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## Illinois Anti-Predatory Lending Database Program

Doc#: 2230055080 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 10/27/2022 04:09 PM Pg: 1 of 27

### Certificate of Exemption



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

The property identified as: **PIN: 06-25-205-018-0000**

**Address:**

**Street:** 800 Phoenix Lake Avenue

**Street line 2:**

**City:** Streamwood

**State:** IL

**ZIP Code:** 60107

**Lender:** Bell Bank

**Borrower:** Phoenix Lake LLC

**Loan / Mortgage Amount:** \$10,000,000.00

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

**Certificate number:** E3055D90-17C6-4994-ADCA-AEBE1EA3999C

**Execution date:** 10/25/2022

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**This document was prepared by,  
and after recording, return to:**

Rory O. Duggan, Esq.  
Fabyanske, Westra, Hart & Thomson, P.A.  
333 South Seventh Street  
Suite 2600  
Minneapolis, Minnesota 55402

**Permanent Tax Index Number:**

06-25-205-012-0000

**Property Address:**

800 Phoenix Lake Avenue  
Streamwood, IL 60107

*This space reserved for Recorder's use only*

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made as of October 25, 2022 by 800 PHOENIX LAKE, LLC, a Delaware limited liability company (the "Mortgagor"), having its principal offices at 150 South 5<sup>th</sup> Street, Suite 2675, Minneapolis, Minnesota 55402, in favor of BELL BANK, a North Dakota corporation, whose address is 3800 American Blvd W., Suite 1450, Bloomington, Minnesota 55431 (the "Lender").

**RECITALS:**

A. The Lender has lent, or agreed to lend, to the Mortgagor the principal sum of \$10,000,000.00 (the "Loan"), to be repaid with interest thereon at a variable rate, as evidenced by that certain Promissory Note dated on or about the date hereof executed by the Mortgagor in favor of the Lender (the "Note," as the same may be amended, restated, replaced, extended, supplemented or otherwise modified from time to time), which Loan is the subject of a Loan Agreement dated on or about the date hereof made by and between the Mortgagor and the Lender (as amended, restated, replaced, extended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Capitalized terms herein which are not otherwise defined herein shall have the meanings assigned thereto as set forth in the Loan Agreement. The Note, the Loan Agreement, and the other Loan Documents (as defined in the Loan Agreement) are hereby incorporated by reference, and, together with this Mortgage, as any of the same may be amended, modified, supplemented, extended, renewed, replaced or restated, are sometimes collectively referred to as the "Loan Documents."

B. The obligations secured by this Mortgage (the "Obligations") are as follows:

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(i) the principal amount of \$10,000,000.00 or so much thereof as may be advanced by the Lender under the Note and pursuant to the Loan Agreement; plus

(ii) interest on the amount advanced and unrepaid under the Note, at the interest rate or rates provided in the Note; plus

(iii) all other amounts payable by the Mortgagor under the Loan Documents as the same now exist or may hereafter be amended, including without limitation (A) all "Obligations", as such term is defined in the Loan Agreement, (B) all Protective Advances (as hereinafter defined), and (C) all expenses described more particularly in Section 4.4 of this Mortgage; plus

(iv) the performance of all covenants and agreements contained in this Mortgage and the Loan Documents.

NOW, THEREFORE, the Mortgagor, in consideration of the Lender making the Loan and the covenants, agreements, representations and warranties set forth in this Mortgage, and to secure the Loan, and payment and performance of the Obligations, hereby grants, bargains, sells, pledges, assigns, warrants, transfers, conveys and mortgages to the Lender, its successors and assigns, forever, with right of entry and possession, and grants to the Lender, its successors and assigns, a continuing security interest in Mortgagor's right, title and interest in and to the following, whether now owned or hereafter arising or acquired, all of which is called the "Mortgaged Property":

## A. LAND AND IMPROVEMENTS

The land described in Exhibit A attached hereto and all mineral rights, hereditaments, easements and appurtenances thereto (the "Land"), and all improvements and structures now or hereafter located thereon (the "Improvements"); and

## B. FIXTURES AND PERSONAL PROPERTY

Whether now owned or hereafter arising or acquired, all Fixtures, Equipment, Accounts, Inventory, Goods, General Intangibles (including payment intangibles, inventions, designs, patents, patent applications, design patents, design patent applications, trademarks, trademark applications, trade names, trade secrets, goodwill, copyrights, registrations, licenses, franchises, customer lists, tax refund claims, rights to indemnification, rights under warranties, all domain names, together with all contracts, agreements, licenses and registrations relating to such domain names), Chattel Paper, Instruments, Documents, Investment Property, Deposit Accounts, Letter-of-Credit rights, Supporting Obligations all accessions to, substitutions for and replacements, products and Proceeds of the foregoing, including any construction and building materials stored on or to be included in the Improvements (together with all other collateral described in Clauses A through F of the definition of Mortgaged Property in which a security interest may be created under the UCC, collectively, the "Personal Property"); and

## C. LEASES AND RENTS

All rights of the Mortgagor with respect to all Persons now or hereafter occupying all or any part of the Land or the Improvements (each, a "Tenant"), if any, including without limitation all leases, subleases, rental agreements, occupancy agreements and licenses and rights in connection therewith, whether oral or written, and all guaranties and other supporting obligations relating thereto (each a "Lease", and collectively, the "Leases"), and all rents, profits, issues and income, both from services and occupation, royalties, revenues and payments, including prepayments and security deposits (collectively,

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the "Rents"), which are now or hereafter due or to be paid in connection with the Land, the Improvements, the Fixtures, the Personal Property or the Leases; and

## D. GENERAL INTANGIBLES

All general intangibles of the Mortgagor which relate to any of the Land, the Improvements, the Fixtures, the Personal Property, the Leases or the Rents, including proceeds of insurance and condemnation or conveyance of the Land and the Improvements, accounts, trade names and contract rights; and

## E. OTHER PROPERTY

All feasibility studies, plans and specifications, soil tests, environmental reports, engineering reports, architect's, engineer's and construction contracts, property management agreements, licenses, permits, certificates and documents relating to the Land, the Improvements, the Fixtures, the Personal Property and the Leases; and

## F. AFTER ACQUIRED PROPERTY AND PROCEEDS

All property similar to the property herein described and conveyed which may be subsequently acquired by the Mortgagor and used in connection with the Land, the Improvements, the Fixtures, the Personal Property, the Leases and other property described herein; and all cash and non-cash proceeds and products of all of the foregoing property.

TO HAVE AND TO HOLD the same, and all estate therein, together with all the rights, privileges and appurtenances thereunto belonging, to the use and benefit of the Lender, its successors and assigns, forever.

PROVIDED NEVERTHELESS, should the Mortgagor pay and perform all the Obligations, then these presents will be of no further force and effect, and this Mortgage shall be satisfied by the Lender, at the expense of the Mortgagor.

THE MORTGAGOR FURTHER agrees as follows:

## ARTICLE I - AGREEMENTS

Section 1.1 Performance of Obligations; Incorporation by Reference. The Mortgagor shall pay and perform the Obligations in accordance with the terms of the Loan Documents. Time is of the essence hereof. All of the covenants, obligations, agreements, warranties and representations of the Mortgagor contained in the Loan Agreement and the other Loan Documents and all of the terms and provisions thereof, are hereby incorporated herein and made a part hereof by reference as if fully set forth herein. All advances made by Lender to Mortgagor pursuant to the Loan Agreement will constitute a part of the Obligations and such advances will be deemed obligatory.

Section 1.2 Terms defined in Uniform Commercial Code. "Account", "Account Debtor", "Chattel Paper", "Commercial Tort Claims", "Deposit Account", "Document", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instrument", "Inventory", "Investment Property", "Letter-of-Credit Rights", "Proceeds" and "Supporting Obligations" shall have the meanings set forth in the UCC (defined below). For purposes of this Mortgage, such terms may be capitalized, even if not capitalized in the UCC, provided, that if any additional goods, property or rights shall be included in such terms under Recital B hereof, such terms shall be construed to include such additional goods, property or rights. For

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purposes of this Mortgage and the other Loan Documents, "UCC" shall mean the Uniform Commercial Code in effect in the State of Illinois, as amended from time to time; provided, however, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection on the security interest in any item or portion of collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Illinois, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of provisions hereof relating to such perfection or effect of perfection or non-perfection, as amended from time to time.

Section 1.3 Further Assurances. If the Lender requests, the Mortgagor shall sign and deliver and cause to be recorded (if applicable) and hereby authorizes the Lender to record to the full extent permitted by applicable law, any further mortgages, pledge agreements, financing statements, security agreements, certificates and other documents as the Lender reasonably may consider necessary or desirable in order to perfect, continue and preserve the Obligations and the Lender's rights, title, estate, liens and interests under the Loan Documents. The Mortgagor further agrees to pay to the Lender, upon demand, all reasonable costs and expenses incurred by the Lender in connection with the preparation, execution, recording, filing and refiling of any such documents, including reasonable attorneys' fees and title insurance costs.

Section 1.4 Leases.

(a) For purposes of this Section, the following terms shall have the following meanings:

(i) "Lease": Shall have the meaning provided for in Clause C of the definition of Mortgaged Property set forth above.

(ii) "Leasing Action": means any termination, assignment, sublease, renewal, or amendment of any Lease, or any material waiver of the Mortgagor's rights as landlord in connection with any Lease.

(iii) "Minor Lease": Any Lease that meets the following criteria:

- (A) The Lease is for less than 25% of the rentable space in the Mortgaged Property;
- (B) The Lease is substantially consistent with the form of lease approved in advance by the Lender;
- (C) The Lease has a term of not more than five years plus one extension of not more than five years; and
- (D) All of the conditions set forth in this Section have been met.

(iv) "Major Lease": Any Lease that is not a Minor Lease.

(b) The Mortgagor's entry into a Major Lease or taking any Leasing Action with respect to any Major Lease shall require the Lender's prior written consent. Every Major Lease or instrument memorializing a Leasing Action shall be submitted to the Lender in final form, with all exhibits attached. Lender shall review and respond to each request for approval of a Leasing Action within ten (10) business days, and if Lender has not responded in such period, then the Leasing Action shall be deemed approved.

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(c) The Lender's prior written consent shall not be required with respect to any Leasing Action taken in connection with a Minor Lease.

(d) The Mortgagor shall provide the Lender with a copy of each proposed Lease or amendment to Lease requiring the consent of the Lender and with any information requested by the Lender regarding the proposed or existing Tenant thereunder. If the Lender does not either expressly grant or withhold its consent to any such proposed Lease or amendment to Lease within 10 business days after receiving a copy thereof and of such information, it shall be deemed to have withheld its consent thereto. Each new Lease shall be subordinate to this Mortgage.

(e) Regardless of whether a Lease is subject to the Lender's approval, all Leases and amendments to or renewals of Leases entered into from and after the date of this Mortgage must satisfy all of the following terms and conditions unless otherwise agreed in advance by the Lender:

(i) The Lease must be an arm's-length transaction to a party not affiliated with or related to the Mortgagor or any of its principals, and the Lease may not contain any option, right of first refusal, or any other right to purchase any portion of the fee interest in and to the Mortgaged Property.

(ii) The Lease must contain provisions that (A) obligate Tenant under the Lease to attorn to any purchaser of the Mortgaged Property at a foreclosure sale or by deed or other proceeding in lieu of foreclosure and (B) provide that neither the Lender nor any purchaser at a foreclosure sale or by deed or any proceeding in lieu of foreclosure shall be responsible for any act, omission, or default by any prior landlord (including the Mortgagor), the return of any security deposit, or the payment of any tenant allowance or other concession, be bound by any rent paid more than one month in advance, or be subject to any offset, defense, or counterclaim against any prior landlord (including the Mortgagor).

(iii) The rent payable under the Lease shall not be less than the greater of: (i) fair market rent for similar space in projects similar to the Mortgaged Property in the county in which the Mortgaged Property is located, or (ii) such other minimal amount as is agreed to by the Mortgagor and the Lender, and the Lease must prohibit the tenant from prepaying rent more than one month in advance of its due date.

(iv) The Lease may not permit the Tenant to self-insure in connection with any of Tenant's insurance obligations under the related Lease.

(v) All leasing commissions due with respect to the Lease must be paid by the Mortgagor in full within 60 days after the commencement of occupancy by Tenant.

(vi) The Lease may not contain any provisions that would materially impair the value of the Mortgaged Property or the Lender's security therein.

(vii) The proposed use of the premises covered by such new Lease or amended Lease may not involve the storage, generation, treatment, handling, use or disposal of Hazardous Substances, except for minor quantities thereof used in the ordinary course of business in compliance with Environmental Laws, and is not offensive or illegal, or reasonably likely to constitute or cause a nuisance or result in a decrease in the value or reputation of the Mortgaged Property.

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(f) The Mortgagor shall, at its cost and expense, perform each obligation to be performed by the landlord under each Lease; not borrow against, pledge or further assign any Rents or other payments due thereunder; not subordinate any Lease to any other lien, and not permit any Tenant to assign its Lease or sublet the premises covered by its Lease, unless required to do so by the terms thereof and then only if such assignment does not work to relieve the Tenant of any liability for performance of its obligations thereunder.

(g) If any Tenant shall default under its Lease, the Mortgagor shall, in the ordinary course of business, exercise sound business judgment with respect to such default, but may not discount, compromise, forgive or waive claims or discharge a Tenant under a Major Lease from its obligations under such Lease or terminate or accept a surrender of such Lease without the prior written consent of the Lender.

(h) If the Mortgagor fails to perform any obligations of the Mortgagor under any Lease or if the Lender becomes aware of or is notified by any Tenant of a failure on the part of the Mortgagor to so perform, the Lender, after providing written notice thereof to the Mortgagor and allowing the Mortgagor a reasonable opportunity to remedy such failure, may, but shall not be obligated to, without waiving or releasing the Mortgagor from any obligation in this Mortgage or any of the other Loan Documents, remedy such failure, and the Mortgagor agrees to repay upon demand all sums incurred by the Lender in remedying any such failure, together with interest thereon from the date incurred at the Default Rate.

(i) The Mortgagor shall deliver to the Lender (i) promptly after receipt of a written request therefor from the Lender, a duly executed estoppel certificate from any Tenant, in a form satisfactory to the Lender (provided that such request shall be made no more frequently than once in any 12 month period), and (ii) following the occurrence of an Event of Default and receipt of a written request therefor from the Lender, all security deposits or other security held by the Mortgagor under any Lease, which the Lender shall then hold and disburse in accordance with the terms of the relevant Leases.

## Section 1.5 Assignment of Leases and Rents.

(a) The Mortgagor hereby assigns and transfers to the Lender all of the Mortgagor's right, title and interest in and to all Leases and Rents from the Mortgaged Property and each and every part thereof, including all present and future Leases and Rents, for the purpose of securing the Obligations. The Mortgagor agrees not to default in performing its obligations under any Lease with respect to the Mortgaged Property or any part thereof. This assignment may be enforced by the Lender at any time during the existence of an Event of Default hereunder, without regard to the adequacy of the security hereof or the solvency of the Mortgagor, by any one or more of the following methods: (i) the appointment of a receiver; (ii) the Lender's taking possession of the Mortgaged Property; (iii) the collection by the Lender of any moneys payable under Leases, or purchase agreements directly from the parties obligated to make such payment; (iv) the obtaining of an injunction and (v) any other method permitted by law. Notwithstanding the foregoing, prior to the occurrence of an Event of Default (as hereinafter defined in Article IV), the Mortgagor shall have a conditional license and opportunity to collect (but not more than one month in advance) all such Rents, and to use the same for the payment of all sums which the Mortgagor is required to pay by the terms hereof and the Obligations, before using the same for any other purpose.

(b) Receipt by the Lender of Rents shall not constitute a waiver of any right that the Lender may enjoy under this Mortgage or under the laws of the State of Illinois, nor shall the

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receipt and application thereof cure any Event of Default hereunder nor affect any foreclosure proceeding or any sale authorized by this Mortgage and the laws of the State of Illinois. There shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Mortgaged Property without the prior written consent of the Lender.

(c) This assignment shall extend to and cover any and all extensions and renewals of existing and future Leases and to any and all present and future rights against guarantors of any such obligations and to any and all Rents collected under Leases or other rentals. This assignment is given to facilitate payment and performance of the Obligations. The Lender shall not be obligated to perform or discharge any obligation, duty or liability under any Lease or under or by reason of this assignment, and the Mortgagor shall and does hereby agree to indemnify and to hold the Lender harmless from any liability, loss or damage that it might incur under any Lease or under or by reason of this assignment and from any claims and demands whatsoever that may be asserted against it by reason of any alleged obligations or undertakings on the Lender's part. Unless otherwise specified by the Lender in writing, all existing and future Leases for the use or occupancy of all or any part of the Mortgaged Property shall be subordinate to the lien of this Mortgage. In pursuance of this assignment, and not in lieu hereof, the Mortgagor shall on demand give the Lender separate specific assignments of Rents and Leases, covering some or all of the Leases, the terms of such assignments being incorporated herein by reference. The Lender is hereby authorized to notify all lessees and Tenants of the Mortgaged Property of the existence of any and all such assignments. The Mortgagor hereby authorizes and directs the lessees and Tenants of the Mortgaged Property that, upon written notice from the Lender, all payments required under said Leases or in any way respecting the same, shall be made directly to the Lender as they become due. The Mortgagor hereby relieves said purchasers, lessees and Tenants from any liability to the Mortgagor by reason of said payments being made to the Lender. With or without exercising the rights set forth in Section 4.2 hereof, the Lender is authorized to give such written notice to Tenants at any time during the existence of an Event of Default hereunder.

(d) The assignment of Leases and Rents contained herein is a perfected, absolute and present assignment of the Leases and Rents for security purposes. Lender grants to Mortgagor a revocable license to collect but not prior to accrual the rents, and to retain, use and enjoy the same, subject to the terms and conditions hereof. Lender at its election may revoke any such license granted to Mortgagor and upon the occurrence of an Event of Default.

Section 1.6 Indemnity. The Mortgagor shall indemnify the Lender and its directors, officers, agents and employees (collectively the "Indemnified Persons") against, and hold the Indemnified Persons harmless from (i) all losses, damages, suits, claims, judgments, penalties, fines, liabilities, costs and expenses by reason of, or on account of, or in connection with the construction, reconstruction or alteration of the Mortgaged Property, or any accident, injury, death or damage to any person or property occurring in, on or about the Mortgaged Property or any street, drive, sidewalk, curb or passageway adjacent thereto, (ii) any liability, loss or damage that it incurs under any Lease or under or by reason of the assignment hereunder and from any claims and demands whatsoever that may be asserted against it by reason of any alleged obligations or undertakings on the Lender's part and (iii) all costs of defense of any such claim asserted against an Indemnified Person, including attorneys' fees, provided, however, the Mortgagor shall have no obligation hereunder to an Indemnified Person with respect to any of the foregoing to the extent (A) resulting from the gross negligence or willful misconduct of such Indemnified Person as determined by a court of competent jurisdiction by final and nonappealable judgment or (B) resulting from an event or condition first occurring or existing after the Lender or anyone claiming by, through or under the Lender acquired title to the Mortgaged Property by foreclosure of the Mortgage or deed in lieu of foreclosure or otherwise took physical control of the Mortgaged Property. The indemnity contained in this Section shall survive payment and performance of the Obligations and satisfaction and



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release of this Mortgage and any foreclosure thereof or acquisition of title by deed in lieu of foreclosure. The indemnity contained in this Section shall be in addition to, not in limitation of, any indemnity provided for under any of the other Loan Documents.

## ARTICLE II - REPRESENTATIONS, WARRANTIES AND COVENANTS

The Mortgagor makes the following representations, warranties and covenants:

Section 2.1 Ownership, Liens, Compliance with Laws. The Mortgagor owns good and marketable fee title to the Land, the Improvements and all of its Personal Property free from all Liens, except the Permitted Encumbrances. All applicable zoning, environmental, land use, subdivision, building, fire, safety and health laws, statutes, ordinances, codes, rules, regulations and requirements affecting the Mortgaged Property permit the current use and occupancy thereof, and the Mortgagor has obtained all consents, permits and licenses required for such use. The Mortgagor has examined and is familiar with all applicable covenants, conditions, restrictions and reservations, and with all applicable laws, statutes, ordinances, codes and governmental rules, regulations and requirements affecting the Mortgaged Property, and the Mortgaged Property complies with all of the foregoing.

Section 2.2 Use. The Mortgaged Property is not homestead property, nor is it agricultural property or in agricultural use. The Mortgaged Property is to be used solely for business purposes. Unless required by applicable law or unless the Lender has otherwise agreed in writing, the Mortgagor shall not allow all or any part of the Mortgaged Property to be used for any purpose other than business purposes. The Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Mortgaged Property without the Lender's prior written consent.

Section 2.3 Utilities. The Mortgaged Property is serviced by all necessary public utilities, and all such utilities are operational and have sufficient capacity.

### Section 2.4 Business Loan.

(a) The Mortgagor declares, represents, certifies and agrees that the Loan is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601, et seq.

(b) All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under the provisions of any applicable law.

(c) Mortgagor represents, warrants and covenants to the Lender that the proceeds of the obligations secured hereby will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor and the entire principal obligations secured by this Mortgage constitute (i) a "business loan" for purposes of and as defined in 815 ILCS 205/4(1)(c), as amended or recodified from time to time, and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(1), as amended or recodified from time to time.

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## ARTICLE III - CASUALTY; CONDEMNATION

Section 3.1 Casualty, Repair, Proof of Loss. If any portion of the Mortgaged Property shall be damaged or destroyed by any cause (a "Casualty"), the Mortgagor shall:

- (a) give immediate written notice to the Lender; and
- (b) promptly commence and diligently pursue to completion the restoration, repair and rebuilding of the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to the Casualty ("Restoration"); and
- (c) if the Casualty is covered by insurance, immediately make proof of loss and cause the insurer to pay the insurance proceeds as provided in Section 3.2. If an Event of Default shall be in existence, or if the Mortgagor shall fail to provide notice to the Lender of filing proof of loss, or if the Mortgagor shall not be diligently proceeding, in the Lender's reasonable opinion, to collect such insurance proceeds, then the Lender may, but is not obligated to, make proof of loss, and is authorized, but is not obligated, to settle any claim with respect thereto, and to collect the proceeds thereof. The Mortgagor shall not accept any settlement of an insurance claim, without the prior written consent of the Lender.

Section 3.2 Use of Insurance Proceeds. If the cost of Restoration is less than \$500,000 and provided that there is no continuing Event of Default, the insurance proceeds shall be paid directly to the Mortgagor for Restoration of the Mortgaged Property. If cost of Restoration is greater than or equal to \$500,000, the proceeds of all insurance policies maintained by the Mortgagor shall be deposited with the Lender and shall be used by the Mortgagor for such Restoration. The Lender shall make the net insurance proceeds received by it (after reimbursement of the Lender's out-of-pocket costs of collecting and disbursing the same) available to the Mortgagor to pay the cost of Restoration of the Mortgaged Property, subject to the following conditions:

- (a) There shall be no Event of Default in existence at the time of any disbursement of the insurance proceeds.
- (b) The Lender shall have determined, in its reasonable discretion, that the cost of Restoration is and will be equal to or less than the amount of insurance proceeds and other funds deposited by the Mortgagor with the Lender.
- (c) The Lender shall have determined, in its reasonable discretion, that the Restoration can be completed in accordance with plans and specifications approved by the Lender (such approval not to be unreasonably withheld or delayed), in accordance with applicable codes and ordinances and in accordance with the terms, and within the time requirements in order to prevent termination, of any Lease, and in any event not less than six months prior to the Maturity Date.
- (d) Funds shall be held by the Lender and shall be disbursed, at the Lender's option, in accordance with the Lender's customary disbursement procedures for construction loans.
- (e) Reserved.
- (f) No Tenant and no group of Tenants whose cumulative monthly rent obligations exceed 10% of the total monthly rental income of the Mortgaged Property immediately prior to the Casualty, shall have the right to terminate its Lease or their Leases as a result of the Casualty.

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(g) The Restoration shall be completed in accordance with plans and specifications approved by the Lender, and the Lender shall have received certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the Restoration.

If any of these conditions shall not be satisfied, then the Lender shall have the right to use the insurance proceeds to prepay the Obligations in accordance with the Loan Documents. If any insurance proceeds shall remain after completion of the Restoration of the Mortgaged Property, they shall be disbursed to the Mortgagor, or at the Lender's discretion, used to prepay the Obligations in accordance with the Loan Documents.

Section 3.3 Condemnation. If any portion of the Mortgaged Property shall be taken, condemned or acquired pursuant to exercise of the power of eminent domain or threat thereof (a "Condemnation"), the Mortgagor shall:

(a) give immediate notice thereof to the Lender, and send a copy of each document received by the Mortgagor in connection with the Condemnation to the Lender promptly after receipt;

(b) not enter into any agreement permitting or consenting to the taking of the Mortgaged Property, or any part thereof, or providing for the conveyance thereof in lieu of Condemnation, with anyone authorized to acquire the same in Condemnation unless the Lender shall first have consented thereto in writing; and

(c) diligently pursue any negotiation and prosecute any proceeding in connection with the Condemnation at the Mortgagor's expense. If an Event of Default shall be in existence, or if the Mortgagor, in the Lender's reasonable opinion, shall not be diligently negotiating or prosecuting the claim, the Lender is authorized, but not required, to negotiate and prosecute the claim and appear at any hearing for itself and on behalf of the Mortgagor and to compromise or settle all compensation for the Condemnation. The Lender shall not be liable to the Mortgagor for any failure by the Lender to collect or to exercise diligence in collecting any such compensation. The Mortgagor shall not compromise or settle any claim resulting from the Condemnation unless such settlement shall result in payment of an amount equal to or greater than 90% of the Lender's reasonable estimate of the damages therefrom. All awards shall be paid to the Lender, subject to Section 3.4.

Section 3.4 Use of Condemnation Proceeds. If no Restoration is necessary or permitted in respect of any Condemnation, the Condemnation proceeds shall be paid directly to the Lender for application to the Obligations. If Restoration is necessary and permitted, the cost of Restoration is less than \$500,000 and provided that there is no continuing Event of Default, the Condemnation proceeds shall be paid directly to the Mortgagor for Restoration of the Mortgaged Property. If Restoration is necessary and permitted and the cost of Restoration is greater than or equal to \$500,000, the Condemnation proceeds maintained by the Mortgagor shall be deposited with the Lender and shall be used by the Mortgagor for such Restoration. The Lender shall make the net Condemnation proceeds received by it (after reimbursement of the Lender's out-of-pocket costs of collecting and disbursing the same) available to the Mortgagor to pay the cost of Restoration of the Mortgaged Property, subject to the following conditions:

(a) There shall be no Event of Default in existence at the time of any disbursement of the Condemnation proceeds.

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(b) The Lender shall have determined, in its reasonable discretion, that the cost of Restoration is and will be equal to or less than the amount of Condemnation proceeds and other funds deposited by the Mortgagor with the Lender.

(c) The Lender shall have determined, in its reasonable discretion, that the Restoration can be completed in accordance with plans and specifications approved by the Lender (such approval not to be unreasonably withheld), in accordance with codes and ordinances and in accordance with the terms, and within the time requirements in order to prevent termination, of any Lease, and in any event not less than six months prior to the Maturity Date.

(d) All funds shall be disbursed, at the Lender's option, in accordance with the Lender's customary disbursement procedures for construction loans.

(e) The Condemnation shall have occurred more than 12 months prior to the Maturity Date.

(f) No Tenant and no group of Tenants whose cumulative monthly rent obligations exceed 10% of the total monthly rental income of the Mortgaged Property immediately prior to the Condemnation, shall have the right to terminate its Lease or their Leases as a result of the Condemnation.

(g) The Restoration shall be completed in accordance with plans and specifications approved by the Lender.

If any of these conditions shall not be satisfied, then the Lender shall have the right to use the Condemnation proceeds to prepay the Obligations in accordance with the Loan Documents. If any Condemnation proceeds shall remain after completion of the Restoration of the Mortgaged Property, they shall be disbursed to the Mortgagor, or at the Lender's discretion, used to prepay the Obligations in accordance with the Loan Documents.

Section 3.5 Appraisals. The Lender is entitled to an appraisal of the Mortgaged Property under the conditions defined in Section 5.10 of the Loan Agreement.

Section 3.6 Illinois Collateral Protection Act Notice. Mortgagor is hereby notified pursuant to the Illinois Collateral Protection Act (815 ILCS 180/1 et. seq.) that unless Mortgagor provides Lender with evidence of the insurance coverage required by the Loan Agreement and this Mortgage, Lender may purchase the required insurance at Mortgagor's expense to protect Lender's interest in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Lender purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required by the Loan Agreement and this Mortgage. If Lender purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including interest at the Default Rate and any other charges Lender may impose in connection with the placement of the insurance until the effective date of the cancellation or the expiration of the insurance. The costs of the insurance shall be added to the Obligations. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

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## ARTICLE IV - DEFAULTS AND REMEDIES

Section 4.1 Events of Default. An Event of Default under the terms of, and as defined in, the Loan Agreement shall constitute an “Event of Default” hereunder.

Section 4.2 Remedies. Upon the occurrence of one or more other Events of Default hereunder, all of the Obligations, at the option of the Lender, shall be accelerated and become immediately due and payable without presentment, demand or notice of any kind to the Mortgagor, all of which are hereby expressly waived. In either event, the Obligations shall be due and payable without presentment, demand or further notice of any kind. In addition to and without limiting the rights and remedies set forth in the Loan Agreement, the other Loan Documents or under applicable law, the Lender shall have the right to proceed to protect and enforce its rights by one or more of the following remedies:

(a) Suits. The Lender shall have the right to bring suit either for damages, for specific performance of any agreement contained in any Loan Document, for the foreclosure of this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy.

(b) Acceleration. The Lender may declare the outstanding principal balance of the Note and all unpaid indebtedness hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind; provided, however, upon the occurrence of an Event of Default pursuant to Section 7.1(e) of the Loan Agreement, all unpaid indebtedness hereby secured shall be immediately due and payable without any action by the Lender.

(c) Uniform Commercial Code. The Lender shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the UCC, including, without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said UCC for reasonable notification shall be met by mailing written notice to the Mortgagor at its address set forth on Page 1 of this Mortgage at least ten (10) days prior to the sale or other event for which such notice is required. The Mortgagor hereby agrees that if the Lender demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, the Mortgagor will promptly turn over and deliver possession thereof to the Lender, and the Mortgagor authorizes, to the extent the Mortgagor may now or hereafter lawfully grant such authority, the Lender, its employees and agents, and potential bidders or purchasers to enter upon the Premises or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Lender may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys’ fees and legal expenses incurred in connection therewith, shall constitute so much additional Obligations and shall be payable upon demand with interest at the Default Rate.

(d) Foreclosure. The Lender may proceed to protect and enforce its rights hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any

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of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Obligations in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as amended from time to time (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of the Lender for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably 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 the 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 Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Lender in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Property, including 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 Obligation and shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate until paid.

(e) Appointment of Receiver. Lender shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove the Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(f) Taking Possession, Collecting Rents, Etc. Without regard to the commission of waste by Mortgagor or any other party, the adequacy of any security for the Obligations or the solvency of Mortgagor or any other party, upon demand by Lender, Mortgagor shall surrender to Lender and Lender may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided by Illinois law, and Lender, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided by Illinois law may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as the Lender and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, and discharge any obligations of

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landlord under the Lease, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including, without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to the Mortgagor;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle the Mortgagor to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage without Lender's prior written consent;

(iv) extend or modify any then-existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date of the Loan and 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 such provisions to be contained therein, shall be binding upon the Mortgagor, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to the Lender, to insure and reinsure the Mortgaged Property and all risks incidental to the Lender's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom;

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of taxes, premiums and other charges applicable to the Mortgaged Property and any other obligations of landlord under the Leases, or in reduction of the Obligations in such order and manner as the Lender shall select, in its sole discretion; and

(vii) receive and collect the rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Mortgagor agrees to consent to a receiver if it is believed necessary or desirable by the Lender to enforce its rights under this subsection. The collection of rents, issues, profits or revenues of the Mortgaged Property by the Lender shall in no way waive the right of the Lender to foreclose this Mortgage in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting the Lender a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall

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be in addition to all other rights or remedies of the Lender hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses the Mortgagor promises to pay upon demand together with interest thereon at the Default Rate. The Lender shall not be liable to account to the Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by the Lender. Without taking possession of the Mortgaged Property, the Lender may, in the event the Mortgaged Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Obligations payable upon demand with interest thereon at the Default Rate.

(g) Indemnity. The Mortgagor hereby agrees to indemnify, defend, protect and hold harmless the Lender and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, or lease of any of the Mortgaged Property, or any part thereof, or as a result of the Lender seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property; provided, however, the foregoing indemnity shall not apply to any willful malfeasance, willful misconduct or recklessness of Lender and its respective employees, officers or agents. Notwithstanding the foregoing (but subject to the terms and conditions set forth in the Environmental and Indemnification Agreement), Mortgagor shall not be obligated to indemnify Lender or its employees, officers or agents for any event or condition that first arises on or after the date on which Lender (or its transferee) acquires title to the Mortgaged Property (whether at foreclosure sale, conveyance in lieu of foreclosure, or similar transfer and the expiration of any applicable redemption period, except as a result of acts taken by Mortgagor on or after such date.

Section 4.3 Proceeds. Except as otherwise provided herein or as required by Illinois law, the proceeds of any Mortgaged Property received by the Lender, whether pursuant to a foreclosure sale or otherwise, will be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings or other collection efforts, including all such items as are mentioned in Section 4.4; (b) all other items that, under the terms of this Mortgage, constitute secured Obligations additional to that evidenced by the Note, with interest thereon from the earlier of the incurring or payment thereof at the Default Rate; (c) all principal and interest remaining unpaid under the Note, in the order of priority specified by Lender in its sole discretion; and (d) the balance to Mortgagor or its successors or assigns, as its interests may appear.

Section 4.4 Expenses of Exercising Rights, Powers, and Remedies. The reasonable expenses (including any receivers' fees, attorneys' fees, appraisers' fees, environmental engineers' and/or consultants' fees, costs incurred for documentary and expert evidence, stenographers' charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree of foreclosure) of procuring all abstracts of title, continuations of abstracts of title, title searches and examinations, title insurance policies and commitments and extensions therefor, UCC and chattel lien searches, and similar data and assurances with respect to title as the Lender may deem reasonably necessary either to prosecute any foreclosure action or to evidence to bidders at any sale which may be had pursuant to any foreclosure decree the true condition of the title to or the value of the Mortgaged Property, and agent's compensation) incurred by the Lender after the occurrence of any Event of Default and/or in pursuing the rights, powers and remedies contained in this Mortgage shall be immediately due and payable by the Mortgagor, with interest thereon from the date incurred at the Default Rate, and shall be added to the indebtedness secured by this Mortgage.



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Section 4.5 Restoration of Position. In case the Lender shall have proceeded to enforce any right under this Mortgage by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, the Mortgagor and the Lender shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property subject to the lien hereof.

Section 4.6 Marshalling. The Mortgagor, for itself and on behalf of all persons, parties and entities which may claim under the Mortgage, hereby waives all requirements of law relating to the marshalling of assets, if any, which would be applicable in connection with the enforcement by the Lender of its remedies for an Event of Default hereunder, absent this waiver. The Lender shall not be required to sell or realize upon any portion of the Mortgaged Property before selling or realizing upon any other portion thereof or otherwise exhaust its remedies against a specific portion of the Mortgaged Property before proceeding against the other and the Mortgagor does hereby expressly consent to and authorize the sale of the Mortgaged Property or any part thereof as a single unit or parcel.

Section 4.7 Waivers. No waiver of any provision hereof shall be implied from the conduct of the parties. Any such waiver must be in writing and must be signed by the party against which such waiver is sought to be enforced. The waiver or release of any breach of the provisions set forth herein to be kept and performed shall not be a waiver or release of any preceding or subsequent breach of the same or any other provision. No receipt of partial payment after acceleration of any of the Obligations shall waive the acceleration. No payment by the Mortgagor or receipt by the Lender of a lesser amount than the full amount secured hereby shall be deemed to be other than on account of the sums due and payable hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the Lender may accept any check or payment without prejudice to the Lender's right to recover the balance of such sums or to pursue any other remedy provided in this Mortgage. The consent by the Lender to any matter or event requiring such consent shall not constitute a waiver of the necessity for such consent to any subsequent matter or event.

Section 4.8 The Lender's Right to Cure Defaults. If the Mortgagor shall fail to comply with any of the terms of the Loan Documents with respect to the procuring of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair, or any other term contained herein or in any of the other Loan Documents, the Lender may, after providing 10 days prior written notice to the Mortgagor, make advances to perform the same without releasing the Mortgagor from any of the Obligations, provided, however, it is expressly understood and agreed that the Lender may make such advance without prior written notice to the Mortgagor if, in the Lender's determination, such advance is required to be made before such 10-day period to protect and/or preserve the Mortgaged Property or the Lender's security interest and lien therein. The Mortgagor agrees to repay upon demand all sums so advanced and all sums expended by the Lender in connection with such performance under this Section 4.8, including without limitation attorneys' fees, with interest at the Default Rate from the dates such advances are made, and all sums so advanced and/or expenses incurred, with interest, shall be secured hereby, but no such advance and/or incurring of expense by the Lender, shall be deemed to relieve the Mortgagor from any default hereunder or under any of the other Loan Documents, or to release the Mortgagor from any of the Obligations.

Section 4.9 Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the inconsistent provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

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(b) If any provision of this Mortgage shall grant to the Lender (including the Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to Section 4.2(e) of this Mortgage 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 and remedies that would otherwise be vested in the Lender or in such receiver under the Act, in the absence of said provision, the Lender shall be vested with the powers, rights and remedies granted pursuant to the Act, to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Lender to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Sections 4.2(d) or 4.10 of this Mortgage, shall be added to the Obligations and shall be immediately due and payable by the Mortgagor with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

Section 4.10 Costs and Expenses of Foreclosure. In any suit to foreclose this Mortgage there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Lender for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as the Lender may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable attorneys' fees, all of which expenditures shall become so much additional Obligations which the Mortgagor agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

## Section 4.11 Protective Advances.

(a) Advances, disbursements and expenditures made by the Lender for the following purposes, whether before and during a 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, shall, in addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":

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

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

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

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

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

(vi) advances of any amount required to make up a deficiency in deposits for instalments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(vii) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act; and

(viii) expenses incurred and expenditures made by the Lender for any one or more of the following: (A) premiums for casualty and liability insurance paid by the Lender whether or not the Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments required or deemed by the Lender to be for the benefit of the Mortgaged 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 Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; (E) pursuant to any lease or other agreement for occupancy of all or a portion of the mortgaged real estate.

(b) All Protective Advances shall be so much additional Obligations, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(c) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

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

(i) determination of the amount of Obligations at any time;

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

(iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(iv) application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (c) of Section 5/15-1508 and Section 5/15-1511 of the Act.

## Section 4.12 Rights Cumulative.

(a) Each right, power and remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Lender.

(b) By accepting payment of any sums secured by this Mortgage after the due date thereof, by accepting performance of any of the Mortgagor's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of the Mortgagor which the Mortgagor was obligated but failed to perform or pay, the Lender shall neither waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Mortgagor's obligations, as applicable, under this Mortgage, the Note, and all other Loan Documents. No waiver or modification of any of the terms of this Mortgage shall be binding on the Lender unless set forth in writing signed by the Lender and any such waiver by the Lender of any Event of Default by the Mortgagor under this Mortgage shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Lender holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

(c) No act or omission by the Lender shall release, discharge, modify, change or otherwise affect the liability of the Mortgagor, as applicable, under the Note, this Mortgage, or any of the other Loan Documents, or any other obligation of the Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Mortgage or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by the Lender. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Lender in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise

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specifically required herein, notice of the exercise of any right, remedy or power granted to the Lender by this Mortgage is not required to be given.

## Section 4.13 Suits and Proceedings; Power of Attorney.

(a) The Lender shall have the power and authority, upon prior notice to the Mortgagor, to institute and maintain any suits and proceedings as the Lender may deem advisable to (i) prevent any impairment of the Mortgaged Property by any act which may be unlawful or by any violation of this Mortgage, (ii) preserve or protect its interest in the Mortgaged Property, or (iii) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if, in the sole opinion of the Lender, the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to the Lender's interest.

(b) Upon the occurrence and during the continuance of any Event of Default, the Mortgagor does hereby make, constitute and appoint the Lender (or any officer or agent of the Lender) as the Mortgagor's true and lawful attorney-in-fact, with full power of substitution, in the name of the Mortgagor or in the name of the Lender or otherwise, for the use and benefit of the Lender, but at the cost and expense of the Mortgagor, to do any and all things necessary or desirable (i) to perfect the Lender's mortgage and security interest in, and Lien on, and other rights and interests in, the Mortgaged Property, (ii) to preserve and protect the Mortgaged Property, (iii) to enforce the Lender's rights and remedies under this Mortgage, the other Loan Documents and applicable law, and (iv) to otherwise carry out this Mortgage and the other Loan Documents. This power of attorney is coupled with an interest and shall be irrevocable.

## ARTICLE V - MISCELLANEOUS

Section 5.1 Binding Effect; Survival; Number; Gender. This Mortgage shall be binding on and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns. All agreements, representations and warranties contained herein or otherwise heretofore made by the Mortgagor to the Lender shall survive the execution, delivery and foreclosure hereof. The singular of all terms used herein shall include the plural, the plural shall include the singular, and the use of any gender herein shall include all other genders, where the context so requires or permits.

Section 5.2 Severability. Whenever possible, each provision of this Mortgage and any other statement, instrument or transaction contemplated hereby or relating hereto, shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of this Mortgage or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage or any other statement, instrument or transaction contemplated hereby or relating hereto.

Section 5.3 Notices. Any notice or other communication to any party in connection with this Mortgage shall be given pursuant to the provisions of Section 8.4 of the Loan Agreement.

## Section 5.4 GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (BUT OTHERWISE WITHOUT REGARD TO THE

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CONFLICT OF LAWS PROVISIONS) OF THE STATE OF ILLINOIS. TO THE EXTENT THAT THIS MORTGAGE MAY OPERATE AS A SECURITY AGREEMENT UNDER THE UCC, LENDER SHALL HAVE ALL RIGHTS AND REMEDIES CONFERRED THEREIN FOR THE BENEFIT OF A SECURED PARTY AS SUCH TERM IS DEFINED IN THE UCC.

(b) SUBJECT TO THE LAST SENTENCE OF THIS SECTION 5.4(b), THE MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE LENDER, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ADVISORS IN ANY WAY RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE U.S. FEDERAL OR ILLINOIS STATE COURTS SITTING IN CHICAGO, ILLINOIS, OR THE U.S. FEDERAL OR MINNESOTA STATE COURTS SITTING IN MINNEAPOLIS, MINNESOTA, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH ILLINOIS OR MINNESOTA STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. THE MORTGAGOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING AGAINST THE MORTGAGOR OR ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION.

(c) THE MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 5.4(b). THE MORTGAGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) THE MORTGAGOR IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN THE LOAN AGREEMENT. NOTHING IN THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF THE LENDER OR THE MORTGAGOR TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 5.5 WAIVER OF JURY TRIAL. THE MORTGAGOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE MORTGAGOR (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT THE LENDER HAS BEEN INDUCED

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TO ACCEPT THIS MORTGAGE BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 5.6 Effect. This Mortgage is in addition to and not in substitution for any other guarantees, covenants, obligations or other rights now or hereafter held by the Lender from any other person or entity in connection with the Obligations.

Section 5.7 Assignability. The Lender shall have the right to assign this Mortgage, in whole or in part, or sell participation interests herein, to any person obtaining an interest in the Obligations.

Section 5.8 Headings. Headings of the Sections of this Mortgage are inserted for convenience only and shall not be deemed to constitute a part hereof.

Section 5.9 Uniform Commercial Code Security Agreement.

(a) This Mortgage constitutes a security agreement within the meaning of the UCC, with respect to all of the Personal Property, and is intended to afford the Lender, to the fullest extent allowed by law, the rights and remedies of a secured party under the UCC. For the purposes of the security agreement and related financing statements, the "debtor" is the Mortgagor, and the "secured party" is the Lender. The Mortgagor hereby authorizes the Lender (and the Lender's representatives and agents) to file (a) the Lender's financing statements (together with amendments thereto and continuation statements thereof) relating to the Mortgaged Property and (b) any termination statements relating to the filings of other secured parties that relate to the Mortgaged Property. The Mortgagor hereby irrevocably constitutes and appoints the Lender and any officer or agent of the Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Mortgagor or in the Mortgagor's own name to execute in the Mortgagor's name any documents and otherwise to carry out the purposes of this Section, to the extent that the Mortgagor's authorization above is not sufficient. This power of attorney is coupled with an interest and shall be irrevocable. For purposes of such filings, the Mortgagor agrees to furnish any information requested by Lender promptly upon request by Lender. The form and substance of any financing statement filed with respect to this Mortgage shall be as Lender, in its sole discretion, may determine and Lender is authorized to file a financing statement with a collateral description of "all assets" or any other similar description. The Mortgagor shall pay all costs of filing such financing statements and termination statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Mortgagor shall not create or suffer to be created pursuant to the UCC any other security interest in said items, including replacements and additions thereto. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Mortgage, including the covenants to pay when due all sums secured by this Mortgage, Lender shall have the remedies of a secured party under the UCC and, at Lender's option, may also invoke the other remedies provided in this Mortgage as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Mortgaged Property separately or together and in any order whatsoever, without in any way affecting the availability of the Lender's remedies under the UCC or of the remedies provided in Section 4.2 of this Mortgage.

(b) The Mortgagor represents and warrants to the Lender: that the exact legal name of the Mortgagor is set forth in the first paragraph of this Mortgage; that the Mortgagor is organized or incorporated under the laws of the state set forth in the first paragraph of this

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Mortgage; and that the Mortgagor is an organization of the type described in the first paragraph of this Mortgage. The Mortgagor covenants that the Mortgagor will not cause or permit any change to be made in its name, identity or corporate or partnership structure unless the Mortgagor shall have first notified the Lender in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by the Lender for the purpose of perfecting or protecting the lien and security interest of the Lender. The Mortgagor's principal place of business and chief executive office, and the place where the Mortgagor keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four-months (or, if less, the entire period of the existence of the Mortgagor) and will continue to be the address of the Mortgagor set forth in Section 5.10 of this Mortgage (unless the Mortgagor notifies the Lender in writing at least 30 days prior to the date of such change). The Mortgagor shall promptly notify the Lender of any change in its organizational identification number. If the Mortgagor does not now have an organizational identification number and later obtains one, the Mortgagor promptly shall notify the Lender of such organizational identification number.

Section 5.10 Fixture Filing. This instrument shall be deemed to be a Fixture Filing within the meaning of Section 26-1-9.1-502 of the UCC, and for such purpose, the following information is given:

(a) Name and address of Debtor:	800 Phoenix Lake, LLC 150 South 5 <sup>th</sup> Street, Suite 2675 Minneapolis, MN 55402
(b) Name and address of Secured Party:	Bell Bank 3800 American Blvd. W. Suite 1450 Bloomington, MN 55431
(c) Description of the types (or items) of property covered by this Fixture Filing:	See granting clauses.
(d) Description of real estate to which the collateral is attached or upon which it is or will be located:	See <u>Exhibit A</u> hereto.

Some of the above-described collateral is or is to become fixtures upon the above described real estate, and this Fixture Filing is to be filed for record in the public real estate records. The above-stated address of Secured Party is the address from which information concerning the security interest may be obtained.

Section 5.11 Non-Residential Use; Non-Agricultural Use. The Mortgagor represents and warrants that (a) the Mortgaged Property does not include residential real estate (as defined in Section 5/15-1219 of the Act, or any successor statute thereto, as the same may be amended from time to time) and; (b) the Mortgaged Property does not include agricultural real estate (as defined in 5/15-1201 of the Act, or any successor statute thereto, as the same may be amended from time to time).



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Section 5.12 Reserved.

Section 5.13 Compliance with Environmental Laws. Concurrently herewith the Mortgagor and certain other Indemnitors (as defined in the Indemnification Agreement) party thereto executed and delivered to the Lender the Indemnification Agreement pursuant to which the Mortgagor and such other Indemnitors have indemnified the Lender for environmental matters concerning the Land and Improvements, as more particularly described therein. The provisions of the Indemnification Agreement are hereby incorporated herein and this Mortgage shall secure the obligations of the Mortgagor thereunder. Notwithstanding the foregoing, the Mortgagor's and the other Indemnitors' obligations under the Indemnification Agreement shall not terminate and shall survive the discharge of the Loan Documents, whether through full payment of the Obligations, foreclosure, deed in lieu of foreclosure or otherwise, for the benefit of the Lender, and its respective successors and assigns, including without limitation, any purchaser at a foreclosure sale.

Section 5.14 Reserved.

Section 5.15 Advice of Counsel Obtained. Each of the parties acknowledges and represents that it has had the opportunity to consult with legal, financial, and other professional advisors as it deems appropriate in connection with its consideration and execution of this Mortgage. Each undersigned party further represents and declares that in executing this Mortgage, it has relied solely upon its own judgment, belief and knowledge, and the advice and recommendation of its own professional advisors, concerning the nature, extent and duration of its rights, obligations and claims; that it has reviewed its records, evaluated its position and conducted due diligence with regard to all rights, claims or causes of action whatsoever with respect to any and all other parties; and that it has not been influenced to any extent whatsoever in executing this Mortgage by any representations or statements made by the other party or its representatives, except those expressly contained herein.

Section 5.16 Agreement Jointly Drafted. The parties agree that this Mortgage shall not be construed against any party hereto on the grounds that such party drafted this Mortgage, but shall be construed as if all parties jointly prepared this Mortgage, and any uncertainty or ambiguity shall not on such grounds be interpreted against any one party.

Section 5.17 Maximum Indebtedness. This Mortgage secures not only existing indebtedness, but also future advances resulting from any act or omission of Mortgagor, whether such advances are obligatory or are to be made at the option of Lender, or otherwise, and whether such advances are made before, during or after the pendency of any proceedings to foreclose the lien of this Mortgage or otherwise enforce the rights of Lender hereunder, as are made within 20 years from the date of this Mortgage, to the same extent as if such future advances are made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid principal balance so secured at one time will not exceed two times the face amount of the Note, plus both interest thereon and any disbursements made for the payment of taxes, levies or insurance on the property encumbered by this Mortgage, with interest on such disbursements at the Default Rate. The provisions of this Section may not be construed to imply any obligation on Lender to make any future advances, it being the intention of the parties that any future advances will be solely at the discretion and option of Lender.

[Remainder of page intentionally blank;  
Signature page follows]

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

**MORTGAGOR:**

800 PHOENIX LAKE, LLC,  
a Delaware limited liability company

By: 

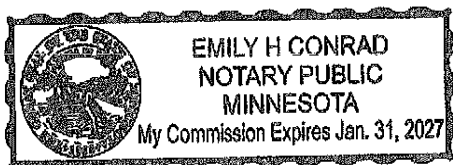
Name: Judd K. Gilats

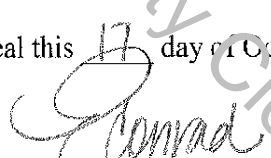
Title: Chief Financial Officer

STATE OF MinnesotaCOUNTY OF Hennepin

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Judd K. Gilats, the Chief Financial Officer, of 800 Phoenix Lake, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Judd K. Gilats, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17 day of October, 2022.



  
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
1-31-2027

[Signature Page to Mortgage, Security Agreement,  
Assignment of Leases and Rents and Fixture Financing Statement]

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## EXHIBIT A

### Legal Description

LOT 1 IN PHOENIX LAKE BUSINESS PARK RESUBDIVISION OF LOTS 2 AND 7 BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORD JULY 19, 2019 AS DOCUMENT 1920016107, IN COOK COUNTY, ILLINOIS.

### **Permanent Tax Index Number:**

06-25-205-012-0000

### **Property Address:**

800 Phoenix Lake Avenue  
Streamwood, IL 60107

Property of Cook County Clerk's Office