

**Illinois Anti-Predatory  
Lending Database  
Program**

Doc#: 2227145079 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 09/28/2022 10:30 AM Pg: 1 of 34

**Certificate of Exemption**



**Report Mortgage Fraud  
844-768-1713**

The property identified as: **PIN: 08-16-101-007**

**Address:**

**Street:** 501-571 W. Golf Rd

**Street line 2:**

**City:** Arlington Heights

**State:** IL

**ZIP Code:** 60005

**Lender:** East West Bank, a California banking corporation

**Borrower:** UP Arlington, LLC, a Delaware limited liability company

**Loan / Mortgage Amount:** \$9,750,000.00

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:** F12E9C61-D5CB-4D34-9B4C-83A3F0DB0588

**Execution date:** 9/15/2022

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THIS INSTRUMENT PREPARED BY  
AND WHEN RECORDED RETURN TO:

HOLLAND & KNIGHT LLP  
ONE ARTS PLAZA  
1722 ROUTH STREET, SUITE 1500  
DALLAS, TEXAS 75201  
ATTENTION: MARK M. SLOAN

*This space reserved for Recorder's use only*

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

(This document serves as a Fixture Filing under the Uniform Commercial Code - Secured Transactions as adopted by the State of Illinois.)

This Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "**Security Instrument**") is executed as of September 23, 2022, by UP ARLINGTON, LLC, a Delaware limited liability company ("**Borrower**"), whose mailing address is 7500 San Felipe, Suite 725, Houston, Texas 77063, Attention: Janet Sanford, and whose organizational number is 6458916, in favor of EAST WEST BANK, a California banking corporation ("**Lender**", which term shall also refer to any subsequent holders of the Note, as hereinafter defined, or any part thereof or any interest therein or any of the "**Indebtedness**", as hereinafter defined), whose address is 5001 Spring Valley Rd., Ste 825W, Dallas TX 75244, Attn: Timothy Monter.

FOR GOOD AND VALUABLE CONSIDERATION, including the Indebtedness, the receipt of which is hereby acknowledged, and in order to secure the payment of the Indebtedness and the performance of the obligations, covenants, agreements and undertakings of Borrower hereinafter described, Borrower does hereby MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, CONVEY and ASSIGN to Lender, with right of entry and possession, the land (the "**Land**") situated in the County of Cook and State of Illinois (the "**State**") described in Exhibit A attached hereto and made a part hereof, together with (i) all the buildings and other improvements now on or hereafter located on the Land; (ii) all materials, equipment, fixtures or other property whatsoever now or hereafter attached or affixed to or installed in said buildings and other improvements, including, but not limited to, all heating, plumbing, lighting, water heating, cooking, laundry, refrigerating, incinerating, ventilating and air conditioning equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and apparatus, utility lines and equipment (whether owned individually or jointly with others), sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, engines, machines, elevators, motors, cabinets, shades, blinds, partitions, window screens, screen doors, storm windows, awnings, drapes, and rugs and other floor coverings, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the

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foregoing, all of which materials, equipment, fixtures and other property are hereby declared to be permanent fixtures and accessions to the freehold and part of the realty conveyed herein as security for the Indebtedness; (iii) all easements and rights of way now and at any time hereafter used in connection with any of the foregoing property or as a means of ingress to or egress from said property or for utilities to said property, including, without limitation, the easements described on Exhibit A, if any; (iv) all interests of Borrower in and to any streets, ways, alleys and/or strips of land adjoining said land or any part thereof; (v) all water and water rights and shares of stock evidencing the same; and (vi) all rights, estates, powers and privileges appurtenant or incident to the foregoing.

TO HAVE AND TO HOLD the foregoing property (the “**Real Property**”) unto Lender and its successors and assigns, however, upon the terms, provisions and conditions herein set forth.

In order to secure the payment of the Indebtedness and the performance of the obligations, covenants, agreements and undertakings of Borrower hereinafter described, Borrower hereby grants to Lender a security interest in all goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature owned by Borrower now or hereafter located or used in and about the building or buildings or other improvements now erected or hereafter to be erected on the lands described in Exhibit A attached hereto and made a part hereof, or otherwise located on said lands, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein, all security deposits (whether cash, one or more letters of credit, bonds or other form of security) and advance rentals under lease agreements now or at any time hereafter covering or affecting any of the Property (as hereinafter defined) and held by or for the benefit of Borrower, all monetary deposits which Borrower has been required to give to any public or private utility with respect to utility services furnished to the Property, all rents and other amounts from and under leases of all or any part of the Property, all issues, profits and proceeds from all or any part of the Property, all proceeds (including premium refunds) of each policy of insurance relating to the Property, including, without limitation any Net Proceeds, Condemnation Proceeds or Insurance Proceeds, all proceeds from the taking of the Property or any part thereof or any interest therein or right or estate appurtenant thereto by eminent domain or by purchase in lieu thereof, all amounts deposited in the Tax Reserve Account, all amounts payable under any interest rate protection or Financial Contract entered into by Borrower with respect to the Loan, all amounts deposited in Borrower's operating accounts, all contracts related to the Property, all money, funds, accounts, instruments, documents, general intangibles (including trademarks, trade names and symbols owned by Borrower and used in connection therewith), all notes or chattel paper arising from or related to the Property, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property, all plans, specifications, maps, surveys, reports, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Property, all proceeds and other amounts paid or owing to Borrower under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property, all oil, gas and other hydrocarbons and other minerals produced from or allocated to the Property and all products processed or obtained therefrom, the proceeds thereof, and all accounts and general intangibles under which such proceeds may arise, together with any sums of money that may now

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or at any time hereafter become due and payable to Borrower by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mining leases covering the Property or any part thereof (collectively, the “Collateral”) and all proceeds of the Collateral. However, should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, any personal property Collateral is limited to only those items specifically covered (currently or hereafter) by Coverage A of the standard flood insurance policy issued in accordance with the National Flood Insurance Program or under equivalent coverage similarly issued by a private insurer to satisfy the National Flood Insurance Act (as amended). The Real Property and the Collateral are collectively called the “Property”.

Borrower will warrant and forever defend the title to the Property against the claims of all persons whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Permitted Encumbrances.

## ARTICLE I. Indebtedness

1.1 Indebtedness. This Security Instrument is made to secure and enforce the payment of the following note, obligations, indebtedness and liabilities: (a) one certain promissory note of even date herewith in the principal amount of NINE MILLION SEVEN HUNDRED FIFTY THOUSAND and NO/100 DOLLARS (\$9,750,000.00), made by Borrower, and payable to the order of EAST WEST BANK, a California banking corporation, without limitation, all principal, interest, fees and charges, attorneys’ fees and legal expenses, and interest at the Default Rate (as such term is defined in the Loan Agreement), both principal and interest being payable as therein provided and being finally due and payable on September 23, 2027, together with all amendments, modifications and extensions thereof, and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part, such note and all amendments, modifications and extensions thereof and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part, being included in the defined term “Note”; and (b) all loans and future advances made by Lender to Borrower and all other debts, obligations and liabilities of every kind and character of Borrower now or hereafter existing in favor of Lender (including all indebtedness incurred or arising pursuant to the provisions of this Security Instrument or any loan agreement relating to the above described indebtedness or any other instrument now or hereafter evidencing, governing or securing the above described indebtedness or any part thereof) whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to Lender or to a third party and subsequently acquired by Lender and whether such debts, obligations and liabilities are evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Borrower may hereafter become indebted to Lender in further sum or sums; and (c) all obligations of Borrower under any Financial Contract; however, the secured obligations shall not include any obligation arising under any Financial Contract to the extent that the securing of such swap obligation by the Borrower would be impermissible or illegal under the U.S. Commodity Exchange Act, as in effect from time to time, and the official rules and regulations promulgated thereunder. The indebtedness referred to in this Section is herein called the “Indebtedness”.

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1.2 Loan Agreement. The Note, this Security Instrument and certain other documents were executed and delivered pursuant to the Loan Agreement of even date herewith (the “**Loan Agreement**”) between Borrower and Lender. Terms used, but not defined, herein are defined in the Loan Agreement and shall have the meaning given such terms in the Loan Agreement. The representations, covenants, terms and provisions of the Loan Agreement are incorporated herein by reference as though fully set forth herein. All of the covenants in the Loan Agreement, together with the covenants set forth in this Security Instrument, shall constitute covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (a) the obligation to pay when due all taxes on the Property or assessed against Lender with respect to the Loan, (b) the right of Lender to inspect the Property, (c) the obligation to keep the Property insured as Lender may require, (d) the obligation to comply with all Requirements, maintain the Property in good condition and promptly repair any damage or casualty, and (e) except as otherwise permitted in the Loan Agreement, the obligation of Borrower to obtain Lender’s consent prior to entering into, modifying or taking other actions with respect to Leases.

1.3 Future Advances. This Security Instrument secures future advances, both obligatory and optional (the foregoing, collectively, the “**Future Advances**”), made from to time by Lender under the Loan Agreement to or for the benefit of Borrower, which Future Advances shall be secured by this Security Instrument.

## ARTICLE II.

### Assignment of Leases and Rents

2.1 Assignment. In order to secure payment of the Indebtedness, Borrower does hereby absolutely, irrevocably and unconditionally assign, transfer and set over to Lender the following: all rights, title, interests, estates, powers, privileges, options and other benefits of Borrower in, to and under the lease agreements, resident agreements, service agreements, license agreements and other occupancy or use agreements which now or hereafter cover or affect all or any portion of the Property, together with all renewals, extensions, modifications, amendments, subleases and assignments thereof (the “**Leases**”); and

(a) all of the rents, income, receipts, revenues, issues, profits and other sums of money (the “**Rent**”) that are now and/or at any time hereafter become due and payable to Borrower under the terms of the Leases or arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, payments in consideration for cancellation of a Lease, security deposits (whether cash, one or more letters of credit, bonds or other form of security), advance rents, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property and all of Borrower’s rights to recover monetary amounts from any lessee in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, disaffirmances, repudiations, and similar actions, under the Federal Bankruptcy Code and other statutes governing the rights of creditors, including specifically the immediate and continuing right to collect and receive each and all of the foregoing; and

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(b) any and all guaranties of payment of the Rent.

2.2 Application of Rent. Until receipt from Lender of a notice of the occurrence of an Event of Default (a "Notice of Default"), each lessee under the Leases may pay Rent directly to Borrower and Borrower shall have the right to receive such Rent provided that Borrower shall hold such Rent as a trust fund to be applied as required by Lender and Borrower hereby covenants so to apply the Rent, before using any part of the same for any other purposes, first, to the payment of Taxes and assessments upon the Property before penalty or interest is due thereon; second, to the cost of insurance, maintenance and repairs required by the terms of this Security Instrument; third, to the satisfaction of all obligations specifically set forth in the Leases; and, fourth, to the payment of interest and principal becoming due on the Note and this Security Instrument. Upon receipt from Lender of a Notice of Default, each lessee under the Leases is hereby authorized and directed to pay directly to Lender all Rent thereafter accruing and the receipt of Rent by Lender shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Notice of Default shall be sufficient authorization for such lessee to make all future payments of Rent directly to Lender and each such lessee shall be entitled to rely on such Notice of Default and shall have no liability to Borrower for any Rent paid to Lender after receipt of such Notice of Default. Rent so received by Lender for any period prior to foreclosure under this Security Instrument or acceptance of a deed in lieu of such foreclosure shall be applied by Lender to the payment (in such order as Lender shall determine) of: (a) (i) all expenses of managing the Property, including but not limited to the salaries, fees and wages of a managing agent and such other contractors and agents as Lender may deem necessary or desirable; (ii) all expenses of operating and maintaining the Property, including but not limited to all taxes, assessments, charges, claims, utility costs and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements; and (iii) all expenses incident to taking and retaining possession of the Property and/or collecting the Rent due and payable under the Leases; and (b) the Note and other Indebtedness secured by this Security Instrument, principal, interest, reasonable attorneys' fees, legal expenses and collection fees and other amounts, in such order as Lender in its sole discretion may determine. In no event will the assignment in this Article II reduce the Indebtedness except to the extent, if any, that Rent is actually received by Lender and applied upon or after said receipt to the Indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Lender may, at its option, at any time and from time to time, release to Borrower Rent so received by Lender or any part thereof. As between Borrower and Lender, and any Person claiming through or under Borrower, other than any lessee under the Leases who has not received a Notice of Default pursuant to this Section, the assignment under this Article II is intended to be absolute, unconditional and presently effective and the provisions of this Section for notification of lessees under the Leases upon the occurrence of an Event of Default are intended solely for the benefit of each such lessee and shall never inure to the benefit of Borrower or any Person claiming through or under Borrower, other than a lessee who has not received such notice. It shall never be necessary for Lender to institute legal proceedings of any kind whatsoever to enforce the provisions of this Section.

2.3 Collection of Rent. At any time during which Borrower is receiving Rent directly from lessees under the Leases, Borrower shall, upon receipt of written direction from Lender, make demand and/or sue for all Rent due and payable under one or more Leases, as directed by Lender, as it becomes due and payable, including Rent which is past due and unpaid. In the event Borrower

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fails to take such action, or at any time during which Borrower is not receiving Rent directly from lessees under the Leases, Lender shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Borrower, all Rent due and payable under the Leases, as it becomes due and payable, including Rent which is past due and unpaid.

2.4 No Merger of Estates. Notwithstanding (a) the fact that any Lease or the leasehold estate created thereby may be held, directly or indirectly, by or for the account of any person or entity which shall have an interest in the fee estate of the Property, (b) the operation of law or (c) any other event, lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this Security Instrument.

2.5 No Third Party Beneficiary. It is expressly agreed by the parties hereto that the assignment under this Article II shall not be construed or deemed made for the benefit of any third party or parties.

2.6 Release and Termination. The assignment contained in this Article II shall terminate upon the release of this Security Instrument but no lessee under the Leases shall be required to take notice of such termination until a copy of a release of this Security Instrument shall have been delivered to such lessee.

## ARTICLE III. Event of Default

3.1 Defaults. The term "Event of Default" as used in this Security Instrument shall have the same meaning as set forth in the Loan Agreement.

## ARTICLE IV. Remedies Upon Event of Default

4.1 Acceleration. During the continuance of an Event of Default, Lender shall have the option of declaring all Indebtedness in its entirety to be immediately due and payable (including any Increased Costs [as defined in the Loan Agreement]), and the liens and security interests evidenced hereby shall be subject to foreclosure in any manner provided for herein or provided for by law as Lender may elect.

4.2 Possession. During the continuance of an Event of Default, Lender is authorized, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of the security, and without releasing Borrower from any Obligation, prior or subsequent to the institution of any foreclosure proceedings to enter upon the Property (subject to the rights of Tenants under the Leases), or any part thereof, and to take possession of the Property and of all books, records and accounts relating thereto and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection or preservation of the Property, and do such acts and things as Lender deems necessary or desirable to protect the security hereof, including, without limitation: (i) appear in and defend any action or proceeding purporting to affect the security of this Security Instrument or the rights or powers of Lender under this Security

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Instrument; (ii) pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Lender, is or may be senior in priority to this Security Instrument, the judgment of Lender being conclusive as between the parties hereto; (iii) obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Security Instrument; and (iv) rent the Property for the account of Borrower and to deduct from such Rents all costs, expenses and liabilities of every character incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting or preserving the Property and to apply the remainder of such Rents on the Indebtedness in such manner as Lender may elect. All such costs, expenses and liabilities incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting or preserving the Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Lender may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution.

**4.3 Release and Indemnification. IN CONNECTION WITH ANY ACTION TAKEN BY LENDER PURSUANT TO SECTION 4.2 OR ARTICLE II, LENDER SHALL NOT BE LIABLE FOR ANY LOSS SUSTAINED BY BORROWER RESULTING FROM ANY FAILURE TO LEASE THE PROPERTY, OR ANY PART THEREOF, OR FROM ANY OTHER ACT OR OMISSION OF LENDER IN MANAGING THE PROPERTY (REGARDLESS OF WHETHER SUCH LOSS IS CAUSED BY THE NEGLIGENCE OF LENDER) UNLESS SUCH LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER, NOR SHALL LENDER BE OBLIGATED TO PERFORM OR DISCHARGE ANY OBLIGATION, DUTY OR LIABILITY UNDER ANY LEASE COVERING THE PROPERTY OR ANY PART THEREOF OR UNDER OR BY REASON OF THIS SECURITY INSTRUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER. BORROWER SHALL AND DOES HEREBY AGREE TO INDEMNIFY LENDER FOR, AND TO DEFEND AND HOLD LENDER HARMLESS FROM, ANY AND ALL LIABILITY, LOSS OR DAMAGE WHICH MAY OR MIGHT BE INCURRED BY LENDER UNDER ANY SUCH LEASE OR UNDER OR BY REASON OF THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY SUCH LEASE, REGARDLESS OF WHETHER SUCH LIABILITY, LOSS, DAMAGE, CLAIMS OR DEMANDS ARE THE RESULT OF THE NEGLIGENCE OR CLAIMS OF NEGLIGENCE OF LENDER OR ANY STRICT LIABILITY; PROVIDED, HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO THE EXTENT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER.** Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees and legal expenses, shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand. Nothing in Section 4.2 or Article II shall impose any duty, obligation or responsibility upon Lender for the control, care, operation,



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management or repair of the Property, nor for the carrying out of any of the terms and conditions of any such lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the operation, management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger or any strict liability prior to the date Lender has taken actual possession of the Property. Borrower hereby assents to, ratifies and confirms any and all actions of Lender with respect to the Property taken under this Section. For purposes of this Section, the term "Lender" shall include the directors, officers, employees, attorneys and agents of Lender and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Lender. Subject to the terms of the Loan Agreement and herein, the foregoing releases and indemnities shall not terminate upon release or other termination of this Security Instrument.

4.4 Financial Contracts. During the continuance of an Event of Default, Lender shall have the right to terminate any Financial Contracts between Lender and Borrower.

4.5 Foreclosure. When the Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof in accordance with Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and to exercise any other remedies of Lender provided in this Security Instrument or any of the other Loan Documents, or which Lender may have at law, at equity or otherwise. With respect to such Act, Borrower agrees and covenants that:

- (a) Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision in this Security Instrument shall be inconsistent with any provision of the Act, 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 (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to this Security Instrument any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Security Instrument, shall be added to the Indebtedness secured hereby and/or by the judgment of foreclosure.

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- (b) Wherever provision is made in this Security Instrument or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of Insurance Proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Lender shall continue in Lender as judgment creditor or Lender until confirmation of sale.
- (c) In addition to any provision of this Security Instrument authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties and provisions for in Sections 15-1701 and 15-1703 of the Act.
- (d) Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.
- (e) Borrower hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Borrower and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.
- (f) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Property, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Property and rents and income therefrom and the maintenance of the lien of this Security Instrument, including the reasonable fees of any attorney employed by Lender in any litigation or proceedings affecting this Security Instrument, any of the other Loan Documents, or the Property,

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including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be due and payable by Borrower within ten (10) days following receipt of written demand therefor, with interest thereon at the Default Rate from the expiration of such 10-day period until paid. If any provision of this Security Instrument shall grant to Lender any rights or remedies upon the occurrence and during the continuation of a Default of Borrower 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.

- (g) To the extent this Security Instrument may encumber more than one property, the Lender at its sole option shall have the right to foreclose any one property or to foreclose en masse. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness to the decree for sale all costs, fees and expenses which may be paid or incurred by or on behalf of Lender to prosecute such suit, and such other costs and fees including, but not limited to, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, accounting fees, brokerage commissions, costs of whatever nature or kind to protect and avoid impairment of the Property, and other related costs and fees as shall be necessary.
- (h) If the liens or security interests hereof shall be foreclosed by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Borrower or Borrower's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Borrower and Borrower's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Property so occupied or possessed and sold to such purchaser), and anyone occupying or possessing such portion of the Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.
- (i) If Lender should institute a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests hereof, Lender may, at any time before the entry of a final judgment in said suit, dismiss the same, without prejudice to its right in the future to bring suit for the collection of the Indebtedness or foreclosure of the liens and security interests hereof.
- (j) Upon sale of the Property at any foreclosure sale, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Indebtedness. In determining such credit bid, to the extent permitted by law, Lender may, but is not obligated to, take into account all or any of the following:

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(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, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Indebtedness; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) 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 Loan Documents or previously discussed between Borrower and Lender; and (z) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

4.6 Receiver. During the continuance of an Event of Default, Lender, at Lender's sole option, may petition a court of competent jurisdiction to have a receiver appointed for the Property pursuant to the Act, and to the extent permitted under applicable law, Borrower hereby consents to such appointment and waives any right to object to the appointment of such receiver for the Property. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Borrower at the time of application for such receiver, and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to make leases to be binding upon all parties, including the Borrower, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Property after entry of a judgment of foreclosure, all as provided in the Act. In addition, such receiver shall also have the power to extend or modify any then existing Leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other provisions to be contained therein, shall be binding on Borrower and all the persons whose interest in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have the power to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit and, in case of a sale and

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deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. Without limiting the foregoing, such receiver shall have all rights, powers, immunities and duties prescribed by Sections 15-1701, 15-1702, 15-1703 and 15-1704 of the Act. The court may, from time to time, authorize the receiver to apply the net income from the Property in payment in whole or in part of: (a) the Indebtedness secured hereby or the Indebtedness secured by a decree foreclosing this Security Instrument, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency. Any money advanced by Lender in connection with any such receivership will constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Indebtedness. This section is made an express condition upon which the Loan is made.

4.7 Proceeds of Sale. Except as may be otherwise required by applicable law, all proceeds of any sale, lease, or other disposition made pursuant to Section 4.5, or the proceeds from the surrender of any insurance policies pursuant hereto, or, or any payments collected by Lender from the Property, or the reserve for impositions, if any, required by the provisions of this Security Instrument or sums received pursuant to a condemnation or proceeds from insurance which Lender elects to apply to the Obligations, shall be applied by Lender to the Obligations in the following order and priority (except to the extent otherwise required by the Act): (i) to the payment of all expenses of advertising, selling, disposing and conveying the Property or part thereof, and/or prosecuting or otherwise collecting payments, proceeds, premiums, or other sums including reasonable attorneys' fees; (ii) to the remainder of the Obligations; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment, performance and discharge of the Obligations to the holder or beneficiary of any inferior liens or security interests covering the Property, if any, in order of the priority of such inferior liens or security interests (Lender shall hereby be entitled to rely exclusively upon a commitment for title insurance or search of applicable uniform commercial code filing office records issued to determine such priority); and (iv) the cash balance, if any, to the Borrower. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Obligations like any other payment. The balance of the Obligations remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents..

4.8 Lender as Purchaser. Lender may be the purchaser of the Property or any part thereof, at any sale thereof, or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Lender shall, upon any such purchase, acquire good title to the Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Obligations. Lender, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of the Lender's purchase shall be applied in accordance with the requirements of this Security Instrument.

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4.9 Uniform Commercial Code. During the continuance of an Event of Default, Lender may exercise its rights of enforcement with respect to the Collateral under the Uniform Commercial Code as enacted in the State and as the same may be amended from time to time, and in conjunction with, in addition to or in substitution for those rights and remedies:

(a) Lender may enter upon the Property to take possession of, assemble and collect the Collateral or to render it unusable;

(b) Lender may require Borrower to reasonably assemble the Collateral and make it available at a place Lender designates which is mutually convenient to allow Lender to take possession or dispose of the Collateral;

(c) written notice mailed to Borrower as provided herein ten (10) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice;

(d) intentionally deleted;

(e) in the event of a foreclosure sale the Collateral and the Real Property may, at the option of Lender, be sold as a whole;

(f) it shall not be necessary that Lender take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale;

(g) prior to application of proceeds of disposition of the Collateral to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses actually incurred by Lender;

(h) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Indebtedness or as to the occurrence of any Event of Default, or as to Lender having declared all of the Indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(i) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender.

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4.10 Deficiency. The following provisions shall apply to the extent that the laws of the State of Texas govern the interpretation or enforcement of this Security Instrument. In the event an interest in any of the Property is foreclosed upon pursuant to a foreclosure sale, Borrower agrees as follows:

(a) Notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Borrower agrees that Lender shall be entitled to seek a deficiency judgment from Borrower and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Property was sold pursuant to a foreclosure sale. Borrower expressly recognizes that this section constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Borrower and other persons against whom recovery of deficiencies is sought or any guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Borrower further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Borrower, any guarantor, and others against whom recovery of a deficiency is sought.

(b) Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years' experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

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4.11 Remedies Cumulative. All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the Indebtedness, or any part thereof, or otherwise benefiting Lender, and Lender shall, in addition to the remedies herein provided, be entitled to avail itself of all such other remedies as may now or hereafter exist at law or in equity for the collection of the Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

4.12 Resort to Any Security. Lender may resort to any security given by this Security Instrument or to any other security now existing or hereafter given to secure the payment of the Indebtedness, in whole or in part, and in such portions and in such order as may seem best to Lender in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Security Instrument.

4.13 Waiver. To the full extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or redemption, and Borrower, for Borrower and Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the Indebtedness, notice of election to mature or declare due the whole of the Indebtedness and all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Borrower shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Lender under the terms of this Security Instrument to a sale of the Property for the collection of the Indebtedness without any prior or different resort for collection, or the right of Lender under the terms of this Security Instrument to the payment of the Indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. If any law referred to in this Section and now in force, of which Borrower or Borrower's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

4.14 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale Borrower or Borrower's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property by, through or under Borrower are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale. Subject to the terms of any applicable non-disturbance and/or attornment agreement between Lender and any tenant(s) of the Property, such tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant,



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at a reasonable rental per day based upon the value of the portion of the Property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of the portion of the Property upon demand, the purchaser shall be entitled to institute and maintain an action for forcible entry and detainer of the Property in the court of competent jurisdiction where the Property, or any part thereof, is situated.

4.15 Tender After Acceleration. If, following the occurrence of an Event of Default and the acceleration of the Indebtedness but prior to the foreclosure of this Security Instrument against the Property, Borrower shall tender to Lender payment of an amount sufficient to pay the entire Indebtedness, such tender shall be deemed to be a voluntary prepayment under the Loan Agreement and, consequently, Borrower shall also pay to Lender the Increased Costs required under the Loan Agreement to be paid in order to prepay principal and, if such principal payment is made during any period when prepayment is prohibited by this Security Instrument or the Loan Agreement, the applicable charge or premium shall be the maximum Increased Costs provided for in the Loan Agreement.

4.16 Collection Expenses. Upon the occurrence of an Event of Default, Borrower shall reimburse Lender for all expenses incurred by Lender as a result of such Event of Default, including, but not limited to, all travel costs, third-party appraisal fees, environmental report preparation and testing fees, architectural and engineering expenses, and reasonable attorneys' fees and legal expenses.

4.17 Appraisalment. Appraisalment of the Property is hereby waived or not waived at the option of Lender, such option to be exercised at or prior to the time judgment is rendered in such judicial foreclosure.

## ARTICLE V. Miscellaneous

5.1 Defeasance. If all of the Indebtedness is paid in full and if all of the covenants, warranties, undertakings and agreements made in this Security Instrument are kept and performed, then and in that event only, all rights under this Security Instrument shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Lender in due form at Borrower's cost.

5.2 Intentionally Deleted.

5.3 Intentionally Deleted.

5.4 No Homestead or Agricultural Use. No portion of the Property is being used as Borrower's business or residential homestead. No portion of the Property is being used for agricultural purposes.

5.5 Protection and Defense of Lien. If the validity or priority of this Security Instrument or of any rights, titles, liens or security interests created or evidenced by any Loan Document with respect to the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Borrower

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with respect thereto, Borrower will give prompt written notice thereof to Lender and at Borrower's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, including but not limited to the employment of counsel, the prosecution or defense of litigation and the release or discharge of all adverse claims, and Lender (whether or not named as a party to legal proceedings with respect thereto) is hereby authorized and empowered to take such additional steps as in its judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of the Loan Documents and the rights, titles, liens and security interests created or evidenced thereby, including but not limited to the employment of counsel, the prosecution or defense of litigation, the compromise or discharge of any adverse claims made with respect to the Property, the purchase of any tax title and the removal of prior liens or security interests (including but not limited to the payment of debts as they mature or the payment in full of matured or nonmatured debts, which are secured by these prior liens or security interests), and all expenses so incurred of every kind and character shall be a demand obligation owing by Borrower and the party incurring such expenses shall be subrogated to all rights of the person receiving such payment.

5.6 Notification of Account Debtors. Lender may at any time after an Event of Default by Borrower notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Lender directly.

5.7 Authorization to File Financing Statement. Borrower hereby irrevocably authorizes Lender at any time and from time to time to file, without the signature of Borrower, in any jurisdiction any amendments to existing financing statements and any initial financing statements and amendments thereto that (a) indicate the Property (i) as "all assets of Borrower and all proceeds thereof, and all rights and privileges with respect thereto" or words of similar effect, regardless of whether any particular asset comprised in the Property falls within the scope of Article/Chapter 9 of the Uniform Commercial Code, or (ii) as being of an equal or lesser scope or with greater detail; (b) contain any other information required by subchapter E of Article/Chapter 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower; and (c) are necessary to properly effectuate the transactions described in the Loan Documents, as determined by Lender in its discretion. Borrower agrees to furnish any such information to Lender promptly upon request. Borrower further agrees that a carbon, photographic or other reproduction of this Security Instrument or any financing statement describing any Property is sufficient as a financing statement and may be filed in any jurisdiction by Lender.

5.8 Fixture Filing. This Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records in the Office of the County Recorder where the Property (including said fixtures) is situated. This Security Instrument shall also be effective as a financing statement covering as-extracted collateral and is to be filed for record in the real estate records of the county where the Property is situated. The mailing address of Borrower, as debtor, and the address of Lender, as secured party, from which information concerning the security interest may

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be obtained are the addresses of Borrower and Lender set forth on the first page of this Security Instrument. Borrower is the record owner of the Land.

5.9 Filing and Recordation. Borrower will cause this Security Instrument and all amendments and supplements hereto and substitutions for this Security Instrument and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Lender shall reasonably request, and will pay all such recording, filing, re-recording and refile taxes, fees and other charges.

5.10 Dealing with Successor. In the event the ownership of the Property or any part thereof becomes vested in a person other than Borrower, Lender may, without notice to Borrower, deal with such successor or successors in interest with reference to this Security Instrument and to the Indebtedness in the same manner as with Borrower, without in any way vitiating or discharging Borrower's liability hereunder or for the payment of the Indebtedness. No sale of the Property, no forbearance on the part of Lender and no extension of the time for the payment of the Indebtedness given by Lender shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Borrower hereunder or the liability of Borrower for the payment of the Indebtedness or the liability of any other person hereunder or for the payment of the Indebtedness, except as agreed to in writing by Lender.

5.11 Intentionally Deleted.

5.12 Subrogation. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights, security interests and liens owned or held by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released, provided, however that the terms and provisions of this Security Instrument shall govern the rights and remedies of Lender and shall supersede the terms, provisions, rights and remedies under and pursuant to the instruments creating the lien or liens to which Lender is subrogated hereunder.

5.13 Application of Indebtedness. If any part of the Indebtedness cannot be lawfully secured by this Security Instrument or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such Indebtedness or if the lien and security interest of the Indebtedness of this Security Instrument are invalid or unenforceable as to any part of the Indebtedness or as to any part of the Property, then all payments made on the Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedure, shall be applied on said Indebtedness first in discharge of that portion thereof which is unsecured in whole or in part by this Security Instrument.

5.14 Notice. Any notice or communication required or permitted hereunder shall be given in accordance with the provisions of the Loan Agreement.

5.15 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and the successors and assigns of Borrower including all successors in interest of Borrower in and to all or any part of the Property, and shall inure to the

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benefit of Lender and its successors and assigns and shall constitute covenants running with the land. All references in this Security Instrument to Borrower or Lender shall be deemed to include all such successors and assigns.

5.16 Severability. A determination that any provision of this Security Instrument is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Security Instrument to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

5.17 Gender and Number. Within this Security Instrument, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, and words in the plural number shall be held and construed to include the singular, unless in each instance the context otherwise requires.

5.18 Counterparts. This Security Instrument may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

5.19 Joint and Several. If Borrower is comprised of more than one entity, the term "Borrower" as used in this Security Instrument means all or either or any of such entities and the obligations of Borrower hereunder shall be joint and several.

5.20 Headings. The Section headings contained in this Security Instrument are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several Sections hereof.

5.21 Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Indebtedness and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Loan Documents.

5.22 Inconsistencies with Loan Agreement. In the event of any inconsistency between this Security Instrument and the Loan Agreement, the terms hereof shall control as necessary to create, preserve and/or maintain a valid lien and security interest upon the Property, otherwise the provisions of the Loan Agreement shall control.

5.23 APPLICABLE LAW. THIS SECURITY INSTRUMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO TEXAS' PRINCIPLES OF CONFLICTS OF LAW) AND THE LAW OF THE

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UNITED STATES APPLICABLE TO TRANSACTIONS IN THE STATE OF TEXAS, EXCEPT FOR THOSE PROVISIONS IN THIS SECURITY INSTRUMENT PERTAINING TO THE CREATION, PERFECTION OR VALIDITY OF OR EXECUTION ON LIENS OR SECURITY INTERESTS ON PROPERTY LOCATED IN THE STATE WHERE THE PROPERTY IS LOCATED, WHICH PROVISIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED AND APPLICABLE UNITED STATES FEDERAL LAW.

5.24 CONSENT TO FORUM. THE PROVISIONS OF THE LOAN AGREEMENT RELATING TO THE CHOICE OF FORUM FOR ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS ARE INCORPORATED HEREIN BY REFERENCE AS THOUGH SET FORTH HEREIN IN ITS ENTIRETY.

5.25 Condemnation Awards. Subject to the terms of the Loan Agreement, Borrower assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Lender and authorizes Lender to collect and receive such awards and compensation and to give proper receipts and acquittances therefor.

5.26 Insurance Proceeds. Subject to the terms of the Loan Agreement, Borrower assigns all proceeds of any insurance policies against loss or damage to the Property to Lender. Borrower authorizes Lender to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Lender instead of to Borrower and Lender jointly.

5.27 Owner of Property Not Borrower. Borrower, the owner of the Property, has executed this Security Instrument for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, for the purpose of enabling Borrower to obtain credit or other accommodations from Lender, including without limitation the Note, which is hereby acknowledged to be a material benefit to Borrower. By the execution hereof, Borrower agrees that the Property shall secure the Indebtedness, hereby consenting to the extension or the renewal from time to time of any such Indebtedness. Borrower hereby agrees that the Property shall be subject to disposition in accordance with the terms and conditions of the Loan Agreement, the Note and this Security Instrument. No renewal or extension of the time of payment of the Note, no release or surrender of any security for the Note, no release of any person primarily or secondarily liable on the Note (including any maker, endorser or guarantor), no delay in enforcement of payment of the Note, and no delay or omission in exercising any right or power with respect to the Note, shall in any way or manner impair or affect the rights of Lender hereunder. Borrower hereby waives notice of the creation, existence, modification, extension and renewal of the Note and liens created hereby. Borrower has executed and delivered this Security Instrument having: (i) not relied on Lender or any information received from Lender and based upon such documents and information Borrower deems appropriate, made an independent investigation of the transactions contemplated hereby and Borrower, its business, assets, operations, prospects and condition, financial or otherwise, and any circumstances which may bear upon such transactions, Borrower or the obligations and risks undertaken herein with respect to the sums secured by this Security

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Instrument; (ii) adequate means to obtain from Borrower on a continuing basis information concerning Borrower (and Lender has no duty to provide to Borrower any such information); (iii) full and complete access to the Note and any other documents executed in connection with the Note; (iv) not relied and will not rely upon any representations or warranties of Lender not embodied herein or any acts heretofore or hereafter taken by Lender (including but not limited to any review by Lender of the affairs of Borrower), and (v) determined that this Security Instrument will benefit Borrower directly or indirectly.

## ARTICLE VI.

### State Specific Provisions.

6.1 State Specific Provisions. In the event of any material inconsistencies between the terms and provisions of this Article 6 and any of the other terms and provisions of this Security Instrument, or to the extent that any of the provisions set forth elsewhere in this Security Instrument are determined by a court of competent jurisdiction to be invalid, illegal or unenforceable pursuant to State laws in any respect, this Security Instrument shall be construed without such provisions to the fullest extent permitted by applicable State laws and the terms and provisions of this Article 6 shall control and be binding.

6.2 Maximum Amount Secured. This Security Instrument is given to secure all existing Indebtedness under this Security Instrument and the other Loan Documents, but also future advances, whether such advances are obligatory or to be made at the option of the Lender or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Security Instrument, although there may be no advance made at the time of execution of this Security Instrument and although there may be no Indebtedness secured hereby outstanding at the time any advance is made. The lien of this Security Instrument shall be valid as to all Indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Property is located. The total amount of Indebtedness secured hereby may increase or decrease from time to time, but the total principal balance of Indebtedness secured hereby (including disbursements that the Lender, may, but shall not be obligated to, make under this Security Instrument, the Loan Documents, or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed \$16,100,530.00 plus interest thereon, and any disbursements made for payment of taxes, special assessments, or insurance on the Property and interest on such disbursements, and all disbursements by Lender pursuant to 735 ILCS 5/15-1302(b)(5) (all such Indebtedness being hereinafter referred to as the maximum amount secured hereby). This Security Instrument shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely real estate taxes and assessments levied on the Property given priority by law.

6.3 Additional Indebtedness Secured. All Persons with any interest in the Property or about to acquire any such interest should be aware that this Security Instrument secures more than the stated principal amount of the Note and interest thereon; this Security Instrument secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any

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and all amounts expended by Lender to operate, manage or maintain the Property or to otherwise protect the Property or the lien of this Security Instrument.

## 6.4 Compliance with Illinois Mortgage Foreclosure Law.

(a) If any provision in this Security Instrument shall be inconsistent with any provision of 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.

(b) If any provision of this Security Instrument shall grant to Lender (including Lender acting as a Lender in possession) or a receiver appointed pursuant to the provisions of Section 4.c of this Security Instrument any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15 1510 or 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 Indebtedness secured by this Security Instrument and/or by the judgment of foreclosure.

6.5 Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows: Unless Borrower provides Lender with evidence of the insurance coverage required by this Security Instrument, or any of the other Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interests in the Property or any other collateral for the Indebtedness or Obligations. This insurance may, but need not protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property or any other collateral for the Indebtedness or Obligations. Borrower may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Borrower has obtained insurance as required by this Security Instrument, or any of the other Loan Documents. If Lender purchases insurance for the Property or any other collateral for the Indebtedness or Obligations, Borrower will be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully 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 the total outstanding Indebtedness. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

6.6 Remedies Against Other Collateral. Borrower hereby acknowledges that certain Loan Documents other than this Security Instrument may create liens on collateral located in counties or states other than the counties and state in which the Property are located. Borrower further acknowledges that this Security Instrument and the other Loan Documents are cross-defaulted and the Loan secured hereby is also secured by the other Loan Documents.

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Borrower agrees that Lender may proceed, at the same or at different times, to foreclose any or all liens against such collateral by any proceedings appropriate in the county and state where such collateral lies, and that no event of enforcement taking place in any county or state pursuant to any of the Loan Documents shall preclude or bar enforcement in any other county or state. Any foreclosure or other appropriate remedy brought in any county or state in which collateral is located may be brought and prosecuted as to any part of such collateral without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other part of the collateral for the Loan.

6.7 Adjustable Rate. The Indebtedness and Obligations of Borrower pursuant to the note issued under the Loan Agreement, which Indebtedness and Obligations are secured by this Security Instrument, include, among other things, the obligation to pay interest on the unpaid principal balance of the Loan described in the Loan Agreement. The Loan Documents which this Security Instrument secures are adjustable instruments on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Loan Documents.

6.8 Protective Advances. Without limitation on anything contained in this Security Instrument, all advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after a 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 this Security Instrument or by the Act, shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "**Protective Advances**"):

(a) all advances by Lender in accordance with the terms of this Security Instrument to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Property; (B) preserve the lien of this Security Instrument or the priority thereof; or (C) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(b) 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 on the Property; (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 that are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by this Security Instrument; 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 15-1505 of the Act;

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

(d) reasonable attorneys' fees and other expenses incurred: (A) in connection with the foreclosure of this Security Instrument as referred to in Section 15-1504(d)(2) and 15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Security Instrument or arising from the interest



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of Lender hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

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

(f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

(g) expenses incurred and expenditures made by Lender for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by 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 existing insurance in effect at the time any receiver or mortgagee takes possession of the Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (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 if in any way affecting the Property; (G) costs incurred by Lender for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Property;

All Protective Advances shall be so much additional indebtedness secured by this Security Instrument, and shall become immediately due and payable within ten (10) days following written notice and with interest thereon from the date of the advance until paid at the applicable rate set forth in the Loan Documents secured by this Security Instrument. This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Indebtedness secured by this Security Instrument at any time; (B) the amount of the Indebtedness found due and owing to Lender in a judgment of foreclosure or any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Indebtedness becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Security Instrument, computation of any amounts required to redeem, pursuant to Section 15-1603(d) of the Act; (D) determination

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of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Lender in possession; and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of sections 15-1508 and Section 15-1511 of the Act.

(h) Any property management agreement for or relating to all or any part of the Property, whether now in effect or entered into hereafter by Borrower or on behalf of Borrower, shall contain a subordination provision (or the property manager shall execute a subordination agreement in favor of Lender prior to or simultaneously with the execution of the property management agreement) whereby the property manager forever and unconditionally subordinates to the lien of this Security Instrument any and all mechanic's lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law, including, without limitation, Illinois Compiled Statutes, Chapter 770, Section 60/1), as amended. Borrower's failure to cause any of the foregoing to occur within twenty (20) days following written notice shall constitute a Default.

(i) To the extent that any remedy provided under this Security Instrument exceeds what is legally permitted under the Act, such remedy shall not be invalid, but shall be reduced to what is permitted under the Act or other applicable law.

(j) Borrower hereby certifies that it is not a "forbidden entity" as that term is defined in Section 1-110.6 of the Illinois Pension Code, 40 ILCS 5/1-110.6.

6.9 Waiver of Rights. The Borrower hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) Borrower hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, on its own behalf and on behalf of each and every Person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Borrower and of all other Persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15 1601 or other applicable law or replacement statutes;

(b) Borrower will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

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(c) If Borrower is a trustee, Borrower represents that the provisions of this paragraph (including the waiver of reinstatement and redemption rights) were made at the express direction of Borrower's beneficiaries and the Persons having the power of direction over Borrower, and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other persons mentioned above.

6.10 **Bonding.** Any lien that is not a permitted lien shall be promptly discharged by Borrower; provided, that if such lien is a lien claim arising ("**Lien Claim**") under Sections 1 or 21 of the Illinois Mechanics Lien Act (770 ILCS 60/38.1, et seq) (the "**Lien Act**") Borrower may substitute a Bond (as defined hereinafter) for such Lien Claim in accordance with the Lien Act.

(a) The bond ("**Bond**") shall be in accordance with the Lien Act, and shall:

(i) specifically state that Borrower and Surety (as defined hereinafter) thereunder submit to the jurisdiction of the circuit court of Cook County, Illinois and that a final non-appealable judgment or decree entered in a proceeding in favor of the lien claimant based on the lien claim that is the subject of such Bond shall constitute a judgment against Borrower and the Surety for the amount found due to the lien claimant, including interest and reasonable attorney's fees, limited to the Bond Amount (as defined hereinafter);

(ii) continue in effect until the complete satisfaction of the adjudicated amount due under the lien claim, or the payment of the full amount of the Bond or to a final determination and the expiration of all appeal periods, that the Lien Claim is invalid, void has been released by the lien claimant, or the time to enforce the Lien Claim has expired without the required action by the lien claimant;

(iii) be in an amount equal to one hundred seventy-five percent (175%) of the amount of the Lien Claim (the "**Bond Amount**"); and

(iv) have as its surety, a company that (A) has a certificate of authority from the Department of Insurance specifically authorizing the company to execute surety bonds; (B) is rated by A.M. Best Company, Inc. with (1) a current financial strength rating of not less than "A" with no rating modifier, (2) an outlook that is either "positive" or "stable", and (3) a financial size category of not less than IX; and (C) if the circuit court of Cook County, Illinois has its own list of approved sureties, is specifically authorized to issue surety bonds for the circuit court of Cook County, Illinois by order or rule (collectively, A through C above is defined as, the "**Surety**").

(b) Borrower shall file a petition in accordance with the Lien Act with the clerk of the circuit court of county in which the Land is located to substitute the Bond for the Lien Claim; provided, that if there is pending action to enforce such Lien Claim, Borrower shall file such petition no later than five (5) months after the filing of a complaint or counterclaim by a mechanics lien claimant to enforce its mechanics Lien Claim. Borrower's petition (the "**Petition**") shall be verified and include:

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- (i) name and address of the Borrower and its attorney, if any;
  - (ii) name and address of the lien claimant;
  - (iii) if there is a suit to enforce the lien claim, the name of the attorney of record for the lien claimant, or if no suit has been filed but a lien claim has been recorded by the lien claimant, the name of the preparer of the lien claim;
  - (iv) the common and legal description of the Real Property, to include the address, if any;
  - (v) an attached copy of the lien claim which includes the date of such lien claim's recording, where it was recorded, and the number under which it was recorded if there is no pending proceeding to enforce the lien claim;
  - (vi) an attached copy of the proposed Bond;
  - (vii) a certified copy of the Surety's certificate of authority from the Department of Insurance or other State agency charged with the duty to issue such a certificate; and
  - (viii) an undertaking by Borrower to replace the proposed bond with another eligible Bond in the event that the proposed Bond at any time ceases to be an eligible Bond under the Lien Act.
- (c) Borrower shall either (i) personally serve, or (ii) send via certified mail, return receipt requested, each Person whose name and address is in the Petition and such Person's attorney of recorded in a pending action on the Lien Claim, a copy of the Petition with the following notice (the "Notice") attached thereto:

"PLEASE TAKE NOTICE that on *[insert date]*, the undersigned, *[Borrower's name]*, filed a petition to substitute a bond for property to a lien claim, a copy of which is attached to this notice.

PLEASE TAKE FURTHER NOTICE that if you fail to file an objection to the substitution of a bond for the lien claim with the clerk of the circuit court of Cook County, Illinois under general number *[insert general number]* or case number *[insert case number]*, within 30 days after you receive this notice or 33 days after this notice is mailed by certified mail, whichever date is earlier, you will have waived your right to object and an order will be entered substituting the security of the bond for the property securing the lien claim and discharging the property described in the petition as being subject to the lien, such as the real estate and the money or other considerations due or to become due from the owner to the contractor under the original contact giving rise to the lien claim."

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(d) If all requirements of the Lien Act are deemed met by the court in either subsection (e) or (f) of Section 38.1 of the Lien Act, and the court enters an order that: (i) the Bond is substituted for the property securing the Lien Claim, and (ii) the lien claimants right to recover on the Bond is substituted for the lien claimant's causes of action that could be asserted under Section 9, 27 or 28 of the Lien Act (a "**Bonded Lien**") then such Bonded Lien shall be considered a permitted lien under this Security Instrument.

For the avoidance of doubt, (i) each Bond may represent only one (1) Lien Claim; (ii) in the event a Bond is insufficient to cover the applicable Lien Claim, Borrower shall remain at all times responsible for any such additional amount; (iii) Lender may, if Borrower has not obtained a Bond and submitted a Petition for such Lien Claim, obtain a Bond and submit a Petition on behalf, and in the name, of the Borrower; provided, that the cost of the Bond and all reasonable attorneys' fees, court fees, and any other costs or fees are at the expense of Borrower and shall be so much additional Indebtedness, and shall become immediately due and payable by Borrower to Lender, upon demand, and if not paid within ten (10) days thereof shall bear interest at the applicable Default Rate. This obligation on the part of Borrower under subsections (ii) and (iii) of this last paragraph shall survive the closing of the Loan, the repayment thereof and any cancellation of the Security Instrument.

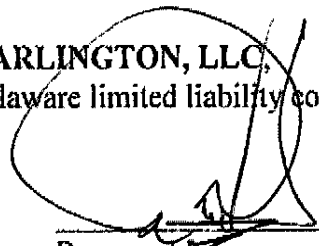
IN WITNESS WHEREOF, Borrower has executed this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the date first set forth above.

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SIGNATURE PAGE FOLLOWS

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## SIGNATURE PAGE OF BORROWER TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

UP ARLINGTON, LLC,  
a Delaware limited liability company



By: \_\_\_\_\_  
Name: Raymond Levy  
Its: Authorized Signatory

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by Raymond Levy, as Authorized Signatory of UP ARLINGTON, LLC, a Delaware limited liability company, on behalf of said entity.

[SEAL]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

*See attached doc  
by 9/15/22*

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## ACKNOWLEDGMENT

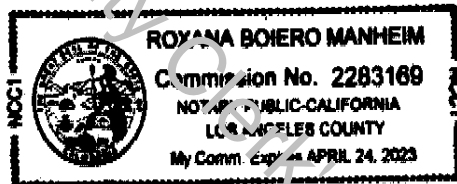
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

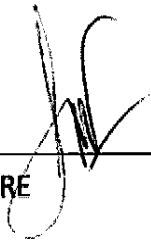
STATE OF CALIFORNIA            )  
   )  
COUNTY OF LOS ANGELES      )

On September 15th, 2022, before me, ROXANA BOIERO MANHEIM, a Notary Public, personally appeared RAYMOND LEVY who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

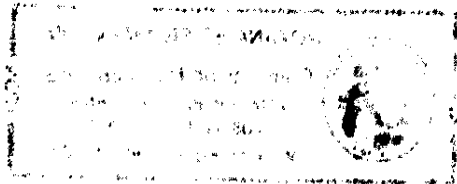


  
\_\_\_\_\_  
SIGNATURE

(SEAL)

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Property of Cook County Clerk's Office





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## EXHIBIT A

(Legal Description)

### PARCEL 1 :

THAT PART OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE NORTH LINE OF SECTION 16 AFORESAID, 45 LINKS (29.70 FEET) WESTERLY OF THE NORTHEAST CORNER OF LOT 4 IN THE SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16 AFORESAID; THENCE SOUTH 32 DEGREES WEST ALONG A LINE (HEREINAFTER REFERRED TO AS LINE 'A') FOR A DISTANCE OF 239.50 FEET TO THE POINT OF BEGINNING OF LAND HEREIN DESCRIBED; THENCE CONTINUE SOUTH 32 DEGREES WEST 432.52 FEET TO A POINT IN THE NORTHEASTERLY LINE OF ALGONQUIN ROAD DEDICATED AS SHOWN ON DOCUMENT 11195785 RECORDED FEBRUARY 2, 1933; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE (BEING A CURVED LINE CONVEX NORTHEASTERLY AND HAVING A RADIUS OF 9649.33 FEET) FOR A DISTANCE OF 443.02 FEET TO A LINE THAT IS 220.50 FEET (AS MEASURED ALONG THE CENTER LINE OF ALGONQUIN ROAD HEREINBEFORE DESCRIBED) NORTHWESTERLY OF AND PARALLEL WITH A LINE WHICH MAKES AN ANGLE OF 58 DEGREES (MEASURED FROM WEST TO THE SOUTH WEST) WITH THE NORTH LINE OF SECTION 16 AFORESAID DRAWN FROM A POINT IN SAID NORTH LINE 660.34 FEET EASTERLY OF THE NORTH QUARTER CORNER OF SECTION 16 AFORESAID; THENCE NORTH 31 DEGREES 01 MINUTES 40 SECONDS EAST ALONG SAID PARALLEL LINE 206.0 FEET TO A POINT 258.0 FEET NORTHEASTERLY FROM THE INTERSECTION OF THE LAST DESCRIBED PARALLEL LINE AND THE CENTER LINE OF ALGONQUIN ROAD; THENCE SOUTH 65 DEGREES 42 MINUTES 09 SECONDS EAST 212.39 FEET TO A POINT IN THE LINE HEREINBEFORE DESCRIBED AS MARKING AN ANGLE OF 58 DEGREES WITH THE NORTH LINE OF SECTION 16 AFORESAID, SAID POINT BEING 946.63 FEET SOUTH 31 DEGREES 01 MINUTES 40 SECONDS WEST FROM THE AFOREMENTIONED POINT IN THE NORTH LINE OF SECTION 16 AFORESAID 660.34 FEET EASTERLY OF THE NORTH QUARTER CORNER THEREOF; THENCE NORTH 31 DEGREES 01 MINUTES 40 SECONDS EAST ALONG SAID 58 DEGREE LINE 304.18 FEET TO A LINE PERPENDICULAR TO LINE 'A' HEREINBEFORE DESCRIBED AND DRAWN THROUGH THE POINT OF BEGINNING; THENCE NORTH 58 DEGREES WEST ALONG SAID PERPENDICULAR LINE 631.91 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

THAT PART OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE NORTH LINE OF SECTION 16, AFORESAID, 658.54 FEET EASTERLY OF THE NORTH QUARTER CORNER THEREOF; THENCE WESTERLY ALONG SAID NORTH LINE 738.44 FEET TO A POINT 45 LINKS WESTERLY OF THE NORTHEAST CORNER OF LOT 4 IN SCHOOL TRUSTEE'S SUBDIVISION OF SECTION 16 AFORESAID; THENCE SOUTH 32 DEGREES WEST ALONG A LINE (HEREINAFTER REFERRED TO AS LINE 'A') FOR A

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DISTANCE OF 239.50 FEET; THENCE SOUTH 58 DEGREES EAST PERPENDICULAR TO LAST DESCRIBED LINE 619.50 FEET TO A LINE PARALLEL WITH LINE 'A' HEREINBEFORE MENTIONED AND DRAWN THROUGH THE POINT OF BEGINNING; THENCE NORTH 32 DEGREES EAST ALONG SAID PARALLEL LINE 641.38 FEET TO THE POINT OF BEGINNING, EXCEPT THEREFROM THAT PART DEDICATED FOR GOLF ROAD AS PER DOCUMENT NUMBER 10488007 RECORDED SEPTEMBER 24, 1929, IN COOK COUNTY, ILLINOIS

PARCEL 3:

EASEMENTS FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY PARAGRAPH 3(A) AND FOR THE BENEFIT OF PARCEL 2 AS CREATED BY PARAGRAPH 3(B) OF THE STORM SEWER AND DETENTION BASIN EASEMENT AGREEMENT RECORDED JULY 17, 1978 AS DOCUMENT 24538271.

PINS: 08-16-101-007 and 08-16-200-117

Address: 501-571 W. Golf Road ; 702-778 W. Algonquin Road,  
Arlington Heights, IL 60005