secured Party:   | Cedar Rapids Bank and Trust Company<br>Attention: Adam O'Sullivan<br>500 First Avenue NE, Suite 100<br>Cedar Rapids, Iowa 52401 |
| c. | Description of the types (or items) of property covered by this Fixture Filing:                        | The Property and Collateral described above   |
| d. | Description of real estate to which the collateral is attached or upon which it is or will be located: | See <u>Exhibit A</u> hereto   |



# UNOFFICIAL COPY

Some of the above-described collateral is or is to become fixtures upon the above-described real estate, and this Fixture Filing is to be filed for record in the public real estate records.

4.4 **DEBTOR COVENANTS.** Borrower shall not (i) change the state where it is registered, (ii) change its name, or (iii) change its chief place of business without providing Lender with thirty (30) days written notice. In the event of such change, Borrower authorizes Lender to execute and deliver on Borrower's behalf such additional filings, financing statements and such other documents as is necessary to perfect the security interest granted herein such other jurisdictions as Lender deems appropriate.

4.5 **APPOINTMENT OF ATTORNEY-IN-FACT.** Borrower hereby appoints Lender as Borrower's attorney-in-fact to do any and every act which Borrower is obligated by this Mortgage to do, and to exercise all rights of Borrower in the Collateral and to make collections and to execute any and all papers and instruments and to do all other things necessary to preserve and protect the Collateral and to make collections and to protect Lender's security interest in said Collateral.

4.6 **AUTHORIZATION OF SECURED PARTY TO FILE FINANCING STATEMENTS.** Borrower authorizes Lender to file (i) an initial financing statement, and/or (ii) an amendment that adds a debtor to a financing statement in accordance with the UCC. The authorization granted to Lender herein may be assigned by Lender to an agent, assignee or designee of Lender.

## ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Borrower shall promptly pay and perform each Secured Obligation when due in accordance with the Swap Documents.

5.2 **TAXES AND ASSESSMENTS.** Borrower shall also pay prior to delinquency all taxes, assessments, levies and charges imposed upon the Property by any public authority or upon Lender by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Lender pursuant to any Secured Obligation; provided, however, Borrower shall have no obligation to pay taxes which may be imposed from time to time upon Lender and which are measured by and imposed upon Lender's net income.

Nothing in this Section 5.2 shall require the payment or discharge of any obligations imposed upon Mortgagor by this Section so long as Mortgagor shall diligently and in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Property or any part thereof to satisfy the same; provided, however, that during such contest Mortgagor shall, at the reasonable request of Mortgagee, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation under this Section and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further, however, that if at any time payment of any obligation imposed upon Mortgagor by this Section 5.2 shall become necessary to prevent the forfeiture of the

# UNOFFICIAL COPY

Property or any portion thereof because of nonpayment, then Mortgagor shall pay the same in sufficient time to prevent the forfeiture of the Property or any portion thereof.

5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Borrower shall immediately discharge any lien not approved by Lender in writing that has or may attain priority over this Mortgage.

Nothing in this Section 5.3 shall require the payment or discharge of any obligations imposed upon Mortgagor by this Section so long as Mortgagor shall diligently and in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Property or any part thereof to satisfy the same; provided, however, that during such contest Mortgagor shall, at the reasonable request of Mortgagee, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation under this Section and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further, however, that if at any time payment of any obligation imposed upon Mortgagor by this Section shall become necessary to prevent the forfeiture of the Property or any portion thereof because of nonpayment, then Mortgagor shall pay the same in sufficient time to prevent the forfeiture of the Property or any portion thereof.

5.4 **DUE ON SALE OR ENCUMBRANCE.** If the Property or any interest therein shall be sold, transferred, including, without limitation, through sale or transfer, directly or indirectly, of a majority or controlling interest in the corporate stock or general partnership interests, limited liability partnership interests, or limited liability company interests of a general partner of Borrower, mortgaged, assigned, or further encumbered, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Lender, THEN Lender, in its sole discretion, may at any time thereafter declare all Secured Obligations immediately due and payable.

5.5 **INSURANCE.** Until the Secured Obligations have been paid in full, Mortgagor shall obtain and maintain the following:

- a. Mortgagor shall keep the buildings, structures, fixtures and other improvements now existing or hereafter erected on the Land insured against loss by fire, vandalism, and malicious mischief, perils of extended coverage, including windstorm and such other hazards, casualties and contingencies as may be specified by Mortgagee, in an amount not less than the greater of (a) the full replacement cost thereof and (b) the full insurable value thereof, which in no event shall be less than the amount of Secured Obligations, and naming Mortgagee as mortgagee and lender's loss payable. Mortgagor shall also maintain rent loss or business interruption insurance with respect to such exposures and perils in an amount sufficient to enable Mortgagor to make the required monthly payments under the Swap Documents, to pay taxes and insurance and to continue operations during an assumed reconstruction period of one (1) year, naming Mortgagee as mortgagee and lender's loss payable. Mortgagor shall also maintain commercial general public liability insurance providing for limits of coverage, inclusive of umbrella amounts, of not less than \$5,000,000 combined single limit



# UNOFFICIAL COPY

coverage, and naming Mortgagee as an additional insured. Mortgagor shall also maintain such insurance as is required by the Swap Documents.

- b. Mortgagor shall also maintain flood insurance in the event Mortgagee notifies Mortgagor that the Federal Emergency Management Agency (“FEMA”) has determined that the Property is located in a flood hazard area. Such insurance must meet FEMA coverage requirements, must name Mortgagee as lender’s loss payable, and must be in an amount equal to the lesser of the Mortgage Amount or the maximum insurance available under the National Flood Insurance Program. Mortgagor understands and agrees that even though the Property may not be currently located within a FEMA designated flood hazard area or that the community in which the Property is located does not currently participate in the federal flood insurance program, this may change in the future. In the event of the change of such designation, Mortgagor agrees to obtain the flood insurance required above within forty-five (45) days after receipt of notice thereof from Mortgagee. Mortgagor shall reimburse Mortgagee for all costs and expenses incurred by Mortgagee in ascertaining from time to time whether the Property is located in a flood hazard area.
- c. All insurance shall be carried in companies licensed to do business in the State of Illinois and reasonably approved by Mortgagee and the policies and renewals thereof shall (i) contain a waiver of defense based on coinsurance, (ii) be constantly assigned and pledged to and held by Mortgagee as additional security for the Secured Obligations, (iii) have attached thereto lender’s loss payable clauses in favor of and in form acceptable to Mortgagee, and (iv) provide that Mortgagee shall receive at least thirty (30) days’ prior written notice of cancellation of the policy. Mortgagor shall provide Mortgagee with a certificate evidencing all such insurance on the date hereof and prior to each renewal date of such policies of insurance. If Mortgagor fails to produce such certificate within five (5) days after request therefor, Mortgagee may effect any insurance required to be maintained by Mortgagor pursuant to this Section 5.5 and the amount paid therefor shall become immediately due and payable with interest at a rate equal to the default rate set forth in the Swap Documents or, if such rate is illegal or usurious, at the maximum rate permitted by law, and shall be secured by this Mortgage. Mortgagor acknowledges that any insurance obtained by Mortgagee hereunder may be more expensive than the insurance which could be obtained by Mortgagor and that such coverage may not be as inclusive as the coverage obtained by Mortgagor due to the fact that it may not include contents coverage or liability coverage. In the event of loss or damage to the Property, Mortgagor will give prompt written notice thereof to Mortgagee, who may make proof of loss or damage if not made promptly by Mortgagor. If Mortgagor has failed to timely do so, Mortgagor hereby authorizes Mortgagee to settle and compromise all claims on such policies and hereby authorizes and directs each insurance company concerned to make payment for any such loss to Mortgagor and Mortgagee jointly. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any property insurance policies then in force shall pass to the purchaser at the foreclosure sale.

# UNOFFICIAL COPY

5.6 **CONDEMNATION**. Mortgagor shall give Mortgagee prompt written notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Property or any easement therein or appurtenance thereof. If all or any material part of the Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking, acquisition or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, to be applied to the Secured Obligations, and any excess shall be paid to Mortgagor.

5.7 **MORTGAGOR TO REPAIR, REPLACE, REBUILD OR RESTORE**. If any Secured Obligations are outstanding when all or any part of the Property is destroyed or damaged or condemned:

- a. Mortgagor shall either pay all such outstanding Secured Obligations in full or proceed promptly, subject to the provisions of subsection (b) of this Section 5.7, to replace, repair, rebuild and restore the Property to substantially the same condition as existed before the taking or event causing the damage or destruction.
- b. All proceeds of any insurance claim shall be paid directly to Mortgagee. Mortgagee shall make available to Mortgagor the proceeds, less such sum, if any, required for payment of all expenses incurred in collecting the same (“**Net Proceeds**”), to payment of the costs of repair, replacement, rebuilding or restoration of the Property provided:
  - (i) no Default, and no event which with the giving of notice or passage of time or both would constitute a Default, is then continuing;
  - (ii) Mortgagor provides evidence to Mortgagee that such repair, replacement, rebuilding or restoration will be completed prior to the Termination Date of the Swap, and within one (1) year after the date of casualty;
  - (iii) the Net Proceeds shall be applied by Mortgagee, and disbursed, at Mortgagee’s option, in accordance with Mortgagee’s customary disbursement procedures for construction loans, and upon such reasonable additional terms as Mortgagee may impose, including, without limitation, deposit by Mortgagor with Mortgagee of such additional funds of Mortgagor as may be required to insure payment of all costs of rebuilding, restoration, repair or replacement and a date down title endorsement and/or issuance of any other applicable title endorsements;
  - (iv) Mortgagee receives and approves the plans and specifications for such repair, replacement, rebuilding or restoration which approval will not be unreasonably withheld, conditioned or delayed;

# UNOFFICIAL COPY

- (v) Mortgagee receives evidence that then current lessees shall continue to be liable under the Leases following such repair, replacement, rebuilding or restoration; and
  - (vi) the Property is reappraised at the cost of Mortgagor, and the outstanding Secured Obligations are less than or equal to seventy percent (70%) of the appraised value of the Property after completion of the restoration.
- c. The balance of the Net Proceeds remaining after payment of all costs of any repair, rebuilding, replacement or restoration of the Property shall be applied as a prepayment of the Secured Obligations, without penalty and any excess shall be paid to Mortgagor.

Notwithstanding the foregoing, and provided no Default, and no event which with the giving of notice of the passage of time or both would constitute an Default, has occurred and is then continuing, Mortgagor shall be entitled to settle and compromise any insurance claim and apply the proceeds of such claim toward the restoration of the Property without the prior written consent of Mortgagee when the amount of the insurance claim is less than \$200,000. Mortgagor shall not, by reason of the payment of any costs of repair, rebuilding, replacement or restoration, be entitled to any reimbursement from Mortgagee or any abatement or diminution of the amounts payable under the Swap Documents or on any other Secured Obligations.

**5.8 DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Borrower's sole expense, Borrower shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Lender hereunder against all adverse claims. Borrower shall give Lender prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of any material damage to the Property or Collateral and of any condemnation offer or action.

**5.9 RIGHT OF INSPECTION.** Subject to the rights of tenants under Leases, Lender, its agents and employees, may enter the Property at any reasonable time upon reasonable prior written notice to Borrower for the purpose of inspecting the Property and Collateral and ascertaining Borrower's compliance with the terms hereof.

## ARTICLE 6. DEFAULT PROVISIONS

**6.1 DEFAULT.** For all purposes hereof, the term "Default" shall mean any Event of Default as defined in the Swap Documents and/or this Mortgage. The occurrence of any one or more of the following shall constitute an "Event of Default" hereunder:

- a. Borrower shall default in any payment of any of the Secured Obligations secured hereby and shall fail to cure such default within five (5) days after the date such payment is due;
- b. Any representation, warranty, or statement made by Mortgagor, any partner of Mortgagor, or any guarantor under the Swap Documents proves untrue in any material respect and shall remain untrue for ten (10) days after written notice by Lender;

# UNOFFICIAL COPY

- c. Borrower fails to satisfy or perform any obligation of or covenant made by Borrower herein and such failure shall continue for ten (10) days after delivery of written notice of such default by Lender;

6.2 **RIGHTS AND REMEDIES.** At any time after Default, Lender shall have all the following rights and remedies:

- a. With or without notice, to declare all Secured Obligations immediately due and payable;
- b. To bring suit either for damages, for payment of amounts outstanding under the Swap Documents, for specific performance of any agreement contained in any of the Swap Documents, for the foreclosure of this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy.
- c. Subject to compliance with applicable law, and without releasing Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Borrower and, in connection therewith, to enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Lender under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Lender, is or may be senior in priority to this Mortgage, the judgment of Lender being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (iv) to employ counsel, accountants, contractors and other appropriate persons;
- d. Prior to or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Mortgagee may: (1) collect and/or sue for the Payments in Mortgagee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees and expenses, apply the net proceeds thereof to the Secured Obligations in such manner and order as Mortgagee may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases. Mortgagor hereby assents to, ratifies and confirms any and all actions of Mortgagee with respect to the Property taken under this Section 6.2(d);
- e. To foreclose this Mortgage pursuant to the statutes of the State of Illinois in such case made and provided;
- f. To apply to a court of competent jurisdiction for and to obtain appointment of a receiver of the Property under the terms set forth herein as a matter of strict right

# UNOFFICIAL COPY

and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Borrower hereby consents to such appointment; and

- g. Subject to compliance to applicable law, to resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both;
- h. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;
- i. Prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon, possess, manage and operate the Property or any part thereof, including without limitation, all books and records, and all recorded data of any kind or nature, regardless of the medium of recording, all software, writings, plans, specifications and schematics relating thereto, and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Property. Mortgagee shall not be deemed to have taken possession of the Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor. In connection with any action taken by Mortgagee pursuant to this Section, Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Property or any part thereof, or from any act or omission of Mortgagee in managing the Property unless such loss is caused by the willful misconduct and bad faith of Mortgagee, nor shall Mortgagee be obligated to perform or discharge any obligation, duty or liability of Mortgagor arising under any of the Leases relating to the Property or arising under any permitted encumbrance or otherwise arising. Mortgagor hereby assents to, ratifies and confirms any and all actions of Mortgagee with respect to the Property taken under this Section 6.2(i);
- j. To proceed under the UCC as to all or any part of the Collateral and in conjunction herewith to exercise all of the rights, remedies and powers of a secured creditor under the UCC. Upon the occurrence of any Default, and pursuant to Section 4.2 hereof, Mortgagor shall assemble all of the Collateral not in Mortgagee's possession or control and make the same available within the Property. Any notification required by the UCC shall be deemed reasonably and properly given if sent in accordance with the notice provisions set forth in Section



# UNOFFICIAL COPY

7.8 of this Mortgage at least ten (10) days before any sale or other disposition of the Collateral. Disposition of the Collateral shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where the Property is located. It shall be deemed commercially reasonable for the Mortgagee to dispose of the Collateral without giving any warranties as to the Collateral and specifically disclaiming all disposition warranties; and

- k. To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent actions.

Upon sale of the Property at any foreclosure, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, the costs of any structural reports, hazardous waste reports or any remediation costs related thereto; (iv) anticipated discounts upon resale of the Property as a distressed or foreclosed property; and (v) such other factors or matters that Lender deems appropriate. In regard to the above, Borrower acknowledges and agrees that: (w) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Swap Documents or previously discussed between Borrower and Lender; and (z) Lender's credit bid may be higher or lower than any appraised value of the Property.

6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** After deducting all costs, fees and expenses of Lender, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Lender under the terms hereof and not then repaid, with accrued interest at the Default Rate (as defined in the Swap Agreement and Commitment); (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

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



# UNOFFICIAL COPY

6.5 **NO CURE OR WAIVER.** The receiver's entry upon and taking possession of all or any part of the Property and Collateral, and any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, and the exercise or failure to exercise of any other right or remedy any receiver, shall not cure or waive any breach, Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Borrower has cured all other defaults), or impair the status of the security, or prejudice Lender in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of or security interests created by this Mortgage.

6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Borrower agrees to pay to Lender immediately and without demand all reasonable costs and expenses incurred by Lender pursuant to this Article 6 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property).

6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Borrower hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect or preserve Lender's security interests and rights in or to any of the Property and Collateral, and upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Lender may perform any obligation of Borrower hereunder.

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

# UNOFFICIAL COPY

## ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 **ADDITIONAL PROVISIONS.** The Swap Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Swap Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Borrower which apply to this Mortgage and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference.

7.2 **ATTORNEYS' FEES.** If the Secured Obligations are placed with an attorney for collection or if an attorney is engaged by Lender to exercise rights or remedies or otherwise take actions to collect under the Swap Documents or under any other agreement between the parties, or if suit be instituted for collection, enforcement of rights and remedies, then in all events, Borrower agree(s) to pay all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.

7.3 **NO WAIVER.** No previous waiver and no failure or delay by Lender in acting with respect to the terms of the Swap Documents or the Mortgage shall constitute a waiver of any breach, default, or failure of condition under the Swap Documents, the Mortgage or the obligations secured thereby. A waiver of any term of the Swap Documents, the Mortgage or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Swap Documents and the terms of any other document related to such swap, the terms of the Swap Documents shall prevail.

7.4 **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.

7.5 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive or modify the provisions of the Section above titled "Due on Sale or Encumbrance."

7.6 **GOVERNING LAW.** This Mortgage shall be construed in accordance with the laws of the State of Illinois without giving effect to the choice of law provisions thereof, except to the extent that federal laws preempt the laws of such state.

7.7 **INCORPORATION.** Exhibit A, as attached, is incorporated into this Mortgage by this reference.

7.8 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Mortgage shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by overnight express mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective 3 days after mailing, if mailed by first class mail, and

# UNOFFICIAL COPY

otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Borrower: 6001 Lawrence, LP  
 c/o Full Circle Communities  
 310 S. Peoria, Ste 500  
 Chicago, IL 60607

Lender: Cedar Rapids Bank and Trust Company  
 500 First Avenue NE, Suite 100  
 Cedar Rapids, Iowa 52401

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 10 days' notice to the other party in the manner set forth hereinabove. Borrower shall forward to Lender, without delay, any notices, letters or other communications delivered to the Property or to Borrower naming Lender, "Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Borrower to perform its obligations to Lender under the Swap Documents.

Borrower requests a copy of any statutory notice of default and a copy of any statutory notice of sale be mailed to Borrower at the address set forth above.

7.9 **WAIVER OF MARSHALLING RIGHTS.** Borrower, for itself and for all parties claiming through or under Borrower, and for all parties who may acquire a lien on or interest in the Property hereby waives all rights to have the Property and/or any other property marshalled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien securing the Secured Obligations.

7.10 **ADVERTISING.** In connection with the Swap Documents, Mortgagor hereby agrees that Mortgagee and its subsidiaries may publicly identify details of the Loan in Mortgagee's advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the transaction evidenced by the Swap Documents, the date of the closing and a description of the size/location of the Property.

7.11 **WAIVER OF HOMESTEAD.** Mortgagor hereby waives any and all homestead rights in the Property.

7.12 **WAIVER OF JURY TRIAL.** BY THE EXECUTION HEREOF, BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREES THAT:

- a. NEITHER BORROWER NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF ANY OF THE SAME SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY

# UNOFFICIAL COPY

OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS MORTGAGE, THE SWAP DOCUMENTS, OR ANY DOCUMENT EVIDENCING, SECURING OR RELATING TO THE SECURED OBLIGATIONS OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES THERETO;

- b. NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;
- c. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;
- d. NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND
- e. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THIS TRANSACTION.

## 7.13 PATRIOT ACT COMPLIANCE.

Borrower will use its good faith and commercially responsible efforts to comply with the Patriot Act (as defined below) and all applicable requirements of governmental authorities having jurisdiction of Borrower and the Property, including those relating to money laundering and terrorism. Lender shall have the right to audit Borrower's compliance with the Patriot Act and all applicable requirements of governmental authorities having jurisdiction of Borrower and the Property, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of governmental authorities, then Lender may, at its option, cause Borrower to comply therewith and any and all reasonable costs and expenses incurred by Lender in connection therewith shall be secured by this Mortgage and other Swap Documents shall be immediately due and payable. For purposes hereof, the term "**Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

Neither Borrower nor any partner in Borrower or member of such partner nor any owner of a direct or indirect interest in Borrower (a) is listed on any Government Lists (as defined below), (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (September 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (d) is not currently under investigation by

# UNOFFICIAL COPY

any governmental authority for alleged criminal activity. For purposes hereof, the term “**Patriot Act Offense**” means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering; (c) the Bank Secrecy Act, as amended; (d) the Money Laundering Control Act of 1986, as amended; or (e) Patriot Act. “Patriot Act Offense” also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term “**Government Lists**” means (i) the Specially Designated Nations and Blocked Persons Lists maintained by Office of Foreign Assets Control (“**OFAC**”), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Lender notified Borrower in writing is now included in “Governmental Lists”, or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Lender notified Borrower in writing is now included in “Governmental Lists.”

## ARTICLE 8. STATE-SPECIFIC PROVISIONS

8.1 **PRINCIPLES OF CONSTRUCTION.** In the event of any inconsistencies between the terms and conditions of this Article 8 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 8 shall control and be binding.

8.2 **ILLINOIS MORTGAGE FORECLOSURE.**

- a. It is the express intention of Borrower and Lender that the rights, remedies, powers and authorities conferred upon Lender pursuant to this Mortgage shall include all rights, remedies, powers, and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5/15-1101 et seq.) (herein called the “**IMFL**”) and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage shall be inconsistent with any provision in the IMFL, the provisions of the IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMFL.
- b. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether provided for in this Mortgage, shall be added to the Secured Obligations or by the judgment of foreclosure.
- c. The powers, authorities and duties conferred upon Lender, in the event that Lender takes possession of the Property and, upon a receiver hereunder, shall also include all such powers, authority, and duties as may be conferred upon Lender in possession or receiver under and pursuant to the IMFL. To the extent the IMFL



# UNOFFICIAL COPY

may limit the powers, authorities, and duties purportedly conferred hereby, such power, authorities, and duties shall include those allowed, and be limited as proscribed by IMFL at the time of their exercise or discharge.

- d. Borrower knowingly and voluntarily waives, on behalf of itself and all persons or entities now or hereafter interested in the Property, to the fullest extent permitted by applicable law including IMFL, (i) all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, redemption, single action, election of remedies and marshalling statutes, laws, or equities now or hereafter existing; (ii) any and all requirements that at any time any action may be taken against any other person or entity and Borrower agrees that no defense based on any thereof will be asserted in any action enforcing this Instrument; and (iii) any and all rights to reinstatement and redemption as allowed under Section 15-1501(b) of the IMFL or to cure any defaults, except such rights of reinstatement and cure as may be expressly provided by the terms of this Mortgage and any other Loan Document.
- e. BORROWER HEREBY KNOWINGLY AND VOLUNTARILY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS OF REDEMPTION FROM SALE OR OTHERWISE UNDER ANY ORDER OR DECREE OF FORECLOSURE, DISCLAIMS ANY STATUS WHICH IT MAY HAVE AS AN "OWNER OF REDEMPTION" AS THAT TERM MAY BE DEFINED IN SECTION 15-1212 OF THE IMFL, PURSUANT TO RIGHTS HEREIN GRANTED, ON BEHALF OF BORROWER AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE PROPERTY DESCRIBED HEREIN SUBSEQUENT TO THE DATE OF THIS MORTGAGE, AND ON BEHALF OF ALL OTHER PERSONS TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS STATUTES.

## 8.3 PROTECTIVE ADVANCES.

- a. All advances, disbursements, and expenditures made by Lender before and during a foreclosure, before and after judgment of foreclosure and at any time prior to the sale, and, where applicable, after the sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by any Swap Document or by the IMFL (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the IMFL, including those provisions of the IMFL hereinbelow referred to:
- (i) all advances by Lender in accordance with the terms of any Loan Document to: (A) preserve or maintain, repair, restore, or rebuild the improvements upon the Property; (B) preserve the lien of this Mortgage or the priority hereof; or (C) enforce this Mortgage, each as referred to in subsection (b)(5) of Section 5/15-1302 of the IMFL;



# UNOFFICIAL COPY

(ii) payments by Lender of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) when due, installments of real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances, or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the IMFL;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens of the Property;

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

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

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

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) if the Property or any portion thereof constitutes one (1) or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (B) if Borrower's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the ten under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Lender, whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the Property imposed by subsection (c)(1) of Section 5/15-1704 of the IMFL; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Lender to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners, or instruments creating covenants or restrictions for the benefit of or affecting the Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (G) if the Loan is a construction loan, costs incurred by Lender for demolition, preparation for, and

# UNOFFICIAL COPY

completion of construction, as may be authorized by the applicable commitment, loan agreement, or other agreement; and (H) pursuant to any lease or other agreement for occupancy of the Property for amounts required to be paid by Borrower;

(viii) all Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of any Loan Document;

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

(x) all Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMFL, apply to and be included in:

1. determination of the amount of indebtedness secured by this Mortgage at any time;

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

3. determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the IMFL;

4. application of income in the hands of any receiver or Lender in possession; and

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

**8.4 AGRICULTURAL OR RESIDENTIAL REAL ESTATE.** Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the IMFL) or residential real estate (as defined in Section 15-1219 of the IMFL).

**8.5 USE OF PROCEEDS.** Borrower represents and warrants to Lender that the proceeds of the obligations secured hereby shall be used solely for business purpose, and the entire principal obligations secured by this Mortgage constitute (i) a “business loan” as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c) and (ii) a “loan secured by a mortgage on real estate” within the purview and operation of 815 ILCS 205/4(1)(l).

# UNOFFICIAL COPY

**8.6** **MAXIMUM PRINCIPAL AMOUNT.** The maximum indebtedness secured by this Mortgage shall not exceed two hundred percent (200%) of the aggregate, original principal amount of the Secured Obligations.

22291318v5

**[REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK]**

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

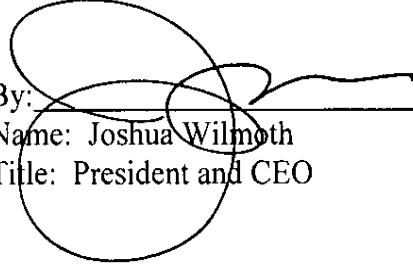
## SIGNATURE PAGE TO SWAP MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the day and year set forth above.

**6001 LAWRENCE, LP,**  
an Illinois limited partnership

By: Lawrence GP, LLC, an Illinois  
limited liability company, its general partner

By: Full Circle Communities, Inc., an  
Illinois not for profit corporation, its sole  
member

By:   
Name: Joshua Wilmoth  
Title: President and CEO

Property of Cook County Clerk's Office

### ACKNOWLEDGMENT

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF COOK                    )

I, Margaret Ann Shultz, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Joshua Wilmoth, the President and CEO of Full Circle Communities, Inc., the sole member of Lawrence GP, LLC, which is the general partner of 6001 Lawrence, LP, an Illinois limited partnership, personally known to me, or proved to me on the basis of satisfactory evidence, to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free voluntary act and deed and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given my hand and notarial seal this 5<sup>th</sup> day of October, 2021.



Margaret Ann Shultz  
Notary Public  
My Commission Expires:  
8-6-2022

# UNOFFICIAL COPY

## EXHIBIT A

### PARCEL 1:

LOTS 1, 3, 4 AND 5 IN LAWRENCE & AUSTIN'S SUBDIVISION, BEING A SUBDIVISION OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

EXCEPT PART OF LOT 5 IN LAWRENCE & AUSTIN'S SUBDIVISION, BEING A SUBDIVISION OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 5; THENCE NORTH 00 DEGREES 00 MINUTES 13 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 5, 22.01 FEET TO THE WESTERLY EXTENSION OF THE SOUTHERLY MOST LINE OF LOT 1 IN SAID LAWRENCE & AUSTIN'S SUBDIVISION; THENCE NORTH 88 DEGREES 36 MINUTES 11 SECONDS EAST ALONG SAID WESTERLY EXTENSION, 22.38 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 01 DEGREES 23 MINUTES 49 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 5, 22.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 88 DEGREES 36 MINUTES 11 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 5, 22.93 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DECLARATION OF INGRESS/EGRESS EASEMENT RECORDED DECEMBER 14, 2010 AS DOCUMENT NUMBER 1034835021 AND AMENDED BY AMENDMENT TO AND PARTIAL RELEASE OF INGRESS/EGRESS EASEMENT RECORDED OCTOBER 6, 2021 AS DOCUMENT NUMBER 2127949236 FOR INGRESS AND EGRESS OVER A PORTION OF LOT 2 IN AFORESAID SUBDIVISION.

### PERMANENT REAL ESTATE INDEX NUMBERS:

13-17-105-109-0000 (LOT 1)  
13-17-105-111-0000 (LOT 3)  
13-17-105-112-0000 (LOT 4)  
13-17-105-113-0000 (LOT 5 AND OTHER PROPERTY)

### COMMON ADDRESS:

6009 AND 6017 WEST LAWRENCE AVENUE, CHICAGO, ILLINOIS 60630