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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud

844-768-1713

91072438(10/19)



2236313029

Doc# 2236313029 Fee \$95.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 12/29/2022 11:54 AM PG: 1 OF 23

The property identified as: **PIN:** 20-33-100-001-0000

Address:

Street: 757 WEST 79TH STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60620

Lender: CEDAR RAPIDS BANK AND TRUST COMPANY

Borrower: AUBURN GRESHAM APARTMENTS LP

Loan / Mortgage Amount: \$25,000,000.00

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: D69065AA-58EC-4CE8-8D14-56007ADF4294

Execution date: 12/27/2022

S Y
P 23
S Y-2
SC
INT RV

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Prepared by, and after recording
return to:

WINTHROP & WEINSTINE, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402
Attention: Holly A. Stocker

**SWAP MORTGAGE,
ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**

ILLINOIS

**THIS INSTRUMENT IS NOT TO BE USED FOR
MULTIFAMILY PROPERTIES CONTAINING 5 OR 6
RESIDENTIAL UNITS IF ANY RESIDENTIAL UNIT
IS OWNER-OCCUPIED**

Property of Cook County Clerk's Office

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SWAP MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

ILLINOIS

THIS SWAP MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("**Instrument**") is made to be effective as of the 27th day of December, 2022, between AUBURN GRESHAM APARTMENTS LP, a limited partnership organized and existing under the laws of Illinois, whose address is c/o Evergreen Redevelopment LLC, 566 W. Lake Street, Suite 400, Chicago, Illinois 60661, as mortgagor ("**Borrower**"), and CEDAR RAPIDS BANK AND TRUST COMPANY, a state chartered banking corporation organized and existing under the laws of Iowa, whose address is 500 First Avenue NE, Suite 100, Cedar Rapids, Linn County, Iowa 52401, as mortgagee ("**Lender**").

RECITALS

WHEREAS, Borrower owns certain real property located in Chicago, Illinois legally described on Exhibit A, attached hereto and hereby incorporated herein (the "**Land**") upon which Borrower intends to construct on the Land a 58-unit affordable housing development; and

WHEREAS, to provide financing for construction of the Improvements, Lender, the City of Chicago ("**Governmental Lender**") and Borrower entered into that certain Funding Loan Agreement, pursuant to which Lender agreed to make a loan to Lender (the "**Funding Loan**"); and

WHEREAS, Governmental Lender used the proceeds of the Funding Loan to make a loan to Borrower (the "**Project Loan**") in the original principal amount of \$25,000,000, pursuant to that certain Borrower Loan Agreement between Governmental Lender and Borrower; and

WHEREAS, in connection with the Project Loan, Borrower and Lender entered into an interest rate swap transaction comprised of the following documents (collectively, the "**Swap Documents**"): (a) that certain ISDA Master Agreement and Schedule dated as of even date herewith between Lender and Borrower (as may be amended or restated, "**Swap Agreement**"), (b) those certain Unlimited Continuing Guaranties (Swap Transactions), each dated as of even date herewith, (c) this Instrument, and (d) together with any applicable schedules, annexes, confirmation letters and any other documents executed in connection with any of the foregoing; and

WHEREAS, Borrower's obligations under the Swap Agreement terminate on January 1st, 2043 ("**Maturity Date**")

AGREEMENT

TO SECURE TO LENDER the payment of the Indebtedness, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of

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Borrower contained in the Swap Agreement or any other Swap Document, Borrower mortgages, warrants, grants, conveys and assigns to Lender the Mortgaged Property, including the Land located in Cook County, State of Illinois and described in Exhibit A attached to this Instrument.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender's interest in the Mortgaged Property ("**Schedule of Title Exceptions**"). Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in the Schedule of Title Exceptions.

UNIFORM COVENANTS

Covenants. In consideration of the mutual promises set forth in this Instrument, Borrower and Lender covenant and agree as follows:

1. **Definitions.** The following terms, when used in this Instrument (including when used in the above recitals), will have the following meanings and any capitalized term not specifically defined in this Instrument will have the meaning ascribed to that term in the Swap Agreement:

"**Attorneys' Fees and Costs**" means (a) fees and out-of-pocket costs of Lender's and Loan Servicer's attorneys, as applicable, including costs of Lender's and Loan Servicer's in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (b) costs and fees of expert witnesses, including appraisers; (c) investigatory fees; and (d) the costs for any opinion required by Lender pursuant to the terms of the Swap Documents.

"**Event of Default**" means the occurrence of any event described in Section 8.

"**Fixtures**" means all property owned by Borrower which is attached to the Land or the Improvements so as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

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“Governmental Authority” means any board, commission, department, agency or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property, or the use, operation or improvement of the Mortgaged Property, or over Borrower.

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (PCBs) and compounds containing them; lead and lead-based paint; asbestos or asbestos containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any Governmental Authority; any substance that requires special handling and any other material or substance now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

“Hazardous Materials Law” and **“Hazardous Materials Laws”** means all federal, state and local laws, ordinances, regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future, including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., and their state analogs.

“Impositions” means all Taxes, Insurance premiums, and any Other Impositions.

“Imposition Reserve Deposits” means all amounts deposited with Lender to pay Impositions.

“Improvements” means the buildings, structures, improvements now constructed or at any time in the future constructed or placed upon the Land, including any future alterations, replacements and additions.

“Indebtedness” means Borrower’s payment and performance obligations and all other amounts due at any time under any of the Swap Documents in an amount of up to \$275,000, including prepayment charges, late charges, default interest, and advances as provided in Section 7 to protect the security of this Instrument.

“Instrument” has the meaning set forth in the first paragraph hereof.

“Insurance” means property insurance, liability insurance and all other insurance that Lender requires Borrower to maintain pursuant to the Swap Agreement.

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“**Leases**” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property, and all modifications, extensions or renewals.

“**Lien**” means any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance on the Mortgaged Property.

“**Loan Servicer**” means the entity that from time to time is designated by Lender or its designee to collect payments and deposits and receive Notices under the Swap Agreement, this Instrument and any other Swap Document, and otherwise to service the Swap Documents for the benefit of Lender. Unless Borrower receives Notice to the contrary, the Loan Servicer is the entity identified as “Lender” in the first paragraph of this Instrument.

“**Mortgaged Property**” means all of Borrower’s present and future right, title and interest in and to all of the following:

- (a) The Land.
- (b) The Improvements.
- (c) The Fixtures.
- (d) The Personalty.
- (e) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated.
- (f) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the Insurance pursuant to Lender’s requirement.
- (g) All awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof.

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- (h) All contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations.
- (i) All proceeds from the conversion, voluntary or involuntary, of any of the items described in subsections (a) through (h) inclusive into cash or liquidated claims, and the right to collect such proceeds.
- (j) All Rents and Leases.
- (k) All earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds under the Swap Agreement.
- (l) All Imposition Reserve Deposits.
- (m) All refunds or rebates of Impositions by any Governmental Authority or any insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated).
- (n) All tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits.
- (o) All names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

“Notice” or **“Notices”** means all notices, demands and other communication required under the Swap Documents, provided in accordance with the requirements of the Swap Agreement.

“Other Impositions” means, collectively, (i) water and sewer charges that could become a Lien on the Mortgaged Property and (ii) assessments or other charges that could become a Lien on the Mortgaged Property, including ground rents and homeowner association dues.

“Person” means any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

“Personalty” means all of the following:

- (a) Accounts (including deposit accounts) of Borrower related to the Mortgaged Property.

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- (b) Equipment and inventory owned by Borrower, which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form) and computer equipment (hardware and software).
- (c) Other tangible personal property owned by Borrower which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures).
- (d) Any operating agreements relating to the Land or the Improvements.
- (e) Any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.
- (f) All other intangible property, general intangibles and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a Governmental Authority.
- (g) Any rights of Borrower in or under letters of credit.

“Prior Lien” means any Lien encumbering the Mortgaged Property preexisting the Lien of this Instrument.

“Property Jurisdiction” means the jurisdiction in which the Land is located.

“Rents” means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due or to become due, and deposits forfeited by tenants.

“Swap Documents” is defined in the Recitals hereof.

“Taxes” means all taxes, assessments, vault rentals and other charges, if any, whether general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a Lien on the Land or the Improvements.

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“Uniform Commercial Code” means the Uniform Commercial Code as promulgated in the applicable jurisdiction.

2. Uniform Commercial Code Security Agreement.

- (a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, for the purpose of securing Borrower’s obligations under this Instrument and to further secure Borrower’s obligations under this Instrument and other Swap Documents, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, “UCC Collateral”), and by this Instrument, Borrower grants to Lender a security interest in the UCC Collateral. To the extent necessary under applicable law, Borrower hereby authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest.
- (b) Unless Borrower gives Notice to Lender 30 days prior to the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Instrument (and any financing statement which may be filed in connection with this Instrument) as Lender may require, Borrower will not (i) change its name, identity, structure or jurisdiction of organization; (ii) change the location of its place of business (or chief executive office if more than one place of business); or (iii) add to or change any location at which any of the Mortgaged Property is stored, held or located.
- (c) If an Event of Default has occurred and is continuing, Lender will have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender’s other remedies.
- (d) This Instrument also constitutes a financing statement with respect to any part of the Mortgaged Property that is or may become a Fixture, if permitted by applicable law.

3. Assignment of Rents; Appointment of Receiver; Lender in Possession.

- (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents.
- (i) It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower.

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- (ii) Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only.
- (iii) For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents will not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents will be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a Lien on Rents in favor of Lender, which Lien will be effective as of the date of this Instrument.
- (b)
- (i) Until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Swap Documents and the other amounts then due and payable under the Swap Documents, including Imposition Reserve Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and Insurance premiums (to the extent not included in Imposition Reserve Deposits), tenant improvements and other capital expenditures.
- (ii) So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to Section 3(b)(i) may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument.
- (iii) After the occurrence of an Event of Default, and during the continuance of such Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. From and after the occurrence of an Event of Default, and during the continuance of such Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents will automatically terminate and Lender will without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower will pay to Lender upon demand all Rents to which Lender is entitled.
- (iv) At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to

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all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant will be obligated to inquire further as to the occurrence or continuance of an Event of Default. No tenant will be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender will be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower will not interfere with and will cooperate with Lender's collection of such Rents.

- (c) If an Event of Default has occurred and is continuing, then Lender will have each of the following rights and may take any of the following actions:
- (i) Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable.
 - (ii) Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law.
 - (iii) Reserved.
 - (iv) Lender or the receiver, as the case may be, will be entitled to receive a reasonable fee for managing the Mortgaged Property.
 - (v) Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower will surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and will deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic

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or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents.

- (iv) If Lender takes possession and control of the Mortgaged Property, then Lender may exclude Borrower and its representatives from the Mortgaged Property.

Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 will not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

- (d) If Lender enters the Mortgaged Property, Lender will be liable to account only to Borrower and only for those Rents actually received. Except to the extent of Lender's gross negligence or willful misconduct, Lender will not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3(c), and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.
- (e) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes will become an additional part of the Indebtedness as provided in Section 7.
- (f) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument will not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

4. Assignment of Leases; Leases Affecting the Mortgaged Property.

- (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.
 - (i) It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only.
 - (ii) For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases will not be deemed to be a part of the Mortgaged Property.

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- (iii) However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases will be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a Lien on the Leases in favor of Lender, which Lien will be effective as of the date of this Instrument.
- (b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower will have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, and during the continuance of such Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases will automatically terminate. Borrower will comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.
- (c)
- (i) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver of any of the rights conferred under this Section 4 will not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements.
- (ii) The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) will not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses.
- (iii) Except to the extent of Lender's gross negligence or willful misconduct, Lender will not be liable in any way for any injury or damage to person or property sustained by any Person or Persons in or about the Mortgaged Property.
- (iv) Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender will not be obligated for any of the following:
- (A) Lender will not be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease).
- (B) Lender will not be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property.

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- (C) Lender will not be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower will constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and will be that of Borrower, prior to such actual entry and taking of possession.
- (d) Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and during the continuance of such Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately will have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.
- (e) Borrower will, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect.
5. **Prepayment Charge.** Borrower may be required to pay a prepayment charge in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Swap Documents.
6. **Application of Payments.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion, in accordance with applicable law. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized will constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and all other Swap Documents will remain unchanged.
7. **Protection of Lender's Security; Instrument Secures Future Advances.**
- (a) If Borrower fails to perform any of its obligations under this Instrument or any other Swap Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender reasonably deems necessary to

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perform such obligations of Borrower and to protect Lender's interest, including all of the following:

- i. Lender may pay Attorneys' Fees and Costs.
 - ii. Lender may pay fees and out-of-pocket expenses of accountants, inspectors and consultants.
 - iii. Lender may enter upon the Mortgaged Property to make repairs or secure the Mortgaged Property.
 - iv. Lender may procure the Insurance required by the Swap Agreement.
 - v. Lender may pay any amounts which Borrower has failed to pay under the Swap Documents.
 - vi. Lender may perform any of Borrower's obligations under the Swap Documents.
 - vii. Lender may make advances to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a Prior Lien.
- (b) Any amounts disbursed by Lender under this Section 7, or under any other provision of this Instrument that treats such disbursement as being made under this Section 7, will be secured by this Instrument, will be added to, and become part of, the principal component of the Indebtedness, will be immediately due and payable and will bear interest from the date of disbursement until paid at the Default Rate pursuant to the Swap Agreement and the Swap Documents.
- (c) Nothing in this Section 7 will require Lender to incur any expense or take any action.

8. Events of Default. Any "Event of Default" under the Swap Agreement will constitute an Event of Default under this Instrument.

9. Remedies Cumulative. Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument, the Swap Agreement or any other Swap Document or afforded by applicable law or equity, and each will be cumulative and may be exercised concurrently, independently or successively, in any order. Lender's exercise of any particular right or remedy will not in any way prevent Lender from exercising any other right or remedy available to Lender. Lender may exercise any such remedies from time to time and as often as Lender chooses.

10. Waiver of Statute of Limitations, Offsets and Counterclaims. Borrower waives the right to assert any statute of limitations as a bar to the enforcement of the Lien of this Instrument or to any action brought to enforce any Swap Document. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or otherwise to offset any obligations to

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make the payments required by the Swap Documents. No failure by Lender to perform any of its obligations under this Instrument will be a valid defense to, or result in any offset against, any payments that Borrower is obligated to make under any of the Swap Documents.

11. Waiver of Marshalling.

- (a) Notwithstanding the existence of any other Liens in the Mortgaged Property held by Lender or by any other party, Lender will have the right to determine the order in which any or all of the Mortgaged Property will be subjected to the remedies provided in this Instrument, the Swap Agreement, or any other Swap Document or applicable law. Lender will have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies.
- (b) Borrower and any Person who now or in the future acquires a Lien in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

12. Further Assurances; Lender's Expenses.

- (a) Borrower will deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require from time to time in order to better assure, grant and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Swap Documents or in connection with Lender's consent rights under the Swap Agreement.
- (b) Borrower acknowledges and agrees that, in connection with each request by Borrower under this Instrument or any Swap Document, Borrower will pay all reasonable Attorneys' Fees and Costs and expenses incurred by Lender, including any fees payable in accordance with any request for further assurances or an estoppel certificate pursuant to the Swap Agreement, regardless of whether the matter is approved, denied or withdrawn. Any amounts payable by Borrower under this Instrument or under any other Swap Document will be deemed a part of the Indebtedness, will be secured by this Instrument and will bear interest at the Default Rate pursuant to the Swap Agreement and the Swap Documents.

13. Governing Law; Consent to Jurisdiction and Venue. This Instrument, and any Swap Document which does not itself expressly identify the law that is to apply to it, will be governed by the laws of the Property Jurisdiction without regard to any principles of conflicts of law. Borrower agrees that any controversy arising under or in relation to this Instrument or any other Swap Document may be litigated in the Property Jurisdiction or as

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otherwise set forth in the Swap Agreement, which venue and forum selection provisions are incorporated herein by this reference. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction and as otherwise set forth in the Swap Agreement will have jurisdiction over all controversies that may arise under or in relation to the Swap Agreement, any security for the Indebtedness or any other Swap Document. Borrower irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 13 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

14. **Notice.** All Notices, demands and other communications under or concerning this Instrument will be governed by the terms set forth in the Swap Agreement.
15. **Successors and Assigns Bound.** This Instrument will bind the respective successors and assigns of Borrower and Lender, and the rights granted by this Instrument will inure to Lender's successors and assigns.
16. **Joint and Several Liability.** If more than one Person signs this Instrument as Borrower, the obligations of such Persons will be joint and several.
17. **Relationship of Parties; No Third Party Beneficiary.**
 - (a) The relationship between Lender and Borrower will be solely that of creditor and debtor, respectively, and nothing contained in this Instrument will create any other relationship between Lender and Borrower. Nothing contained in this Instrument will constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.
 - (b) No creditor of any party to this Instrument and no other Person will be a third party beneficiary of this Instrument or any other Swap Document. Without limiting the generality of the preceding sentence, (i) any arrangement ("**Servicing Arrangement**") between Lender and any Loan Servicer for loss sharing or interim advancement of funds will constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower will not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.
18. **Severability; Amendments.**
 - (a) The invalidity or unenforceability of any provision of this Instrument will not affect the validity or enforceability of any other provision, and all other provisions will remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument.

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- (b) This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

19. Construction.

- (a) The captions and headings of the Sections of this Instrument are for convenience only and will be disregarded in construing this Instrument. Any reference in this Instrument to a "Section" will, unless otherwise explicitly provided, be construed as referring to a Section of this Instrument.
- (b) Any reference in this Instrument to a statute or regulation will be construed as referring to that statute or regulation as amended from time to time.
- (c) Use of the singular in this Instrument includes the plural and use of the plural includes the singular.
- (d) As used in this Instrument, the term "including" means "including, but not limited to" and the term "includes" means "includes without limitation."
- (e) The use of one gender includes the other gender, as the context may require.
- (f) Unless the context requires otherwise any definition of or reference to any agreement, instrument or other document in this Instrument will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in this Instrument).
- (g) Any reference in this Instrument to any Person will be construed to include such Person's successors and assigns.

20. Subrogation. If, and to the extent that, the proceeds under the Swap Agreement, or subsequent advances under Section 7, are used to pay, satisfy or discharge a Prior Lien, such proceeds or advances will be deemed to have been advanced by Lender at Borrower's request, and Lender will automatically, and without further action on its part, be subrogated to the rights, including Lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released

21-30. Reserved.

31. Acceleration; Remedies. At any time during the existence of an Event of Default, Lender, at Lender's option, may declare all of the Indebtedness to be immediately due and payable without further demand, and may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by Illinois law or provided in this Instrument, the Swap Agreement or in any other Swap Document. The Indebtedness will include, Lender will be entitled to collect, and any decree which adjudicates the amount secured by this Instrument will include, all costs and expenses incurred in pursuing such remedies, including Attorneys' Fees and Costs, costs of documentary evidence, abstracts and title

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reports, any of which may be estimated to reflect the costs and expenses to be incurred after the entry of such a decree.

32. **Release.** Upon termination of Borrower's obligations under the Swap Documents and payment of all outstanding Indebtedness, Lender will release this Instrument. Borrower will pay Lender's reasonable costs incurred in releasing this Instrument.
33. **Waiver of Homestead and Redemption.** Borrower releases and waives all rights under the homestead and exemption laws of the State of Illinois. Borrower acknowledges that the Mortgaged Property does not include "agricultural real estate" or "residential real estate" as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b), Borrower waives any and all rights of redemption from sale under any order of foreclosure of this Instrument, or other rights of redemption, which may run to Borrower or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. Borrower waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.
34. **Maximum Amount of Indebtedness.** Notwithstanding any provision to the contrary in this Instrument, the Swap Agreement or any other Swap Document which permits any additional sums to be advanced on or after the date of this Instrument, whether as additional loans or for any payments authorized by this Instrument, the total amount of the Indebtedness will not at any time exceed 300% of the Indebtedness as defined above in this Instrument.
35. **Illinois Collateral Protection Act.** Unless Borrower provides Lender with evidence of the insurance coverage required by the Swap Documents, if applicable, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Mortgaged Property. This insurance may, but need not, protect Borrower's interests. The coverage that Lender purchases may not pay any claim that Borrower may make or any claim that is made against Borrower in connection with the Mortgaged Property. Borrower may cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by the Swap Documents, if applicable. If Lender purchases insurance for the Mortgaged Property, Borrower will be responsible for the costs of that insurance, including interest and any other charges that Lender may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Instrument, the cost of such insurance will be added to the cost of the Indebtedness secured hereby. The cost of such insurance may be more than the cost of insurance Borrower may be able to obtain on its own.
36. **Applicability of Illinois Mortgage Foreclosure Law.** To ensure the maximum degree of flexibility of the Swap Documents under the Illinois Mortgage Foreclosure Law, if any provision of this Instrument is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-101, *et seq.*, as amended from time to time ("Act"), the provisions of the Act will take precedence over the provisions of this Instrument, but the Act will not invalidate or render unenforceable any other provision of

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this Instrument that can be fairly construed in a manner consistent with the Act. Without in any way limiting any of the Lender's rights, remedies, powers and authorities provided in this Instrument or otherwise, and in addition to all of such rights, remedies, powers and authorities, Lender will also have all rights, remedies, powers and authorities permitted to the holder of a mortgage under the Act. If any provision of this Instrument will grant to Lender any rights, remedies, powers or authorities upon default of the Borrower which are more limited than what would be vested in Lender under the Act in the absence of such provision, Lender will have such rights, remedies, powers and authorities that would be otherwise vested in it under the Act. Without limitation, all expenses (including Attorneys' Fees and Costs) incurred by Lender to the extent reimbursable under 735 ILCS 5/15-1510, 5/15-1512 or any other provision of the Act, whether incurred before or after any judgment of foreclosure, will be added to the Indebtedness and included in the judgment of foreclosure.

37. WAIVER OF TRIAL BY JURY.

- (a) **BORROWER AND LENDER EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY.**
- (b) **BORROWER AND LENDER EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

38. This Instrument Secures Future Advances. If and to the extent that any portion of the Indebtedness is to be advanced from and after the effective date of the Swap Documents, Lender agrees to make such advances in accordance with the terms and conditions of the Swap Agreement or any other applicable Swap Document, which have been executed contemporaneously with this Instrument, and such amounts will be a Lien from the date of recordation of this Instrument as provided in 5/15-1302(b)(1) of the Act.

39. Subordinate Instrument. Notwithstanding any provisions of this Instrument to the contrary, Borrower and Lender agree that the lien, terms, covenants and conditions of this Mortgage are and shall be subordinate in all respects, including right of payment, to the indebtedness evidenced by (i) that certain Promissory Note (Construction Loan) dated the date hereof, in the maximum principal amount of \$25,000,000.00, (as modified or amended the "Borrower Note") made by the Borrower and secured by a Mortgage, Security Agreement, Fixture Filing and Assignment of Rents, dated as of the date hereof (the "Borrower Mortgage") to The City of Chicago (the "Governmental Lender") as assigned by the Governmental Lender to Fifth Third Commercial Funding, Inc. pursuant

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to that certain Assignment of Mortgage and Other Loan Documents, dated as of the date hereof (the “**Governmental Lender Assignment**”) all as recorded in the official records of Cook County, Illinois, on or about the date hereof but prior hereto. Notwithstanding anything herein to the contrary, Lender (nor any of its successors in interest) shall not be entitled to enforce this Instrument unless and until all amounts secured by the Borrower Mortgage have been paid in.

40. **Attached Exhibits.** The following Exhibits, if marked with an “X” in the space provided, are attached to this Instrument:

Exhibit A Description of the Land

14823.457
25099102v3

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE AND ACKNOWLEDGMENT PAGE FOLLOWS**

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IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

BORROWER

AUBURN GRESHAM APARTMENTS LP, an Illinois limited partnership

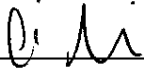
By: Auburn Gresham Apartments GP LLC, an Illinois limited liability company, its General Partner

By: 
David Block
Manager

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that David Block, personally known to me to be the Manager of Auburn Gresham Apartments GP LLC, an Illinois limited liability company (the "General Partner"), the general partner of Auburn Gresham Apartments LP, an Illinois limited partnership, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such manager, he signed and delivered the said instrument, pursuant to authority given by the members of the General Partner as his free and voluntary act, and as the free and voluntary act and deed of the General Partner and Auburn Gresham Apartments LP, for the uses and purposes therein set forth.

Given under my hand and official seal this 19th day of December, 2012.

(SEAL) 
Notary Public



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EXHIBIT A

DESCRIPTION OF THE LAND

PARCEL 1:

LOTS 6, 7, 8, 9 AND 10 IN BLOCK 4 IN GEORGE A CHAMBERS SUBDIVISION OF THAT PART OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 757 West 79th Street, Chicago, IL, 60620

PIN: 20-33-100-001-0000

PARCEL 2:

LOTS 15, 16, 17, 18, 19, 20, 21, 22 AND 23, IN BLOCK 31 IN WEST AUBURN, A SUBDIVISION OF BLOCKS 17, 18, 19, 20, 29, 30, 31 AND 32 IN THE SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 838 West 79th Street f/k/a 834-858 West 79th Street, Chicago, IL 60620

PINs: 20-29-430-027-0000
 20-29-430-028-0000
 20-29-430-029-0000
 20-29-430-030-0000
 20-29-430-031-0000
 20-29-430-032-0000

PARCEL 3:

LOTS 13 AND 14 IN BLOCK 31 IN WEST AUBURN, A SUBDIVISION OF BLOCKS 17, 18, 19, 20, 29, 30, 31 AND 32 IN THE SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 838 West 79th Street f/k/a 834 West 79th Street, Chicago, IL 60620

PINs: 20-29-430-033-0000
 20-29-430-034-0000