

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., et al.,

Defendants.

Case No. 1:18-cv-5587

Hon. Manish S. Shah

Magistrate Judge Young B. Kim

**REPLY STATEMENT OF CLAIMANT  
SHATAR CAPITAL PARTNERS**

Shatar—as the first to file its mortgage liens of record without notice of the EBF Investor-Lenders’ mortgage liens—holds a first position, perfected security interest in the Indiana Property”) and 7749-59 South Yates Boulevard, Chicago, Illinois, 60649 (the “Yates Property”) (together, the “Indiana and Yates Properties”). The SEC does not take a position as to Shatar’s priority. The Receiver and Certain Individual Investors, on the other hand, challenge Shatar’s priority position as to the Indiana and Yates Properties for several reasons, chiefly related to Shatar’s purported “inquiry notice” of Equitybuild’s general “business model.”<sup>1</sup>

The facts of Shatar’s loan belie these meritless positions. Shatar’s mortgage on the Indiana Property was a purchase-money mortgage: Shatar’s funds went directly from the Shatar lenders,

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<sup>1</sup> To the extent other claimants challenge Shatar’s priority on the Indiana and Yates Properties (*see* Dkt. 1566), Shatar reiterates its lien priority for the reasons expressed herein, as well as in its position statement (Dkt. 1562). Notably, numerous individuals in their separate position statements assert, often as the only basis for their position, that Equitybuild told them they would have a first lien. But Shatar was not only told by Equitybuild, in writing, and in signed mortgage documentation, that it had first position liens on the Indiana and Yates Properties, but the record index for the Indiana and Yates Properties also showed no prior liens at the time Shatar closed its loan and recorded its mortgages.

through escrow, to the third-party seller of the Indiana property which was completely unaffiliated with Equitybuild. Hence, there was nothing for Shatar to further inquire about, nor was there anything to discover—the competing EBF Investor-Lender Indiana mortgage did not even exist when Shatar closed its loan. (*Compare* Dkt. 1562-2 *with* Dkt. 1562-4.) As to Yates, Shatar similarly used escrow to ensure its funds were not disbursed before confirmation that its mortgage was in first lien position, and there was similarly nothing for Shatar to discover—the EBF Investor-Lenders failed to timely record their mortgage (either through their agent or by themselves). Accordingly, Shatar had no notice—inquiry or otherwise—as to the EBF Investor-Lenders’ liens and is entitled to the full benefit of its lien priority under Illinois law.

### **ARGUMENT**

By recording its mortgages first without notice, Shatar attained lien priority as matter of Illinois law. The Receiver and the Certain Individual Investors nevertheless challenge Shatar’s priority on several meritless grounds, including that (i) Shatar is not a proper claimant, (ii) Hebraic law transformed Shatar into an equity claimant, (iii) Shatar was on inquiry notice of Equitybuild’s “business model,” and therefore should have been aware of the competing EBF Investor-Lender mortgages; (iv) the EBF Investor-Lenders are entitled to an “equitable lien,” and (v) even if Shatar has priority, its recovery should be limited to its principal. As shown below, none of the Receiver’s or the Certain Individual Investors’ arguments are grounded in law or supported by evidence.

#### **I. Shatar is a Proper Claimant.**

As an initial matter, the Certain Individual Investors assert, without citation to any legal authority, that Shatar is not a proper claimant because “neither Shatar nor the Shatar Lenders (nor the subsequent purchaser) have submitted documents establishing that Shatar has the authority to pursue the claim.” (Dkt. 1564 at 10.). Shatar *has* submitted these documents and the Certain Individual Investors’ challenge to Shatar’s right to pursue the claim on behalf of its lenders and

assignee is a baseless attempt to elevate form over substance.<sup>2</sup> Notably, the Receiver charged with carrying out the orderly administration of this receivership takes no such position.

The lenders and subsequent assignee all authorized Shatar to act as a servicer on their behalf for their interests in the Indiana and Yates Properties. (*See* Reply Ex. 1 (Letter of Authorization and Servicing Agreement between Shatar and Esmail, excerpted from Shatar Proof of Claim (“POC”) at 322); Reply Ex. 2 (same between Shatar and Farssa, Inc., excerpted from Shatar POC at 316; Reply Ex. 3 (same between Shatar and 1111 Crest Dr., LLC, excerpted from Shatar POC at 320); and Reply Ex. 4 (same between Shatar and Pakravan Living Trust (subsequent assignee of Ebriani’s interest), excerpted from Shatar POC at 321.) Beyond the proof of Shatar’s authority to pursue these claims on the Shatar lenders’ behalf, Shatar’s involvement has also not prejudiced the Certain Individual Investors in any way. Indeed, the Receiver was aware of Shatar’s lenders, and pursued discovery as to 1111 Crest Dr. LLC, Abraham Ebriani, Farsaa Inc., and Hamid Esmail<sup>3</sup> with subpoenas on June 27, 2023. Counsel for the Certain Individual Investors was on the service list for each of these subpoenas, but declined to pursue any discovery regarding Shatar’s authority via these lenders. Accordingly, Shatar is a proper claimant to pursue the Shatar lenders’ claims as to the Indiana and Yates Properties.

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<sup>2</sup> In this context, the Certain Individual Investors also suggest for the first time since he was deposed on November 1, 2023, that Ezri Namvar, the designated 30(b)(6) deponent for Shatar, was not “properly prepare[d] to fulfill that role.” (Dkt. 1564 at 9, n.6.) The Receiver, whose counsel actually asked the vast majority of the relevant substantive questions at the deposition, has never suggested as much. And for good reason. Mr. Namvar answered every question posed during the deposition—including counsel for the Certain Individual Investors’ improper questions relating to Mr. Namvar’s personal background. Further, the Certain Individual Investors conveniently omit Mr. Namvar’s clarification describing his efforts to prepare for the 30(b)(6) deposition. (Dkt. 1562-1 at 128:12-129-13.) Relatedly, as counsel for the Certain Individual Investors knows full well, it is wholly improper to suggest Mr. Namvar’s personal background in any way put him on notice of Equitybuild’s fraud. (*See* Dkt. 1564 at 13, n.9.)

<sup>3</sup> Consistent with his historic practice, the Receiver did not seek discovery as to the Pakravan Living Trust, as the Trust acquired its interest by assignment after the Receivership was instituted.

## II. “Heter Iska” Did Not Transform Shatar’s Loan Into An Equity Investment.

Citing a single email between Shatar and Equitybuild, the Receiver contends Shatar’s loan with Equitybuild should be treated as “an equity investment,” according to the principles of “Heter Iska.” (Dkt. 1571 at 4.) According to the Receiver, a “heter iska” is a “concept within Jewish law where money provided from one entity to another is not to be considered a loan but an investment in a joint business venture.” (*Id.* at 5.) As a result, the Receiver contends, Shatar is “properly considered an investor in a joint business venture with EquityBuild and, thus, subordinate to the investor-lenders’ claims on the Indiana and Yates properties” because Shatar and Equitybuild agreed “they wanted the loan proceeds to be governed under the principles of ‘Heter Iska.’” (Dkt. 1571 at 4, 6 (citing Receiver Ex. 10).)

Here, however, Shatar’s mortgages dictate that Illinois law, not Hebraic law, applies. (Dkt. 1562-2 and 1562-3 at ¶ 35: “The validity of this Mortgage and its construction, interpretation, and enforcement, and the parties’ rights under such documents and concerning the Mortgaged Property, shall be decided under, governed by, and construed in accordance with the laws of the State of Illinois.”) Courts considering the interplay of civil law and the principles of Heter Iska have specifically observed that “the Heter Iska cannot be held to have affected the validity of the duly executed Note and Mortgages” where “[t]he explicit language of the mortgages disavows an intent to substitute the relevant laws with that of Jewish Law.” *See Madison Park Invs. LLC v. 488-486 Lefferts LLC*, 2015 N.Y. Misc. LEXIS 320 (N.Y. Sup. Ct. Feb. 5, 2015), \*22, n.3 (holding mortgages explicitly provided New York law would govern, not Hebraic law, and noting that “it has been specifically held that ‘a Heter Iska agreement does not alter the clear civil law terms of a note and a mortgage’” (quoting *VNB New York Corp. v. 47 Lynbrook LLC*, 2012 N.Y. Misc. LEXIS 364 (N.Y. Sup. Ct. Jan. 19, 2012))).

No subsequent communications—including the email cited by the Receiver—alter the choice of law selection in the Shatar mortgages. To the contrary, at most “a Heter Iska constitutes ‘merely a compliance in form with Hebraic law,’ and does not create a partnership, joint venture, or profit sharing agreement.” (*Id.* (citation omitted) (collecting cases).) Accordingly Illinois law applies and, as discussed further below, under Illinois law Shatar’s mortgages are entitled to priority.

**III. Shatar Was the First to Record its Mortgage Lien and There is No Evidence Shatar Was On Notice Of The EBF Investor-Lenders’ Mortgages.**

It is undisputed that Shatar holds first-in-time recorded mortgage liens on the Indiana and Yates Properties. (*Compare* Dkts. 1562-2, 3 *with* Dkts. 1562-4, 5.) Nevertheless, the Certain Individual Investors and the Receiver challenge Shatar’s lien priority by alleging that Shatar was on notice of the EBF Investor-Lenders’ mortgage liens or should have been aware of the EBF Investor-Lenders’ mortgage liens based on Equitybuild’s “business model.” (Dkt. 1564 at 11-18; Dkt. 1571 at 4-8.) But neither the Certain Individual Investors nor the Receiver present any evidence sufficient to carry their burden to prove that Shatar had actual or constructive notice of the EBF Investor-Lenders’ mortgage liens on the Indiana and Yates Properties. *See Krueger v. Oberto*, 309 Ill. App. 3d 358, 368 (2d Dist. 1999) (“It is well established that the burden of proof is upon the person charging notice.”) (citing *Reed v. Eastin*, 379 Ill. 586, 592 (1942) (“The burden of proof is, of course, upon the person charging notice to prove it.”); *see also U.S. Bank Nat’l Ass’n v. Johnston*, 2016 IL App (2d) 150128, ¶ 45 (constructive notice refers to both notice provided by what is available on the public record as well as inquiry notice). Accordingly, based on Shatar’s earlier-in-time recorded mortgage lien and lack of notice, Shatar has priority in regards to the Indiana and Yates Properties as a matter of law. *See* 765 ILCS § 5/30; *see also Bruder*, 207 B.R.

151, 156 (N.D. Ill. Bankr. 1997) (citations omitted) (In Illinois, “the first to record, without notice, has superior rights to those who record later.”).

**A. There Is No Evidence Of Actual Notice Of The EBF Investor-Lenders’ Mortgages.**

Shatar was not on actual notice of any competing mortgage liens on the Indiana and Yates Properties. No claimant suggests as much with respect to the Indiana Property, likely because the EBF Investor-Lenders’ mortgage for the Indiana Property was not executed until *after* the Shatar mortgage for the Indiana Property. (*Compare* Dkt. 1562-2 (mortgage dated March 30, 2017) *with* Dkt. 1562-4 (mortgage dated March 31, 2017).) As to the Yates Property, the Certain Individual Investors claim actual notice, but their argument only confirms Shatar’s lack of such notice.

In support of their argument, the Certain Individual Investors refer to a document presented during Shatar’s 30(b)(6) deposition—a copy of EBF Investor-Lenders’ mortgage for the Yates Property (*see* Reply Ex. 5, Shatar 30(b)(6) Dep. Ex. 11)—for their assertion that “Shatar knew that there was a mortgage granted to the Individual Investors for the Yates Property on March 14, 2017 and had a copy of that mortgage.” (Dkt. 1564 at 16 (citing EBF Investor-Lenders’ mortgage on the Yates Property presented during 30(b)(6) deposition.) However, the EBF Investor-Lender mortgage on the Yates Property includes a date and time stamp on the first page readily demonstrating that Shatar could not have seen the mortgage prior to when Shatar received and recorded its mortgages. Specifically, the mortgage Shatar had a copy of is the recorded version with a recording stamp of “6/23/2017 at 10:56AM”—the date EBF recorded the EBF Investor-Lender mortgage on the Yates Property, and *two months after Shatar recorded its liens*. (*See* Shatar Reply Ex. 5; *see also* Dkt. 1562-3.) That Shatar “had a copy” of the EBF Investor-Lender’s Yates mortgage is not in any way unusual; it is entirely normal and reasonable for a litigant to obtain a copy of the opposing litigant’s mortgage during litigation. Finally the evidence affirmatively

establishes Shatar did *not* have actual knowledge of the EBF Investor-Lender mortgages at the time of Shatar's loan. During the 30(b)(6) deposition, Shatar explicitly confirmed it was not aware that there was a mortgage that had been given to individual investors for the same property it was making a loan on – if it was “why would [Shatar] have done business with [Equitybuild]?” (Dep. at 117:8-19 (“[Y]our testimony as the corporate representative on behalf of Shatar Capital is that nobody at Shatar Capital was aware of that mortgage; is that right? A: Correct, 100 percent.”).)

**B. Shatar Was Not On Inquiry Notice Of The EBF Investor-Lenders' Mortgages.**

Shatar was not on inquiry notice as to the EBF Investor-Lender mortgages either. As to the Indiana Property, it would have been impossible for Shatar to discover (via inquiry or any other type of notice) the EBF Investor-Lenders' Indiana mortgage, given that the EBF Investor-Lenders' mortgage did not even exist at the time Shatar received its Indiana mortgage. (*Compare* Dkt. 1562-2 *with* Dkt. 1562-4.) Furthermore, the inquiry notice arguments challenging Shatar's lien position on the Indiana Property ignore the reality that, for the Indiana Property, Shatar's funds went directly from the Shatar lenders, through escrow, to the third-party seller of the Indiana Property,<sup>4</sup> which was completely unaffiliated with Equitybuild.<sup>5</sup> Left unsaid by the Certain Individual Investors and the Receiver is how or why Shatar would doubt it was getting a first lien position

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<sup>4</sup> See Reply Ex. 6 (excerpted from Shatar POC at 238 (escrow instructions stating “You have confirmed that all liens and encumbrances, including any existing mortgages and/or deeds of trust recorded against the Property are either cleared prior to closing or will be paid through the closing of escrow” and requiring insured first lien position before release of funds); see also Reply Ex. 7 (Chicago Title document produced at CT01716-01718, showing receipts of \$1.8 million from Shatar lenders and at line 6 transferring \$1,603,604.87 to Chicago Title Escrow 201701072); Reply Ex. 8 at 2 (Chicago Title document produced at CT00749-53, escrow disbursement showing transfer of funds between escrows); *id* at 2, line 09 (showing net proceeds of \$1,469,079.45 to selling entity); Reply Ex. 9 (Chicago Title document produced at CT000765, showing wire to selling entity); Reply Ex. 10 (March 30, 2017 Special Warranty Deed with grantor T2 5450 S Indiana LLC conveying Indiana Property to 5450 S. Indiana LLC, c/o Equitybuild, Inc.).

<sup>5</sup> The selling entity T2 5450 S Indiana, LLC is not related to any Equitybuild entity. See <https://t2investments.com/about/>; see also Reply Ex. 10.

when it funded the purchase of the property by utilizing escrow wherein its funds went directly to the third-party seller. These facts should quickly end the Court’s inquiry notice analysis regarding the Indiana property.

As to the Yates Property, it is undisputed that in the 16 days between the execution of the EBF Investor-Lenders’ Yates mortgage and the Shatar closing (which utilized the same escrow described in footnote 3), there was *no* recordation of the EBF Investor-Lenders’ mortgage. Given the EBF Investor-Lenders’ failure to have timely recorded their mortgage (whether themselves or through their agent, EBF), the Certain Individual Investors and the Receiver are left with abstract arguments that Shatar was aware of, generally, Equitybuild’s general business practices and thus Shatar “should not be granted priority over the Individual Investors’ lien given the many issues with Equitybuild’s business of which Shatar had actual knowledge.” (Dt. 1564 at 11.) Not only did the Certain Individual Investors and the Receiver decline to seek leave to present expert testimony on these issues, they further fail to cite any case law to support their arguments and none of the cited evidence is sufficient to meet their burden to establish inquiry notice.<sup>6</sup> In any event, even if notice of “Equitybuild’s business model”<sup>7</sup> was sufficient to trigger inquiry notice of competing mortgages, that notice would only have put Shatar on notice of facts it would have discovered upon inquiry—none of which would have alerted Shatar to the EBF Investor-Lenders’ mortgages.

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<sup>6</sup> The remainder of this Section largely focuses on the Certain Individual Investors’ argument concerning inquiry notice, which the Receiver adopts and incorporates. (*See* Dkt. 1571 at 6.)

<sup>7</sup> In any case, Equitybuild did not have a single, discoverable “business model.” As described in the SEC’s Complaint, Equitybuild’s “business model” evolved over time, using multiple alleged business models utilizing both mortgages and real estate funds. (*See, e.g.*, Dkt. 1 (SEC Complaint).) As a result, it is not accurate to suggest that Equitybuild, in every instance, adhered to the single “business model” the Receiver and Certain Individual Investors contend placed Shatar on inquiry notice.



As an initial matter, the majority of the Certain Individual Investors’ references to Shatar’s purported knowledge of Equitybuild’s “business practices” relate to other properties, not the Indiana or Yates Properties. The Certain Individual Investors extrapolate “actual knowledge” of the EBF Investor-Lenders’ mortgages from the understanding that “Equitybuild made loans using investments from multiple individuals, with investments as small as \$100,000, and that Equitybuild prided itself on securing those loans with first lien positions on the properties.” (Dkt. 1564 at 12.) But this aspect of Equitybuild’s business approach came up in the specific context of a different property—7024 Paxton—and, as the Certain Individual Investors concede, was raised in an introductory email to Shatar, in which Equitybuild was pitching investment in Paxton, not the Indiana and Yates Properties. (Dkt. 1564 at 11-12.)

For the same reason, the Certain Individual Investors’ suggestion that Shatar’s knowledge of “crowdfunding”—also based on the email concerning Paxton, attaching blank, form documents, circulated months before the Indiana and Yates investment was introduced to Shatar (*see* Dkt 1537, Ex. 4)—do not contradict Shatar’s testimony that it did not, in fact, “realize how small the investments that Individual Investors made with EquityBuild were until [Shatar] saw the mortgage Equitybuild gave to the Individual Investors for the Yates Property during the Shatar 30(b)(6) deposition” (Dkt. 1564 at 17). Indeed, other than the “crowdfunding” email related to a different loan and different property, the Certain Individual Investors fail to offer any evidence showing Shatar knew of the “small” investments shown on Exhibit A to the EBF Investor-Lender mortgages prior to the deposition, let alone at the time Shatar made its loan. More fundamentally, the Certain Individual Investors also fail to establish—or even concretely argue—why knowledge of “crowdfunding” (a term undefined by any evidence) generally would equate to knowledge of unrecorded EBF Investor-Lender mortgages on the Indiana and Yates Properties.

The Certain Individual Investors’ suggestion that Shatar was on notice based on its receipt of Equitybuild’s form documents is similarly unsupported. Specifically, the Certain Individual Investors argue that because Shatar received Equitybuild’s form documents, Shatar should have known how Equitybuild’s “business worked—and that likely would have been enough to put Shatar on notice that there was likely ‘funny business,’ possibly even a Ponzi scheme.” (Dkt. 1564 at 13.) But the Certain Individual Investors offer no explanation as to how or why these blank form documents would alert Shatar to competing mortgages on the Indiana and Yates Properties.

The Certain Individual Investors next contend Shatar knew or should have known “about issues with the Yates property, including the Individual Investors loan, that Shatar itself said would be problematic.” (Dkt. 1564 at 13.) For example, the Certain Individual Investors make much of the notion that learning that the Yates mortgage was not a purchase-money mortgage, Shatar should have taken its usual additional steps to determine that “the value was there.” (*Id.*) But the Shatar deposition confirmed that that is exactly what happened, which the Certain Individual Investors concede. (Dkt. 1564 at 16: “Namvar testified that, though he could not remember if those different steps were taken, if they had been, ‘it would have to do with determining that the value was there,’ *which Namvar’s friend had done.*” (emphasis added).) Specifically, Namvar had his associate in Chicago go view the properties in person to confirm their value—the “additional step” necessary for Shatar’s review of a non-purchase-money mortgage. (Dkt. 1562-1 at 56:2-17.) Again, the Certain Individual Investors offer no explanation as to how or why Shatar would have known about a mortgage on the Yates Property when none was recorded and Shatar had been promised a first lien position.

The Certain Individual Investors focus their briefing on the purported evidence indicating Shatar’s alleged “notice” of the EBF Investor-Lenders’ interests in the Indiana and Yates

Properties—none of which, as discussed, establishes such notice.<sup>8</sup> Tellingly absent from these arguments is any reference to or discussion of Illinois law.

**C. Illinois Law Supports Shatar’s Priority.**

Illinois law confirms Shatar’s lien priority. In Illinois, “[a] purchaser is placed on ‘inquiry notice’ when facts revealed in the title search process would cause a reasonable individual to think twice about completing the transaction.” *Stump v. Swanson Dev. Co. LLC*, 2014 IL App (3d) 110784 ¶ 104. Where a party has knowledge of facts or circumstances that would cause a person of prudence to make further inquiry, and that party does not investigate further, the party will be charged only with notice of any facts that may have been discovered by the inquiry. *See id.*; *see also Glenview State Bank v. Shyman*, 146 Ill. App. 3d 136, 138 (1986)). In other words, even if the Certain Individual Investors correctly identified facts and circumstances sufficient to put Shatar on inquiry notice—notwithstanding that those purported facts and circumstances all related to Equitybuild’s business generally, with no relation to the Indiana and Yates Properties—Shatar can only be charged with notice of facts it would have discovered upon further inquiry. *See Stump*, 2014 IL App (3d) 110784 at ¶ 104. Here, at the time Shatar closed on its mortgages, the record index for the Indiana and Yates Properties showed no prior liens and Equitybuild represented in the loan documents that it was granting first lien positions on both properties to Shatar. (*See, e.g.*, Reply Ex. 6.) There was nothing more that Shatar could or should have done to ensure its mortgage lien priority.

**IV. Illinois Law Does Not Permit A Subsequent Mortgagee To Take Priority Via An “Equitable Lien” Absent A Showing Of Equitable Subrogation, Which The Certain Individual Investors Have Not Asserted, Let Alone Proven.**

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<sup>8</sup> All of the purported “facts” assembled for the proposition that Shatar knew about and understood the Equitybuild general business model to support their inquiry notice argument are at least as applicable to the EBF Investor-Lenders.

The Certain Individual Investors alternatively argue that even if the Court finds that Shatar has priority, the Court should hold that the EBF Investor-Lenders have an “equitable lien” on the Indiana and Yates Properties, entitling them to the proceeds of the sale of those properties ahead of Shatar. (Dkt. 1564 at 19-20.) Conceding that “the holder of an equitable lien cannot take priority over the interest of a party who acquires an interest in a property without notice of the equitable interest,” the Certain Individual Investors again rely on the concept of inquiry notice. (*Id.* at 20 (citing *Stump*, 2014 IL App (3d) 110784).) Specifically, they contend “the Institutional Lenders’ due diligence, with reasonable inquiry, should have uncovered facts sufficient for the Court to conclude that each had actual notice and knowledge of the Individual Investors’ loans, and that those loans remained outstanding.” (*Id.* at 20.)

However, simply claiming an “equitable lien” does not provide a basis for the Court to grant priority to the EBF Investor-Lenders over Shatar’s first-in-time recorded mortgages (which, again, were recorded without notice of any competing liens). Rather, Illinois law requires a subsequent mortgagee attempting to assert the priority of its lien over a prior mortgage to establish the elements of equitable subrogation. Specifically, a subsequent mortgagee must show (1) words or conduct by the prior mortgagee amounting to a misrepresentation or concealment of a material fact; (2) knowledge by the prior mortgagee that the representations were untrue; (3) the truth respecting the representations was unknown to the subsequent mortgagee; (4) the prior mortgagee intended or expected that the subsequent mortgagee would act on the representations; (5) the subsequent mortgagee relied on the prior mortgagee's representations; and (6) the subsequent mortgagee acted because of the prior mortgagee's misrepresentations and is prejudiced as a result. *See Walker v. Ocwen Loan Servicing, LLC*, 2016 IL App (3d) 150034-U, ¶ 32 (citing *Chemical Bank v. American Nat’l Bank & Tr. Co.*, 180 Ill. App. 3d 219, 226 (1st Dist. 1989)).

The Certain Individual Investors do not state, even in a conclusory manner, any of these elements, let alone prove them. *See id.* (“Proof of these elements must be clear, precise and unequivocal.”). Most importantly, these elements require some level of misconduct on the part of the prior mortgagee directed toward the subsequent mortgagee, which the Certain Individual Investors have not and cannot show. Indeed, there is no evidence that Shatar (or the lenders listed on the Shatar mortgages) had any relationship or contact with the EBF Investor-Lenders, let alone made representations to the EBF Investor-Lenders that would cause them to believe their mortgages would have priority over Shatar’s mortgages.

Moreover, equitable subrogation is available only where no prejudice results. *Id.* at ¶ 30 (citing *Detroit Steel Prods. Co. v. Hudes*, 17 Ill. App. 2d 514, 521 (4th Dist. 1958)). Here, if equitable subrogation were applied, Shatar as the first mortgage lender would be harmed— “[a]llowing [the EBF Investor-Lenders’ mortgages] to leapfrog over [Shatar’s] would make [Shatar’s] mortgage subject to a mortgage that was non-existent at the time of execution.” *Id.* at ¶ 36; *see also Firstmark Standard Life Ins. Co. v. Superior Bank FSB*, 271 Ill. App. 3d 435, 439 (1st Dist. 1995) (a mortgage “becomes effective when it is recorded”); *5210 Wash. Investors LLC & Arthur Bertrand v. Equitybuild, Inc.*, 2023 Ill. Cir. LEXIS 79, \*10 (“[A] mortgage is not a lien on a property until it has been recorded.”).

To this end, even if Shatar could be charged with knowledge of facts it “should have uncovered” with “reasonable inquiry”—the same holds true for the EBF Investor-Lenders, further undermining the notion that they are entitled to an “equitable lien” under the circumstances. Indeed, the same evidence of Equitybuild’s “business model” was equally available to the EBF Investor Lenders, who are likewise capable of “a simple Google search.” (Dkt. 1564 at 3.) Moreover, it is well established that “[w]here one of two innocent persons must suffer by reason

of the fraud or wrong conduct of another, the burden must fall upon him who put it in the power of the wrongdoer to commit the fraud or do the wrong.” *M&T Bank v. Mallinckrodt*, 2015 IL App (2d) 141233, ¶ 52; *see also Walker*, 2016 IL App (3d) 150034-(U), ¶ 34 (“The doctrine of equitable subrogation was created to place the loss on the party upon whom it should fall. In this case, the loss falls on defendant, who was in the best position to prevent it.”) (citation omitted)). Here, the EBF Investor-Lenders empowered EBF to record their mortgage lien on the Yates Property<sup>9</sup> on their behalf, and it was the EBF Investor-Lenders and their agent, EBF, that failed to record that mortgage lien for months. Simply put, absent proof supporting equitable subrogation, Illinois law does not burden Shatar, a third-party to the relationship between EquityBuild and the EBF Investor-Lenders, with the responsibility for the EBF Investor-Lenders’ agent’s actions.

**V. Shatar Is Entitled To The Entirety Of Its Secured Claim Up To The Amount Of The Net Proceeds, Or, In The Alternative, The Court Should Stay Briefing On The Specific Amounts Due And Rule Only On Priority.**

The Receiver argues that Post-Receivership Interest and late fees, attorneys’ fees, and other ancillary charges permitted by the applicable loan documents should be denied, even to the victorious priority secured creditor. (*See* Dkt. 1571 at 11-16.) The Receiver’s argument is grounded primarily in (i) general concepts of equitable discretion, and (ii) that Equitybuild operated as a Ponzi Scheme. (Dkt. 1571 at 11-16.) There are fatal defects as well as procedural issues as to both propositions.

**a. A Secured Creditor Is Entitled To The Complete Recovery Authorized Under Illinois Law.**

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<sup>9</sup> As described, the EBF Investor-Lender mortgage on the Indiana Property postdates the Shatar mortgage on the Indiana Property, thus it would be impossible for the EBF Investor-Lenders’ agent to record prior to the execution of Shatar’s mortgage.

The notion that the Court may override a secured mortgagee's rights violates the fundamental precept that equity follows law. *See, e.g., In re BNT Terminals, Inc.*, 1991 Bankr. LEXIS 421, \*20 (Bankr. N.D. Ill. Feb. 21, 1991) (declining to reinstate liens “premised upon ‘basic concepts of equity’” because “equity follows law and [defendant’s] lawyers have failed to articulate what the basic concepts of equity are that the Court should apply.”). At least one court<sup>10</sup> has explicitly considered whether a court administering an equity receivership has “general authority to ignore state law in the name of equity” in order to distribute receivership proceeds on a pro rata basis, rather than in accordance with state law priority rules. *In re Real Prop. Located at [Redacted] Jupiter Drive*, No. 2:05-CV-01013-DB, 2007 U.S. Dist. LEXIS 65276 (Utah D. Ct. Jun. 7, 2007). The court confirmed it *did not* have such broad authority, rejecting an argument that the “the district court’s discretion in supervising a receivership includes the ability to deny ‘state law remedies’ in dealing with receivership assets.” *Id.* at \*11 (quoting competing investor’s brief). Citing Supreme Court authority for the proposition that it is “well-established that a ‘receiver appointed by a federal court takes [a] property subject to all liens, priorities or privileges existing or accruing under the laws of the State,’” the court agreed it was “governed by the general rule that state law regarding lien priorities is to be respected in receiverships.” *Id.* at \*12. Further observing that “[t]he United States Constitution specifically states that contractual rights are not to be impaired,” the court explained that “[t]he consequences may be harsh for the [competing]

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<sup>10</sup> To be clear, the substance of the opinion in *Jupiter* was drafted by a Special Master, whom the court appointed to determine which investors were entitled to what portion of what remained in the investment pool. After conducting “a de novo review of the [Special Master’s] Report and Recommendation and the objections to it,” the court adopted the Special Master’s report. (*See In re Real Prop. Located at [Redacted] Jupiter Drive*, No. 2:05-CV-01013-DB (Utah D. Ct.), “Order Adopting the First Report and Recommendation of the Special Master,” Dkt. 272 at 1-2.) In light of the district court’s adoption of the Special Maser’s report, and for ease of reference, Thorofare refers to the *Jupiter* opinion as coming from the court.

Investors, but the law is clear. Equity has its limits.” *Id.* at \*26-27 (citing U.S. Const. Art. I, § 10, cl. 1).

As in *Jupiter*, the Court should decline the Receiver’s invitation to abandon Illinois lien priority rules in favor of equity. Illinois law is clear that the recording of a mortgage creates a security interest in real estate for the payment of the underlying indebtedness. *See* 765 ILCS 5/11 (“Such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient mortgage in fee to *secure the payment of the moneys therein specified.*”) (emphasis added); *see also Ogle v. Koerner*, 140 Ill. 170, 179 (1892) (“A mortgage. . . vests in the party secured a lien upon the mortgage premises” and “[b]y virtue of that lien the mortgagee is entitled to . . . the proceeds of the sale [of the property in foreclosure] applied to the payment of the debt secured.”). Illinois law further explicitly deems mortgages effective from and after the time of filing on the record, and “not before.” *See* 765 ILCS 5/30 (“[M]ortgages . . . shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record.”). Accordingly, as the first to record its mortgage liens without notice, Illinois law entitles Shatar to the payment of the amounts specified in its mortgages.

For Shatar, in addition to the remainder of the principal, its mortgages specify it is entitled to interest. (Dkts. 1562-2, 1562-3; *see also* Reply Ex. 11 (Promissory Note, excerpted from Shatar POC at 44.) The Receiver, however, contends “[a]s a general rule, in equity receiverships, interest on a debtor’s obligations ceases to accrue at the inception of the proceeding,” relying on the Supreme Court’s decision in *Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 163 (1946). (Dkt. 1571 at 12 (“the *Vanston* Court made clear that interest is not permitted in a



federal equity receivership. . .”).) While *Vanston* “has never . . . been legislatively or judicially overruled,” it has, however, been “superseded in the respects that section 506(b) provides.” *In re Urban Communicators PCS Ltd. P’ship*, 379 B.R. 232, 252-53 (Bankr. S.D.N.Y. 2007), *rev’d on other grounds*. For its part, section 506(b)—which applies with full force in these proceedings<sup>11</sup>—dictates that “[t]o the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim,” a secured claimant is allowed “interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement . . . under which such claim arose.” 11 U.S.C. § 506(b). Further, the *Vanston* case was limited to challenging the potential recovery of interest on interest in which the subordinate creditors “concede[d] that the first mortgage bondholders should receive simple interest on the principal due them.” *Vanston*, 329 U.S. at 159.<sup>12</sup>

The *Jupiter* opinion is instructive on this point, as well. *Jupiter* further held “[h]aving reviewed the cases and the treatises . . . [t]he institution of a receivership does not stop the running of interest contracted for by a secured party any more than it interferes with the priority afforded

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<sup>11</sup> Contrary to the Receiver’s suggestion (*see* Dkt. 1571 at 14 n.6), “equitable considerations” should not serve as a basis to avoid the applicability of Local Rule 66.1, providing “the administration of estates by receivers or other officers shall be similar to that in bankruptcy cases,” thus bringing 11 U.S.C. § 506(b) reasonably into the Court’s consideration. Notably, the Receiver contends Shatar “knowing in detail Equitybuild’s business model” constitutes “inequitable conduct.” (Dkt. 1571 at 15.) But, as described, this alleged “knowledge” applies with equal force to all Equitybuild investors. (*See infra.*) Moreover, the Seventh Circuit has recognized that “when a specific [Bankruptcy] Code section addresses an issue, a court may not employ its equitable powers to achieve a result not contemplated by the Code.” *In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993).

<sup>12</sup> The Receiver’s other cited cases are similarly distinguishable. *SEC v. Capital Cove Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856 (C.D. Cal., Oct. 13, 2015) (concerning default interest); *In re Hollstrom*, 133 B.R. 535, 539 (Bankr. D. Colo. 1991) (concerning default interest); *Duff v. Cent. Sleep Diagnostics, LLC*, 801 F.3d 833, 844 (7th Cir. 2015) (involving question of whether a receivership court had the discretion to treat claimants’ names as confidential, not whether the court could ignore state and federal rights of secured creditors in their collateral).

such a party by state law.” *Id.* at \*23 (citing Clark on Receivers, § 660 (noting that “appointment of a receiver cannot deprive a party to the suit or a claimant of his contractual rights.”)).

Accordingly, as noted, the Shatar mortgages and loan documents confirm it is entitled to interest. (*See* Dkts. 1562-2, 1562-3; *see also* Reply Ex. 11.) Section 506(b) also requires that Shatar receive all amounts due under its mortgages because the liquidated value of the Indiana and Yates Properties exceed the amount of Shatar’s claim. *See* 11 U.S.C. § 506(b); *see also In re Cella III, LLC*, 625 B.R. 19, 25–26 (Bankr. E.D. La. 2021) (holding secured creditors are secured and entitled to recover interest up to the value of the property); *In re Croatan Surf Club, LLC*, No. 11-00194-8-SWH, 2012 Bankr. LEXIS 2369, at \*6 (Bankr. E.D.N.C. May 25, 2012) (holding same); *In re Broomall Printing Corp.*, 131 B.R. 32, 35–37 (Bankr. D. Md. 1991) (holding same); *Liberty Nat. Bank & Tr. Co. of Louisville v. George*, 70 B.R. 312, 313 (W.D. Ky. 1987) (holding same).

**b. The Receiver Has Not Met His Burden Of Proving That The Ponzi Scheme Presumption Applies As To Shatar.**

The Receiver improperly assumes the Ponzi scheme presumption applies to trigger the so-called “netting rule.” *See In re Taneja*, 2012 Bankr. LEXIS 3554, \*14 (Bankr. E.D. Va. July 30, 2012) (“A party seeking to raise a [Ponzi scheme] presumption has the burden of proving the predicate facts that give rise to the presumption.”). Specifically, the Receiver argues the Cohens’ operation of a Ponzi scheme “was alleged with specificity by the SEC in its Complaint, and the Cohens did not deny the Ponzi scheme having entered into a Consent Judgment.” (Dkt. 1571 at 15.)

But the factual circumstances specific to Shatar’s Indiana mortgage undercut the applicability of the Ponzi scheme presumption because Shatar never sent Equitybuild any money. Instead, Shatar disbursed its lenders’ funds to T2 5450 S Indiana, LLC (an entity unrelated to Equitybuild). (*See* Reply Exs. 7-10). Put differently, Shatar’s lenders’ funds went directly to the

prior owner of the Indiana Property, and Shatar is nothing other than a first position lender secured by a purchase-money mortgage. Accordingly, because the Indiana mortgage was a purchase-money mortgage and the Cohens' consent judgment alone is inadmissible as evidence of a Ponzi scheme as to both the Indiana and Yates Properties,<sup>13</sup> the application of the Ponzi scheme presumption is not established. Therefore, it does not follow that the "netting rule" applies.

**c. In The Alternative, The Court Should Defer Decision On Distribution Amounts Until The Resolution Of The Receiver's Avoidance Claim.**

In the alternative, if the Court disagrees with Shatar that Shatar is entitled to its entire secured claim under Illinois law, and all items provided for in 11 U.S.C. § 506(b), the Court need not and should not decide now what specific amounts to order by way of distribution. The bases for the equitable and Ponzi scheme considerations the Receiver urges should limit the priority claimants' recovery substantially overlap with the avoidance claims as disclosed by the Receiver. (Dkt. 1537.) But the Receiver only disclosed its intent to pursue an avoidance claim against Shatar's loan—it has not *proven* a voidable transfer under the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160, as required to trigger the so-called "netting rule." In fact, the only two authorities the Receiver cites to support his argument that netting should apply are both wholly focused on analyzing whether netting was appropriate upon proof and application of the applicable Uniform Fraudulent Transfer statute for each case. *See Scholes v. Lehmann*, 56 F.3d 750, 757-58 (7th Cir. 1995) (analyzing whether netting was appropriate by applying predecessor statute to

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<sup>13</sup> Consent judgments are not admissible evidence of the allegations stated therein. *See, e.g., Carpenters Health & Welfare Fund v. The Coca-Cola Co.*, 2008 U.S. Dist. LEXIS 112503, \*14 (N.D. Ga. Apr. 23, 2008) (a consent judgment "falls squarely into the class of evidence deemed inadmissible pursuant to Rule 408"). This rule serves the "high public policy value of encouraging entities . . . to settle their disputes with . . . governmental agencies," and avoids the "chilling effect" that "would likely" result from admitting the consent judgment as evidence of wrongdoing by private litigants." *Id.* at \*3.

Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160, while also discussing analysis under current statute); *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008) (analyzing netting while applying California's Uniform Fraudulent Transfer Act).

Critically, at the November 16, 2023 hearing the Court agreed to stay any discovery on avoidance issues pending resolution of the priority dispute. As a result, the claimants, including Shatar, have not yet had an opportunity to pursue discovery relating to the Receiver's Group 2 avoidance disclosure, let alone an opportunity to brief the issue for the Court. Accordingly, out of fairness to the claimants, Shatar requests that the Court stay briefing on the specific amounts due until after the Court has adjudicated priority and avoidance issues, which will ultimately impact the distribution amounts, or order such briefing to occur as part of the avoidance briefing when that schedule is set.

### CONCLUSION

For all the above reasons, and those stated in Shatar's Position Statement (Dkt. 1562), Shatar's mortgage interests in the Indiana and Yates Properties are senior to the mortgage interests of the EBF Investor-Lenders as a matter of law. Shatar, on behalf of the lenders listed on the mortgages of the Indiana and Yates Properties, 1111 Crest Dr. LLC, Abraham Aaron Ebriani, Hamid Esmail, and Farsaa, Inc., and any subsequent assignees including Pakravan Living Trust, is therefore entitled to receive the funds liquidated by the Receiver's sale of the Indiana and Yates Properties in the amounts due as specified in its loan documents. (*See* Dkts. 1562-2, 1562-3; *see also* Reply Ex. 11.)

Dated: January 10, 2024

Respectfully submitted,

*/s/ Andrew R. DeVooght*

Andrew R. DeVooght

Alexandra J. Schaller

LOEB & LOEB LLP

321 N. Clark St., Ste. 2300

Chicago, IL 60654  
Telephone: (312) 464-3100  
Facsimile: (312) 464-3111  
[adevooght@loeb.com](mailto:adevooght@loeb.com)  
[aschaller@loeb.com](mailto:aschaller@loeb.com)

Edward S. Weil  
Todd Gale  
Brett J. Natarelli  
DYKEMA GOSSETT PLLC  
10 South Wacker Drive, Ste. 2300  
Chicago, IL 60606  
Telephone: (312) 876-1700  
Facsimile: (888) 828-6441  
[eweil@dykema.com](mailto:eweil@dykema.com)  
[tgale@dykema.com](mailto:tgale@dykema.com)  
[bnatarelli@dykema.com](mailto:bnatarelli@dykema.com)

*Attorneys for Claimant Shatar Capital  
Partners*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 10, 2024, I electronically filed the foregoing **REPLY POSITION STATEMENT OF SHATAR CAPITAL PARTNERS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record, and further caused the foregoing to be served upon all members of Claims Group 2 by email to the distribution list [ebgroup2service@rdaplw.net](mailto:ebgroup2service@rdaplw.net).

*/s/ Andrew R. DeVooght*  
\_\_\_\_\_  
Andrew R. DeVooght

# EXHIBIT 1

# SHATAR CAPITAL INC.

12121 Wilshire Blvd. #555 | Los Angeles, California 90025  
 310.207.1000 | [www.shatar.com](http://www.shatar.com)

## LETTER OF AUTHORIZATION AND SERVICING AGREEMENT

June 3, 2019

Hamid Esmail, a Single Man  
 PO Box 20651  
 Bakersfield, Ca 93390

**RE:** 5450 S Indiana LLC, an Illinois limited liability company & 7749-59 S Yates LLC, an Illinois limited liability company  
**Property Address(es):** 5450 South Indiana Avenue, Chicago, IL 60615  
 7749-59 South Yates Boulevard, Chicago, IL 60649  
**PINs:** 20-10-310-056-0000  
 21-30-318-013-0000

Dear Lender(s) and/or assigns,

This letter is for your acknowledgement to confirm and provide further authorization to Shatar Capital, Inc. (Shatar) and/or assigns as the servicer of your interest in the properties listed above.

Initial	Acknowledgements
	Shatar Capital, Inc. it's affiliates and or assigns, will retain and maintain all original documents, monthly payments received and distribution of funds (as applicable)
	Shatar Capital, Inc. it's affiliates and or assigns, will manage our interest in the subject property and any further actions as they deem necessary.
	Shatar Capital, Inc. it's affiliates and or assigns has authorization to act as an authorized agent specific to this transaction as deemed necessary.
	I understand that any litigations or other that may incur costs may be at the expense of our percentage of interest in the property and do not hold Shatar liable.

<b>Fee by Investor/Lender</b>	Shatar Capital, Inc, it's affiliates and or assigns, will retain a split on payments made if applicable as it pertains to the sold rate or otherwise agreed upon.
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Sincerely,

Processing Department  
 Shatar Capital Inc.  
 12121 Wilshire Blvd, Ste 555  
 Los Angeles, CA 90025  
 (310) 207-1000  
[processing@shatar.com](mailto:processing@shatar.com)

Lender Acknowledgement: Hamid Esmail, a Single Man

Lender Name

*Hamid Esmail*

Signor's Printed Name

Signature

Date

*6/13/19*



# EXHIBIT 2

# SHATAR CAPITAL INC.

12121 Wilshire Blvd. #555 | Los Angeles, California 90025  
310.207.1000 | [www.shatar.com](http://www.shatar.com)

## LETTER OF AUTHORIZATION AND SERVICING AGREEMENT

June 3, 2019

Farsaa Inc., a California  
Company  
GH FARZAD CPA  
17530 Ventura Blvd #207  
Encino, CA 91316

RE: 5450 S Indiana LLC, an Illinois limited liability company & 7749-59 S Yates LLC, an Illinois limited liability company  
Property Address(es): 5450 South Indiana Avenue, Chicago, IL 60615  
7749-59 South Yates Boulevard, Chicago, IL 60649  
PINs: 20-10-310-056-0000  
21-30-318-013-0000

Dear Lender(s) and/or assigns,

This letter is for your acknowledgement to confirm and provide further authorization to Shatar Capital, Inc. (Shatar) and/or assigns as the servicer of your interest in the properties listed above.

Initials	Acknowledgements
	Shatar Capital, Inc. it's affiliates and or assigns, will retain and maintain all original documents, monthly payments received and distribution of funds (as applicable)
	Shatar Capital, Inc. it's affiliates and or assigns, will manage our interest in the subject property and any further actions as they deem necessary.
	Shatar Capital, Inc. it's affiliates and or assigns has authorization to act as an authorized agent specific to this transaction as deemed necessary.
	I understand that any litigations or other that may incur costs may be at the expense of our percentage of interest in the property and do not hold Shatar liable.

Fee by Investor/Lender	Shatar Capital, Inc, it's affiliates and or assigns, will retain a split on payments made if applicable as it pertains to the sold rate or otherwise agreed upon.
------------------------	---

Sincerely,

Processing Department  
Shatar Capital Inc.  
12121 Wilshire Blvd, Ste 555  
Los Angeles, CA 90025  
(310) 207-1000  
[processing@shatar.com](mailto:processing@shatar.com)

**Lender Acknowledgement:** Farsaa Inc., a California Company

Lender Name

Farokh Saadat  
Signor's Printed Name

[Signature] 06/03/19  
Signature Date

# EXHIBIT 3

# SHATAR CAPITAL INC.

12121 Wilshire Blvd. #555 | Los Angeles, California 90025  
 310.207.1000 | [www.shatar.com](http://www.shatar.com)

## LETTER OF AUTHORIZATION AND SERVICING AGREEMENT

June 3, 2019

Attn: 1111 Crest Dr. LLC, a  
 California Limited Liability  
 Company  
 Michael Braum  
 6551 Van Nuys Blvd,  
 Mezzanine FL  
 Van Nuys, CA 91401

**RE: 5450 S Indiana LLC, an Illinois limited liability company & 7749-59 S Yates LLC, an Illinois limited liability company**  
**Property Address(es):** 5450 South Indiana Avenue, Chicago, IL 60615  
 7749-59 South Yates Boulevard, Chicago, IL 60649  
**PINs:** 20-10-310-056-0000  
 21-30-318-013-0000

Dear Lender(s) and/or assigns,

This letter is for your acknowledgement to confirm and provide further authorization to Shatar Capital, Inc. (Shatar) and/or assigns as the servicer of your interest in the properties listed above.

Initial	Acknowledgements
	Shatar Capital, Inc. it's affiliates and or assigns, will retain and maintain all original documents, monthly payments received and distribution of funds (as applicable)
	Shatar Capital, Inc. it's affiliates and or assigns, will manage our interest in the subject property and any further actions as they deem necessary.
	Shatar Capital, Inc. it's affiliates and or assigns has authorization to act as an authorized agent specific to this transaction as deemed necessary.
	I understand that any litigations or other that may incur costs may be at the expense of our percentage of interest in the property and do not hold Shatar liable.

<b>Fee by Investor/Lender</b>	<b>Shatar Capital, Inc, it's affiliates and or assigns, will retain a split on payments made if applicable as it pertains to the sold rate or otherwise agreed upon.</b>
-------------------------------	--

**Lender Acknowledgement:** 1111 Crest Dr. LLC, A California Limited Liability Company

Sincerely,

Processing Department  
 Shatar Capital Inc.  
 12121 Wilshire Blvd, Ste 555  
 Los Angeles, CA 90025  
 (310) 207-1000  
 processing@shatar.com

**Lender Name**

Daniel Braum

**Signor's Printed Name**

  
**Signature**

6/17/19

**Date**

# EXHIBIT 4

# SHATAR CAPITAL INC.

12121 Wilshire Blvd. #555 | Los Angeles, California 90025  
 310.207.1000 | [www.shatar.com](http://www.shatar.com)

## LETTER OF AUTHORIZATION AND SERVICING AGREEMENT

June 3, 2019

Attn: PAKRAVAN LIVING TRUST  
 Danny Pakravan  
 3131 Antelo Road  
 Los Angeles, CA 90077

RE: 5450 S Indiana LLC, an Illinois limited liability company & 7749-59 S Yates LLC, an Illinois limited liability company  
 Property Address(es): 5450 South Indiana Avenue, Chicago, IL 60615  
 7749-59 South Yates Boulevard, Chicago, IL 60649  
 PINs: 20-10-310-056-0000  
 21-30-318-013-0000

Dear Lender(s) and/or assigns,

This letter is for your acknowledgement to confirm and provide further authorization to Shatar Capital, Inc. (Shatar) and/or assigns as the servicer of your interest in the properties listed above.

Initial	Acknowledgements
	Shatar Capital, Inc. it's affiliates and or assigns, will retain and maintain all original documents, monthly payments received and distribution of funds (as applicable)
	Shatar Capital, Inc. it's affiliates and or assigns, will manage our interest in the subject property and any further actions as they deem necessary.
	Shatar Capital, Inc. it's affiliates and or assigns has authorization to act as an authorized agent specific to this transaction as deemed necessary.
	I understand that any litigations or other that may incur costs may be at the expense of our percentage of interest in the property and do not hold Shatar liable.

Fee by Investor/Lender	Shatar Capital, Inc, it's affiliates and or assigns, will retain a split on payments made if applicable as it pertains to the sold rate or otherwise agreed upon.
------------------------	---

Sincerely,

Processing Department  
 Shatar Capital Inc.  
 12121 Wilshire Blvd, Ste 555  
 Los Angeles, CA 90025  
 (310) 207-1000  
[processing@shatar.com](mailto:processing@shatar.com)

Lender Acknowledgement: PAKRAVAN LIVING TRUST

Lender Name

Danny Pakravan  
 Signor's Printed Name

Signature

Date

6/3/19

# EXHIBIT 5

**Illinois Anti-Predatory  
Lending Database  
Program**

**Certificate of Exemption**



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



Doc# 1717413022 Fee \$52.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 06/23/2017 10:56 AM PG: 1 OF 8

The property identified as: **PIN: 21-30-318-013-0000**

**Address:**

**Street:** 7749-59 S. Yates Ave

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60649

**Lender:** The Persons Listed on Exhibit A to the Mortgage c/o EquityBuild Finance, LLC

**Borrower:** 7749-59 S. Yates, LLC

**Loan / Mortgage Amount:** \$2,860,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is not owner-occupied.

**Certificate number:** FBC372B1-2DDB-4E6C-98FA-1C795C599B19

**Execution date:** 3/14/2017

JA



Mail To: + Prepared by:  
 EquityBuild Finance, LLC  
 5068 W. Plano Pkwy, #300  
 Plano, TX 75093

[The Above Space For Recorder's Use Only]

### MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on March 14<sup>th</sup>, 2017. The mortgagor is 7749-59 S. Yates, LLC ("Borrower").

This Security Instrument is given to The Persons Listed on Exhibit A to the Mortgage C/O EquityBuild Finance, LLC whose address is 5068 West Plano Pkwy. #300 Plano, TX 75093 ("Lender").

Borrower owes Lender the principal sum of Two Million Eight Hundred Sixty and 00/100 Dollars (U.S. \$2,860,000.00). This debt is evidenced by Borrower's notes as this Security Instrument (Mortgage), which provides for a final payment of the full debt, if not paid earlier, due and payable September 1<sup>st</sup>, 2018 unless otherwise specified on the notes. This Security Instrument secures to Lender:

(a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extension and modifications; (b) the payment of all other sums, with interest advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following described property located in COOK County, Illinois:

PIN: 21-30-318-013-0000

which has the address of 7749-59 S Yates Ave. Chicago, IL 60649 ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

**THIS SECURITY INSTRUMENT** combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANT.** Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration and repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 19 the property is acquired by Lender, Borrower's rights to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of sums secured by this Security Instrument immediately prior to the acquisition.

3. **Preservation and Maintenance of Property; Leaseholds.** Borrower shall not destroy, damage or substantially change the Property, allow the Property to deteriorate or commit waste. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease, and if Borrower acquires fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.

4. Protection of Lender's Rights in the Property; Mortgage Insurance. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees, and entering on the Property to make repairs. Although Lender may take action under this paragraph 4, Lender does not have to do so.

5. Successor and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Interest shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey the Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forebear or make any accommodations with regard to the terms of this Security Instrument or the Note without the Borrower's consent.

6. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

7. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

8. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

9. Transfer of the Property or a beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:**

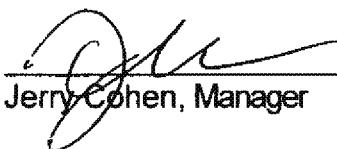
10. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

11. Assignment of Rents and Leases. As additional security for the payment of the Indebtedness, Mortgagor assigns and transfers to Mortgagee, pursuant to 1953 PA 210, as amended by 1966 PA 151 (MCLA 554.231 et seq., MSA 26.1137(1) et seq.), all the rents, profits, and income under all leases, occupancy agreements, or arrangements upon or affecting the Premises (including any extensions or amendments) now in existence or coming into existence during the period this Mortgage is in effect. This assignment shall run with the land and be good and valid as against Mortgagor and those claiming under or through Mortgagor. This assignment shall continue to be operative during foreclosure or any other proceedings to enforce this Mortgage. If a foreclosure sale results in a deficiency, this assignment shall stand as security during the redemption period for the payment of the deficiency. This assignment is given only as collateral security and shall not be construed as obligating Mortgagee to perform any of the covenants or undertakings required to be performed by Mortgagor in any leases. In the event of default in any of the terms or covenants of this Mortgage, Mortgagee shall be entitled to all of the rights and benefits of MCLA 554.231-.233, MSA 26.1137(1)-(3), and 1966 PA 151, and Mortgagee shall be entitled to collect the rents and income from the Premises, to rent or lease the Premises on the terms that it may deem best, and to maintain proceedings to recover rents or possession of the Premises from any tenant or trespasser. Mortgagee shall be entitled to enter the Premises for the purpose of delivering notices or other communications to the tenants and occupants. Mortgagee shall have no liability to Mortgagor as a result of those acts. Mortgagee may deliver all of the notices and communications by ordinary first-class U.S. mail. If Mortgagor obstructs Mortgagee in its efforts to collect the rents and income from the Premises or unreasonably refuses or neglects to assist Mortgagee in collecting the rent and income, Mortgagee shall be entitled to appoint a receiver for the Premises and the income, rents, and profits, with powers that the court making the appointment may confer. Mortgagor shall at no time collect advance rent in excess of one month under any lease pertaining to the Premises, and Mortgagee shall not be bound by any rent prepayment made or received in violation of this paragraph. Mortgagee shall not have any obligation to collect rent or to enforce any other obligations of any tenant or occupant of the Premises to Mortgagor. No action taken by Mortgagee under this paragraph shall cause Mortgagee to become a "mortgagee in possession."

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

BORROWER: 7749-59 S. YATES, LLC

 \_\_\_\_\_ (SEAL)  
Jerry Cohen, Manager

\_\_\_\_\_ [Space Below This Line For Acknowledgement] \_\_\_\_\_

STATE OF FLORIDA, Manatee County ss:

I hereby certify that on this day, before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgements, personally appeared Jerry Cohen, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same for the purpose therein expressed.

WITNESS my hand and official seal in the county and state aforesaid this 14<sup>th</sup> day of March, 2017.

My Commission expires: July 26, 2017

{Seal}  
Jessica Ann Baier  
Notary Public



**Exhibit A**

Lender Name	Principal Amount	Percentage of Loan
Advanta IRA Services, LLC FBO Dwight L. Plymale IRA #8006189	\$97,000	3.35%
American Estate & Trust FBO Donald R Hendrickson IRA	\$10,000	0.35%
American Estate & Trust FBO Karen L Hendrickson IRA	\$10,000	0.35%
American Estate & Trust LC, FBO Lynn Kupfer's IRA	\$100,000	3.45%
American Estate and Trust, LC FBO Edward J. Netzel IRA	\$10,000	0.35%
Amit Hammer	\$30,000	1.04%
Cadaval Investment Trust FBO Manuel Cadaval Solo 401k.	\$25,000	0.86%
Clearwood Funding, LLC	\$50,000	1.73%
David M. Harris	\$100,000	3.45%
Duke E. Heger and Viviana Heger	\$35,000	1.21%
Ed Bancroft	\$5,000	0.17%
EquityBuild, Inc.	\$989,000	34.13%
Grathia Corporation	\$100,000	3.45%
iPlan Group Agent for Custodian FBO Christopher Mora IRA	\$6,000	0.21%
iPlan Group Agent for Custodian FBO Dana Speed IRA	\$169,000	5.83%
iPlan Group Agent for Custodian FBO Filomena Mora IRA	\$3,200	0.11%
iPlan Group Agent for Custodian FBO Joshua Mora IRA	\$4,000	0.14%
iPlan Group Agent for Custodian FBO Rama Voddi IRA	\$33,000	1.14%
iPlan Group Agent for Custodian FBO Rosa Ricciardi IRA	\$16,700	0.58%
iPlanGroup Agent for Custodian FBO Janice G. Burrell IRA	\$50,000	1.73%
iPlanGroup Agent for Custodian FBO Paula Levand IRA	\$12,000	0.41%
iPlanGroup Agent for Custodian FBO Teeñá Ploeger IRA	\$18,500	0.64%
iPlanGroup Agent for Custodian FBO Todd Colucey IRA	\$8,000	0.28%
John E. Bloxham	\$35,000	1.21%
John Witzigreuter	\$50,000	1.73%
Joseph P. McCarthy	\$10,000	0.35%
Joshua A. Lapin	\$25,000	0.86%
Keith P. Rowland and Jane E. Rowland.	\$50,000	1.73%
Keith Randall	\$70,000	2.42%
Kevin D. & Laura H. Allred JTWROS	\$50,000	1.73%
KKW Investments, LLC	\$3,000	0.10%
Madison Trust Company custodian FBO Guenter Scheel IRA M1702087	\$25,000	0.86%
Madison Trust Company Custodian FBO James R. Talman IRA	\$20,000	0.69%
Manuel Cadaval	\$25,000	0.86%
Manuel Cadaval Custodian for Jacob A. Cadaval.	\$25,000	0.86%
Michael F. Grant & L. Gretchen Grant Revocable Trust Dated March 16 2012	\$50,000	1.73%
Michael Grow Jr.	\$100,000	3.45%
Naveen Kwatra	\$25,000	0.86%
Optima Property Solutions, LLC	\$100,000	3.45%
Patrick Connely	\$20,000	0.69%
PNW Investments, LLC	\$12,000	0.41%
Quantum Growth Holdings, LLC	\$5,500	0.19%
Raymond Thompson Investment Trust, LLC	\$30,000	1.04%
Seadog Properties, LLC	\$24,000	0.83%
Shlomo Zussman	\$25,000	0.86%
Steve Weera Tonasut and Esther Kon Tonasut as Trustees of the Tonasut Family Trust dated June 14, 2004	\$50,000	1.73%
Steven G. Mouty Trust	\$50,000	1.73%
Summit Trust Company, Trustee David R Theil MD PS PL Profit Sharing Keogh FBO David R Theil Plan Administrator	\$25,000	0.86%
Tolu Makinde	\$30,000	1.04%
Wesley Pittman	\$32,000	1.10%
White Tiger Revocable Trust	\$50,000	1.73%

Lots 19, 20 and 21 in Block 12 in South Shore Park, a subdivision of the West ½ of the Southwest ¼ of Section 30, Township 38 North, Range 15, East of the Third Principal Meridian, in Cook County, Illinois

**COOK COUNTY  
RECORDER OF DEEDS**

**COOK COUNTY  
RECORDER OF DEEDS**

*[Faint, illegible text, possibly a stamp or signature]*

# EXHIBIT 6



Tel: (949) 379-2600  
Fax: (949) 379-2610



**GERACI**  
— LAW FIRM —

90 Discovery  
Irvine, California 92618  
www.geracilawfirm.com

ANTHONY F. GERACI\*  
CHRISTINA L. GERACI  
JOSH A. LAZAR\*\*  
SABINE WROMAR  
AMY E. MARTINEZ  
PAUL J. SIEVERS  
NEMA DAGHBANDAN  
DENNIS R. BARANOWSKI  
JASPREET KAUR  
KEVIN S. KIM  
JENNY Y. PARK  
MELISSA C. MARTORELLA  
MELISSA L. LUCAR  
ALEXA P. STEPHENSON  
BRYAN P. REDINGTON

\* ADMITTED IN ARIZONA & NEW JERSEY  
\*\* ADMITTED IN NEW YORK &  
CONNECTICUT

March 29, 2017

**VIA ELECTRONIC MAIL**

John Bottiglierio  
Escrow Officer  
Chicago Title Insurance Company  
10 South LaSalle Street, Suite 3100  
Chicago, Illinois 60603  
[john.bottiglierio@ctt.com](mailto:john.bottiglierio@ctt.com)

Angie Yoo  
Title Officer  
Chicago Title Insurance Company  
10 South LaSalle Street, Suite 3100  
Chicago, Illinois 60603  
[angie.yoo@ctt.com](mailto:angie.yoo@ctt.com)

*Re: Title Order No.: 008984422 (effective 3/17/17) ("Preliminary Report")*  
*Property Addresses: 5450 South Indiana Avenue, Chicago, Illinois 60615 ("Property 1");*  
*and 7749-59 South Yates Boulevard, Chicago, Illinois 60649*  
*("Property 2") (collectively, the "Property")*  
*Borrower: 5450 S. Indiana LLC, an Illinois limited liability company ("Borrower*  
*1"), and 7749-59 S. Yates LLC, an Illinois limited liability company*  
*("Borrower 2") (collectively, the "Borrower")*  
*Guarantor: Jerome H. Cohen, an individual, and Shaun Cohen, an individual*  
*(collectively, "Guarantor")*  
*Lender: See Exhibit "A" attached to the Mortgage and Note, which shall be*  
*supplied by Broker ("Lender")*

Re: Escrow Instructions  
March 29, 2017  
Page 2

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Dear John Bottigliero and Angie Yoo:

Geraci Law Firm has prepared loan documents in connection with a loan in the principal amount of One Million Eight Hundred Thousand and 00/100 Dollars (\$1,800,000.00) made to Borrower as evidenced by that certain Note secured by a Mortgage dated March 28, 2017 ("Note"). Borrower's repayment of the Note is secured by the Property, as more particularly described in the Legal Description of the Preliminary Report, and in Exhibit "B" of that certain Mortgage, Assignment of Leases and Rents, Fixture Filing, and Security Agreement dated March 28, 2017 (the "Mortgage").

A. In connection with the closing of this transaction, under separate cover, you will receive the loan documents described below which are collectively referred to herein as the "Loan Documents:"

1. Promissory Note;
2. Two Mortgages\*;
  - (i) To be executed by Borrower 1 and securing Property 1 ("Mortgage 1")
  - (ii) To be executed by Borrower 2 and securing Property 2 ("Mortgage 2")
3. Guaranty;
4. Balloon Payment Disclosure;
5. Arbitration Agreement;
6. Hazard Insurance Disclosure;
7. E.C.O.A. Appraisal Report Disclosure;
8. Business Purpose of Loan Certification (**to be completed by Borrower**);
9. Certificate of Non-Owner Occupancy (**to be completed by Borrower**);
10. Conditional Loan Approval;
11. Environmental Indemnity Agreement\*;
12. Compliance Agreement;
13. Language Capacity Declaration (**to be completed by Borrower**);
14. Three (3) Certificates and Consents of Members of LLC; and,
15. Fair Lending Notice.

**\* You shall attach the legal description of the property as provided by Title as Exhibits to the Mortgage and Environmental Indemnity Agreement.**

The Mortgage referenced in A.2 above, is referred to herein as the "Recordable Document." Where applicable, the Lender will execute the Loan Documents upon Lender's receipt of the fully executed originals.

B. For the purpose of closing this transaction, you have received or will receive the Loan funds (the "Funds") which you shall disburse in accordance with the terms of these instructions.

C. You have authorization to close this transaction when:

1. You have received all of the Loan Documents.
2. If the Borrower is an entity, you have reviewed the entity documents of Borrower and have confirmed that the parties or party executing the Loan Documents on behalf of Borrower have authority to execute the Loan Documents on behalf of Borrower.

Re: Escrow Instructions  
March 29, 2017  
Page 3

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3. You have received copies of the government issued identification of each and every party executing the Loan Documents and shall forward copies to Lender with the Loan Documents.
4. You have confirmed that all liens and encumbrances, including any existing encumbrances, mortgages and/or deeds of trust recorded against the Property are either cleared prior to closing or will be paid through the closing of escrow.
5. You have confirmed that the fee owner of the Property is Borrower, or are prepared to record all necessary documents to fully convey the Property to Borrower.
6. Chicago Title Insurance Company (the "Title Company") is prepared to issue to Lender a 2006 ALTA Lender's Policy in the amount of Two Million Two Hundred Fifty Thousand and 00/100 Dollars (\$2,250,000.00) (125% of the principal balance), insuring fee title to the Property as vested in Borrower, and insuring Lender that (i) the Mortgage 1 executed by Borrower 1, in favor of Lender, will record in first priority position on Property 1, and (ii) Mortgage 2 executed by Borrower 2, in favor of Lender, will record in first priority position on Property 2 (collectively, the "Title Policy"); including the following endorsements: **ALTA 09-06; ALTA 22-06**. Prior to the issuance of the Title Policy, the following exception items listed in the Preliminary Report shall be paid or otherwise DELETED and may not appear on the Title Policy: **1, 2, 4 (showing as none due, paid current), 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 22, and 23**.
7. You have obtained a copy of the (i) fire/hazard, and (ii) liability insurance policies on the Property (inclusive of flood coverage if applicable to the Property), which confirms that the premiums have been paid for the 12-month period following the date of loan closing; and, you have obtained insurance mortgagee endorsements naming Lender, its successors and assigns, as mortgagee for all of the required policies. For the hazard insurance policies, you have confirmed with Lender that Lender's following requirements have been met: (i) the Borrower's insurance policies cover the replacement value of the improvements on the Properties, and (ii) if the Property is not the primary residence of the Borrower, that the policy is a landlord or other investment policy. For the liability policy, the minimum aggregate coverage shall be Five Million Dollars (\$5,000,000.00). Lender will not fund this Loan until the all insurance policies are obtained and Lender is named as mortgagee.

Mortgagee clause shall read as follows:

**[See Exhibit "A" to Note and Mortgage]; ISAOA  
c/o Shatar Capital Partners  
12121 Wilshire Boulevard, Suite 555  
Los Angeles, California 90025**

8. You have contacted Mr. Calleja, the closing contact on behalf of Lender, and have confirmed that all other conditions of closing required by Lender to be fulfilled outside of this transaction have been fulfilled to the satisfaction of Lender; and, **you have delivered a scanned copy of this letter countersigned to indicate your acceptance of these instructions WITH A SCANNED COPY OF THE SIGNED LOAN**

Re: Escrow Instructions  
March 29, 2017  
Page 4

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**DOCUMENTS PRIOR TO MAILING ORIGINAL DOCUMENTS TO LENDER  
to Mr. Calleja at [andrew@shatar.com](mailto:andrew@shatar.com).**

9. You have prepared a Settlement Statement for execution by Borrower which includes the following information:
- i. all fees and costs plus any other costs and expenses incurred in connection with the closing of this transaction, including those which may be incurred for the Lender's Policy of Title Insurance and endorsements, escrow fees, notary fees, photocopying, recording and filing fees, taxes, title company services, and all such other fees and charges.
  - ii. Any amounts necessary to clear the exceptions listed in C(6) above including any taxes and liens.
  - iii. Insurance premiums for the property in an amount to be provided by Lender;
  - iv. Deposit Credit payable to **Borrower** in the amount of \$9,000.00;
  - v. Origination Fee payable to **Daniel Namvar** in the amount of \$72,000.00;
  - vi. Loan Document and Processing Fee payable to **Daniel Namvar** in the amount of \$4,500.00;
  - vii. Per diem interest in the amount of \$550.00 per day from date funds disbursed through March 31, 2017 payable to **Lender**.

Please deliver fees payable to Lender and Daniel Namvar to:

c/o Shatar Capital Partners  
12121 Wilshire Boulevard, Suite 555  
Los Angeles, California 90025

Note: Lender shall have no liability for any costs or expenses which may be incurred in connection with the closing of this transaction. Borrower must sign and date the Settlement Statement at the closing to acknowledge receipt of the Statement and approval of the disbursements.

- D. Please ensure that the Loan Documents have been fully executed (and acknowledged, as appropriate) by the parties thereto, that the Recordable Documents are properly notarized and are in recordable form; and, provide the Borrower with a duplicate set of Loan Documents.
- E. Thereafter, please (i) insert the date of closing in the appropriate blanks in the Recordable Document(s), if any such Recordable Document(s) are not already dated, (ii) attach the Legal Description of the Property as set forth in the Legal Description of the Preliminary Report to every Recordable Document requiring a legal description of the Property but not containing such legal description, (iii) complete any blanks contained in the Recordable Document with information provided to you in writing, and (iv) ensure that each of the Closing Documents is dated appropriately.
- F. Thereafter, you shall record the Recordable Document in the Official Records in the County in which the Property is located. The recordation shall constitute your issuance of the Title Policy.
- G. You shall disburse the Funds as follows:

*Re: Escrow Instructions*  
March 29, 2017  
Page 5

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1. Pay all demands received into escrow in connection with this transaction which have been approved by Lender.

2. Pay all of the fees and costs plus any other costs and expenses incurred in connection with the closing of this transaction, including those which may be incurred for the Title Policy, escrow fees, notary fees, photocopying, recording and filing fees, taxes, title company services, and all such other fees, charges, and taxes. Lender shall have no liability for any costs or expenses which may be incurred in connection with the closing of this transaction (collectively, the "Fees and Costs").

H. Upon completion of the foregoing, you shall deliver the executed originals of the Loan Documents (with the exception of the Recordable Document) directly to:

**c/o Shatar Capital Partners  
12121 Wilshire Boulevard, Suite 555  
Los Angeles, California 90025**

1. Within five (5) days of closing, one certified copy of each Recordable Document(s), showing all recording information.

2. Within five (5) days of closing, one certified copy of the Closing Statement showing settlement of the Funds disbursed at closing.

In this transaction, you shall adhere to the procedures set forth in these Closing Instructions. If you are unable to comply with these instructions and close the transaction on or before March 31, 2017, or if there are to be any changes therein, then you are not to proceed without further authorization from Mr. Calleja.

Prior to closing, please deliver the acknowledgment below to Mr. Calleja. Please call if you have any questions.

Very truly yours,

GERACI LAW FIRM

*/s/ Melissa C. Martorella*

Melissa C. Martorella, Esq.  
[melissa.martorella@geracilawfirm.com](mailto:melissa.martorella@geracilawfirm.com)

# EXHIBIT 7



CHICAGO TITLE AND TRUST COMPANY

10 S LASALLE STREET  
CHICAGO, IL 60603

ESCROW TRUST DISBURSEMENT STATEMENT

DISBURSEMENT DATE: March 31, 2017

REFER TO: JOHN BOTTIGLIERO  
PHONE: (312) 223-2124  
FAX: (312) 223-2108

ESCROW TRUST NO. D2201701509-001

TITLE ORDER NO. 01401-008984422

PARTIES:  
SEE ATTACHED SIGNATURE PAGE-BORROWERS  
SEE ATTACHED SIGNATURE PAGE-LENDERS  
5450-58 S. INDIANA & 7749 S. YATES  
CHICAGO, IL

RECEIPTS:

03/30/17	MASTERS HOLDINGS LLC --LAON FUNDS	396,000.00
03/30/17	ABRAHAM EBRIANI --LOAN FUNDS	252,000.00
03/30/17	BRAUN FAMILY LLC --LOAN FUNDS	900,000.00
03/30/17	HAMID ESMAIL --LOAN FUNDS	252,000.00
		\$ 1,800,000.00

DISBURSEMENTS:

01) CHICAGO TITLE AND TRUST COMPANY - Borrower's Charges

Re: Title Order No. 01401-008984422

TITLE INSURANCE-REFINANCE	2,250.00	
MONEY LENDERS ESCROW FEE	750.00	
WIRE TRANSFER FEE	40.00	
EXPRESS DELIVERY & SERVICE FEE	40.00	
CLOSING PROTECTION LETTER FEE-LENDER	25.00	
CLOSING PROTECTION LETTER FEE-BORROWER	50.00	
RECORDING AND SERVICE FEE	265.00	
ALTA 9 ENDORSEMENT	300.00	
LOCATION ENDORSEMENT - 1	300.00	
	\$4,020.00	\$4,020.00

02) DANIEL NAMVAR  
ORIGINATION FEE \$72,000 LESS \$9,000  
BORROWER DEPOSIT 63,000.00 \$63,000.00

03) DANIEL NAMVAR  
LOAN DOCUMENT AND PROCESSING FEE 4,500.00 \$4,500.00

04) SHATAR HOLDINGS LLC  
PER DIEM INTEREST 03/30-03/31 1,100.00 \$1,100.00

05) ROSENTHAL BROS., INC.  
INVOICE 112386 14,024.00 \$14,024.00

06) CHICAGO TITLE  
CLOSING ESCROW 201701072 1,603,604.87 \$1,603,604.87

JB1 03/31/17 14:07

NOTE: \* - Indicates items Paid Outside of Closing.

ESCROW TRUST NO. D2201701509-001  
PAGE NO. 2

07) SEE ATTACHED SIGNATURE PAGE-BORROWERS

TOTAL DISBURSEMENT AMOUNT  
TOTAL BORROWER RECEIPTS

\$1,690,248.87

\$1,800,000.00

OVERDEPOSIT TO BORROWER

\$109,751.13

DISBURSEMENTS APPROVED:




**Signature Page to Escrow Disbursement Statement  
Escrow 201701509**

**BORROWERS:**


**5450 S. INDIANA LLC**

**an Illinois limited liability company**

By:   
Name: Jerry Cohen  
Title: manager

**7749-59 S YATES LLC,**

**an Illinois limited liability company**

By:   
Name: Jerry Cohen  
Title: manager

**LENDERS:**

**1111 Crest Dr. LLC, a California limited liability company, as to undivided 50% ownership**


**Abraham Aaron Ebriani, a Single man, as to undivided 14% ownership**


**Hamid Esmail, a Single man, as to undivided 14% ownership**

**Farsaa Inc., a California company, as to undivided 22% ownership**

**Chicago Title and Trust Company**

By:

  
John Bottigliero  
Escrow Officer

INDEPENDENT REVIEW  
BY:   
DATE: 01/10/24

# EXHIBIT 8



CHICAGO TITLE AND TRUST COMPANY

10 S LASALLE STREET  
CHICAGO, IL 60603

ESCROW TRUST DISBURSEMENT STATEMENT

DISBURSEMENT DATE: March 31, 2017

REFER TO: JOHN BOTTIGLIERO  
PHONE: (312) 223-2124  
FAX: (312) 223-2108

ESCROW TRUST NO. D2201701072-001

TITLE ORDER NO. 01401-008983091

PARTIES:  
T2 5450 S INDIANA, LLC  
5450 S. INDIANA LLC  
5450-58 S. INDIANA, CHICAGO, IL

RECEIPTS:			
	03/30/17	5450 S. INDIANA LLC-EARNEST MONEY	10,000.00
			\$ 10,000.00

DISBURSEMENTS:

01) PRORATIONS/CREDITS - Seller			
EARNEST MONEY		75,000.00-	
CREDIT BUYER: SEWER CREDIT		6,200.00-	
CREDIT BUYER: 2017 RE TAXES		1,230.91-	
CREDIT BUYER: 2016 RE TAXES		2,377.15-	
CREDIT BUYER: MARCH RENT		760.07-	
		-----	
TOTAL PRORATIONS		85,568.13-	
PURCHASE PRICE		1,675,000.00	
		-----	
ADJUSTED PURCHASE PRICE		\$1,589,431.87	\$1,589,431.87
02) CHICAGO TITLE AND TRUST COMPANY - Seller's Charges			
Re: Title Order No. 01401-008983091			
TITLE INSURANCE		2,280.00	
CHICAGO TRANSFER TAX		5,025.00	
STATE TRANSFER TAX		1,675.00	
COUNTY TRANSFER TAX		837.50	
COMMERCIAL SALE ESCROW FEE		500.00	
NEW YORK STYLE CLOSING		150.00	
RECORDING AND SERVICE FEE		190.00	
HOLDBACK ESCROW FEE		200.00	
		-----	
		\$10,857.50	\$10,857.50
03) M.G.R.			
SERVICE FEE- WATER CERTIFICATION		125.00	\$125.00
04) M.G.R			
WATER BILL		1,196.45	\$1,196.45
05) BARACK FERRAZZANO KIRSCHBAUM NAGELBERG			
LEGAL FEES		8,673.47	\$8,673.47
06) EDWARD J. MOLLOY AND ASSOCIATES			
SURVEYOR		2,500.00	\$2,500.00

ESCROW TRUST NO. D2201701072-001  
PAGE NO. 2

07) INTERRA BROKER COMMISSION	67,000.00	\$67,000.00
08) CHICAGO TITLE REPAIRS HOLDBACK ESCROW	30,000.00	\$30,000.00
09) T2 5450 S INDIANA, LLC AND LIMITED LIABILITY COMPANY NET PROCEEDS TO SELLER		<u>\$1,469,079.45</u>
10) PRORATIONS/CREDITS - Buyer		
EARNEST MONEY	75,000.00	
CREDIT BUYER: 2017 RE TAXES	1,230.91	
CREDIT BUYER: SEWER CREDIT	6,200.00	
CREDIT BUYER: MARCH RENT	760.07	
CREDIT BUYER: 2016 RE TAXES	2,377.15	
TOTAL PRORATIONS	<u>85,568.13</u>	
PURCHASE PRICE	1,675,000.00	
ADJUSTED PURCHASE PRICE	<u>\$1,589,431.87</u>	\$1,589,431.87
11) CHICAGO TITLE AND TRUST COMPANY - Buyer's Charges		
Re: Title Order No. 01401-008983091		
CHICAGO TRANSFER TAX	12,563.00	
RECORDING AND SERVICE FEE	60.00	
COMMERCIAL SALE ESCROW FEE	500.00	
NEW YORK STYLE CLOSING	150.00	
EXTENDED COVERAGE	400.00	
HOLDBACK ESCROW FEE	200.00	
	<u>\$13,873.00</u>	\$13,873.00
12) T2 5450 S INDIANA, LLC 1ST,2ND & 3RD EXTENSION FEES	* 35,000.00	\$0.00
13) M.G.R. BUILDING REGISTRATION FEE AND SERVICE FEE TO OBTAIN	85.00	\$85.00
14) ROCK FUSCO & CONNELLY, LLC ATTORNEY FEE	2,100.00	\$2,100.00
15) ROCK FUSCO & CONNELLY, LLC PAST DUE FEES	7,500.00	\$7,500.00
16) ROCK FUSCO & CONNELLY, LLC LLC DOCUMENTS	615.00	\$615.00
17) 5450 S. INDIANA LLC TOTAL DISBURSEMENT AMOUNT		<u>\$1,613,604.87</u>
TOTAL BUYER RECEIPTS		<u>\$10,000.00</u>

JB1 03/31/17 11:49

NOTE: \* - Indicates items Paid Outside of Closing.

CT00750

ESCROW TRUST NO. D2201701072-001  
PAGE NO. 3

AMOUNT DUE FROM BUYER


\$1,603,604.87  
=====

DISBURSEMENTS APPROVED:

**Signature Page to Escrow Disbursement Statement**  
**Escrow 201701072**

**SELLER:**

**T2 5450 S INDIANA, LLC,**  
**an Illinois limited liability company**

By:   
Name: Jeff Brown  
Title: Manager

**BUYER:**

**5450 S. INDIANA LLC,**  
**an Illinois limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Chicago Title and Trust Company**

By: \_\_\_\_\_  
John Bottigliero  
Escrow Officer

**Signature Page to Escrow Disbursement Statement**  
**Escrow 201701072**


**SELLER:**

**T2 5450 S INDIANA, LLC,**  
**an Illinois limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


**BUYER:**

**5450 S. INDIANA LLC,**  
**an Illinois limited liability company**

By:  \_\_\_\_\_  
Name: Jerry Cohen  
Title: manager

**Chicago Title and Trust Company**

By:  \_\_\_\_\_  
John Bottigliero  
Escrow Officer

INDEPENDENT REVIEW  
BY:  \_\_\_\_\_  
DATE: 08/31/2017

# EXHIBIT 9



**Payment Confirmation**

**Bank of America**  
**Merrill Lynch**



**Company:** CHICAGO TITLE AND TRUST COMPANY  
**Requester:** Bottiglieri, John  
**Run Date:** 03/31/2017 2:50:51 PM CDT

**Domestic High Value (Wire)**

Payment Category: Urgent/Wire

**Status:** Pending Approval  
**Transaction Number:** 173VF5003RB00S26

**Debit Account Information**

**Debit Bank:** [REDACTED]  
**Debit Account:** [REDACTED]  
**Debit Account Name:** Chicago Title and Trust CO LP  
**Debit Currency:** USD

**Beneficiary Details**

**Beneficiary Name:** T2 5450 S INDIANA LLC  
**Beneficiary Address:** NA  
**Beneficiary City:** NA  
**Beneficiary Postal Code:**  
**Beneficiary Country:** US - United States of America

**Beneficiary Account:** [REDACTED]  
**Beneficiary Bank ID:** [REDACTED]  
BANK OF AMERICA, NA  
100 N TRYON ST  
CHARLOTTE  
US - United States of America  
**Beneficiary Email:** JOHN.BOTTIGLIERO@ctt.com  
**Beneficiary Mobile Number:**

**Payment Details**

**Credit Currency:** USD  
**Credit Amount:** 1,469,079.45

**Value Date:** 03/31/2017

**Optional Information**

**Sender's Reference Number:**

**Beneficiary Information:** NET PROCEEDS 5450 S INDIANA LLC

**Additional Routing**

**Intermediary Bank ID:**

**Receiver Information:**

**Control Information**

**Input:** jbottig

**Input Time:** 03/31/2017 2:50:51 PM CDT

# EXHIBIT 10

**SPECIAL WARRANTY DEED**

(Illinois)

**This instrument was prepared by and after recording, please return To:**

Barack Ferrazzano Kirschbaum & Nagelberg  
LLP  
200 W. Madison Street, Suite 3900  
Chicago, Illinois 60606  
Attn: Bryan J. Segal, Esq.

**Send Subsequent Tax Bills To:**

5450 S. INDIANA LLC  
c/o Equity Build, Inc  
757 E. 80th Ave., Suite 370 #442  
Denver, CO 80205



Doc# 1709445115 Fee \$44.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 04/04/2017 04:06 PM PG: 1 OF 4

Al \_\_\_\_\_ ly

**T2 5450 S INDIANA, LLC ("Grantor")**, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration in hand paid, the receipt whereof is hereby acknowledged, and pursuant to the authority of the undersigned,

**HEREBY CONVEYS and WARRANTS to 5450 S. INDIANA LLC ("Grantee")**, the following described real property situated in the County of Cook in the State of Illinois, to wit:

See Exhibit A attached hereto and made a part hereof for legal description,

Subject to those exceptions set forth on Exhibit B attached hereto and made a part hereof.

Address: 5450 South Indiana, Chicago, Illinois 60615

PINS: 20-10-310-056

Together with all buildings and improvements located thereon, and all hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, of Grantor, either in law or equity, of, in and to the above described premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises as above described, with the appurtenances, unto

Grantee, its successors and assigns forever.

And Grantor, for itself, and its successors, does covenant, promise and agree, to and with Grantee, its successors and assigns, that it has not done or suffered to be done, anything whereby the said

JFA

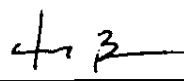
premises hereby granted are, or may be, in any manner encumbered or charged, except as herein recited and subject to Exhibit B attached hereto and made a part hereof (collectively, the "Permitted Exceptions"); and that it will warrant and defend, subject to the Permitted Exceptions, the title to the said premises, against all persons lawfully claiming, or to claim the same, by, through or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has executed the foregoing instrument on this 30<sup>th</sup> day of March, 2017.

**T2 5450 S INDIANA, LLC**, an Illinois limited liability company

By: T2 Comiskey, LLC, a Delaware limited liability company, its member

By: T2 Capital Management II, LLC, the manager

By:   
Jeff Brown, its manager

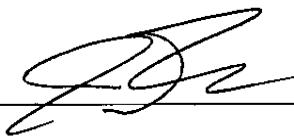
State of Illinois )

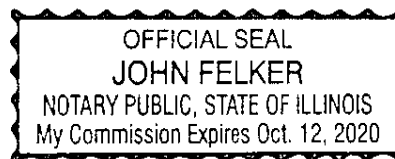
)SS:

County of DuPage )

I, the undersigned, a Notary Public in and for said State of Illinois, DO HEREBY CERTIFY, THAT Jeff Brown, personally known to me to be the Manager of T2 Capital Management II, LLC, 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 acknowledged that as such duly appointed Manager, he signed and delivered the said instrument pursuant to his authority as his free and voluntary act on behalf of the limited liability company.

Given under my hand and official seal this 29<sup>th</sup> day of March, 2017.








**EXHIBIT A TO SPECIAL WARRANTY DEED****Legal Description**

LOT 1 IN SIDNEY A. KENT'S SUBDIVISION OF LOTS 1 TO 19, INCLUSIVE, IN BLOCK 1 IN KENT AND WILLOUGHBY'S SUBDIVISION OF PART OF THE SOUTHWEST ¼ OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE MAP OF SAID SUBDIVISION RECORDED MAY 3, 1889 IN BOOK 35 OF PLATS, PAGE 5 AS DOCUMENT 1095293, IN COOK COUNTY, ILLINOIS.

Street Address: 5450 South Indiana, Chicago, Illinois 60615

PIN: 20-10-310-056

REAL ESTATE TRANSFER TAX		05-Apr-2017
	CHICAGO:	12,562.50
	CTA:	5,025.00
	<b>TOTAL:</b>	<b>17,587.50</b>
20-10-310-056-0000   20170301631918   0-021-948-096		
* Total does not include any applicable penalty or interest due.		

REAL ESTATE TRANSFER TAX		05-Apr-2017
	COUNTY:	837.50
	ILLINOIS:	1,675.00
	<b>TOTAL:</b>	<b>2,512.50</b>
20-10-310-056-0000   20170301631918   0-433-624-768		

**EXHIBIT B TO SPECIAL WARRANTY DEED****Permitted Exceptions**

1. TAXES FOR THE YEARS 2016 AND 2017 AND SUBSEQUENT YEARS
2. EXISTING UNRECORDED LEASES AND ALL RIGHTS THEREUNDER OF THE LESSEES AND OF ANY PERSON OR PARTY CLAIMING BY, THROUGH OR UNDER THE LESSEES.
3. A 25 FOOT BUILDING LINE AS SHOWN ON THE PLAT OF KENT'S SUBDIVISION AFORESAID, RECORDED JULY 13, 1890 AS DOCUMENT 2844861.
4. VIOLATION OF 25-FOOT BUILDING LINE UP TO 15.40 FEET AS DISCLOSED BY SURVEY BY EDWARD J. MOLLOY & ASSOCIATES, DATED OCTOBER 24, 2016 ORDER NUMBER 10-38-14.

# EXHIBIT 11

**PROMISSORY NOTE SECURED BY MORTGAGE**  
*(12 Month Term / Interest Only Payments / Balloon Payment)*

**\$1,800,000.00**

Date: March 28, 2017  
Los Angeles, California

**Property Addresses: 5450 South Indiana Avenue, Chicago, Illinois 60615; and  
7749-59 South Yates Boulevard, Chicago, Illinois 60649**

FOR VALUE RECEIVED, the undersigned, 5450 S. Indiana LLC, an Illinois limited liability company, and 7749-59 S. Yates LLC, an Illinois limited liability company (collectively, "Borrower"), hereby promises to pay to the lenders in the Exhibit "A" attached hereto and incorporated herein, or order ("Lender"), the principal sum of One Million Eight Hundred Thousand and 00/100 Dollars (\$1,800,000.00), together with interest on the unpaid principal balance of this Note, as follows:

**1. Interest.** Interest on the unpaid principal balance will accrue from the date the proceeds have been distributed to or on behalf of the Borrower (the "Date of Advance") at an annual rate equal to Eleven and 00/100 Percent (11%). Interest on this Note is computed on a 30/360 simple interest basis; that is, with the exception of odd days before the first full payment cycle, monthly interest is calculated by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by a month of 30 days. Interest for the odd days before the first full month is calculated on the basis of the actual days and a 360-day year. All interest payable under this Note is computed using this method.

**2. Payment Obligations.**

**2.1 Payments.** Interest-only payments shall be due and payable in consecutive monthly installments of Sixteen Thousand Five Hundred and 00/100 Dollars (\$16,500.00) on the 1st day of each month beginning on May 1, 2017. Such payments shall continue until the entire indebtedness evidenced by this Note and all accrued and unpaid interest and fees are fully paid, with any unpaid principal and interest due and payable on April 1, 2018 (the "Maturity Date").

Payments due under the Note shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under this Note and the Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer. Lender reserves the right, in its sole and absolute discretion, to require payment in any other manner.

**2.2 Balloon Payment.** The payment schedule contained in this loan requires that Borrower make a balloon payment of One Million Eight Hundred Sixteen Thousand Five Hundred and 00/100 Dollars (\$1,816,500.00) on the Maturity Date, which is comprised of the unpaid principal balance in the amount of \$1,800,000.00 and the unpaid interest only payment in the amount of \$16,500.00 for interest accruing during the month prior to the Maturity Date. This balloon payment is more than double the amount of the regular payments.

**2.3 Delivery of Payments.** Payments shall be made to Lender at Lender's address, which is provided in paragraph 11 of this Note, or to another address if so designated by Lender.

**2.4 Order of Application of Payments.** Each payment under this Note shall be credited in the following order: (a) costs, fees, charges, and advances paid or incurred by Lender or payable to Lender and interest under any provision of this Note or the Mortgage, in such order as Lender, in its



sole and absolute discretion, elects, (b) interest payable under the Note, and (c) principal under the Note.

3. **Late Charge.** Borrower acknowledges that default in the payment of any sum due under this Note will result in losses and additional expenses to Lender in servicing the indebtedness evidenced by this Note, handling such delinquent payments, and meeting its other financial obligations. Borrower further acknowledges that the extent of such loss and additional expenses is extremely difficult and impractical to ascertain. Borrower acknowledges and agrees that, if any payment due under this Note is not received by Lender within ten (10) days when due, a charge of 10 cents (\$0.10) for each dollar (\$1.00) that is not paid when due would be a reasonable estimate of expenses so incurred (the "Late Charge"). Without prejudicing or affecting any other rights or remedies of Lender, Borrower shall pay the Late Charge to Lender as liquidated damages to cover expenses incurred in handling such delinquent payment.

4. **Default.** On (a) Borrower's failure to pay any installment or other sum due under this Note when due and payable (whether by extension, acceleration, or otherwise), (b) an Event of Default (as defined in the Mortgage), or (c) any breach of any other promise or obligation in this Note or in any other instrument now or hereafter securing the indebtedness evidenced by this Note, then, and in any such event, Lender may, at its option, declare this Note (including, without limitation, all accrued interest) due and payable immediately regardless of the Maturity Date. Borrower expressly waives notice of the exercise of this option.

5. **Prepayment.** Borrower may prepay this Note in whole or in part at any time without penalty. All prepayments of principal on this Note shall be applied to the most remote principal installment or installments then unpaid.

6. **Interest on Default.** If Borrower is in default under this Note, as that event is contemplated under paragraph 4 of this Note, or defaults under any other clause of any document associated with this Note, then the entire unpaid principal balance shall automatically bear an annual interest rate (instead of the rate specified in paragraph 1) equal to the lesser of (a) Twenty and 00/100 Percent (20%) or (b) the maximum interest rate allowed by law (the "Default Rate"). If the Maturity Date is accelerated pursuant to Paragraph 4, the unpaid principal shall accrue interest at the Default Rate only until the default is cured and the Mortgage is reinstated. Borrower acknowledges and agrees that it would be extremely difficult or impractical to fix the actual damages resulting from Borrower's failure to pay the principal, accrued interest and other sums due on the Maturity Date, and therefore Borrower shall pay interest at the Default Rate not as a penalty, but for purposes of defraying the expenses incident to handling the past due principal, accrued interest and other sums due under this Promissory Note. Interest at the Default Rate represents the reasonable estimate of the loss that may be sustained by Lender due to the failure of Borrower to pay the principal, accrued interest and other sums due on the Maturity Date. Interest at the Default Rate shall be payable by Borrower without prejudice to the rights of Lender to collect any other amounts to be paid under this Promissory Note (including, without limitation, late charges pursuant to Paragraph 3, above) or the Mortgage.

7. **Interest on Interest.** If any interest payment under this Note is not paid when due, the unpaid interest shall be added to the principal of this Note, shall become and be treated as principal, and shall thereafter bear like interest.

8. **Due-on-Sale.** If Borrower sells, conveys, assigns or otherwise transfers (a) all or any part of the Property, (b) any interest in the Property, or (c) all or substantially all of the beneficial interest of Borrower (which shall include, without limitation, a sale or other transfer of any of the shares, membership interest or partnership interests of Borrower), whether any such sale, conveyance, assignment or other transfer occurs directly or indirectly, voluntarily or involuntarily or by operation of law, without the prior written consent of Lender (which may be withheld in Lender's sole and absolute discretion), then Lender may elect, in its sole and absolute discretion, to accelerate the

Maturity Date and declare the entire unpaid principal, accrued interest and other sums due hereunder to be immediately due and payable.

**9. Attorney Fees.** Borrower agrees to pay the following costs, expenses, and attorney fees paid or incurred by Lender, or adjudged by a court: (a) reasonable costs of collection and costs, expenses, and attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; (b) reasonable costs, expenses, and attorney fees paid or incurred in connection with representing Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note; (c) reasonable costs, expenses, and attorney fees incurred to protect the lien of the Mortgage; and (d) costs of suit and such sum as the court may adjudge as attorney fees in any action to enforce payment of this Note or any part of it.

**10. Waiver.** Borrower, endorsers, and all other persons liable or to become liable on this Note waive diligence, presentment, protest and demand, and also notice of protest, demand, nonpayment, dishonor and maturity and consents to any extension of the time or terms of payment hereof, any and all renewals or extensions of the terms hereof, any release of all or any part of the security given for this Promissory Note, any acceptance of additional security of any kind and any release of any party liable under this Promissory Note. Any such renewals or extensions may be made without notice to Borrower.

**11. Notice.** Any notice required to be provided in this Note shall be given in writing and shall be sent (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service, marked for next day business delivery. All notices shall be addressed to the party to whom such notice is to be given at the following addresses:

Lender: c/o Shatar Capital Partners  
12121 Wilshire Boulevard, Suite 555  
Los Angeles, California 90025

Borrower: 5450 S. Indiana LLC and 7749-59 S. Yates LLC  
201 North Westshore, Unit 1501  
Chicago, Illinois 60601,

or to such other address as a party may designate by written notice to the other. All notices shall be deemed effective on the earliest of (a) actual receipt; (b) rejection of delivery; (c) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing or, if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the day of sending.

**12. Secured by Mortgage.** This Note is secured by, among other things, that certain Mortgage, Assignment of Leases and Rents, Fixture Filing, and Security Agreement (the "Mortgage") of even date herewith made by Borrower, as trustor, for the benefit of Lender, as beneficiary.

**13. Forbearance Not a Waiver.** If Lender delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any Lender rights or of any breach, default, or failure of condition under this Note. No waiver by Lender of any of its rights or of any such breach, default, or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by Lender.

14. **Assignment.** This Note inures to and binds the heirs, legal representatives, successors, and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Note or any proceeds of it, or assign or delegate any of its rights or obligations, without Lender's prior written consent in each instance. Lender in its sole discretion may transfer this Note, and may sell or assign participations or other interests in all or any part of this Note, all without notice to or the consent of Borrower.

15. **Governing Law and Venue.** The collateral Property which secures this Note is located in the State of Illinois. Notwithstanding the location of the Property, this Note and all attendant loan documents were negotiated and executed in the State of California; and, it is the express intent of the Parties hereto that this Note shall be construed and enforceable according to the laws of the State of California for all purposes. Jurisdiction and venue for any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, or any other interaction between the Lender and Borrower, shall be in Los Angeles County, California, and Borrower hereby submits to personal jurisdiction in that forum for any and all purposes.

BORROWER'S INITIALS:  \_\_\_\_\_

16. **Made or Arranged by a Real Estate Broker.** Borrower acknowledges that this Note was made or arranged by a licensed California Real Estate Broker and that the broker's participation was a material factor in consummating this loan.

17. **Usury.** All agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or the Mortgage securing this Note or any other agreement pertaining to this Note, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Lender shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Note, such excess shall be refunded to Borrower. This provision shall control every other provision of all agreements between Borrower and Lender.

18. **Time Is of the Essence.** Time is of the essence with respect to all obligations of Borrower under this Note.

19. **Cross-Default.** Any default under the terms of any loan agreement, promissory note, deed of trust, mortgage, lease, conditional sale contract or other agreement, document or instrument evidencing, governing or securing any indebtedness owing by Borrower or any Affiliate of Borrower to Lender or any Affiliate of Lender; shall, at Lender's option, constitute a default under this Note. The following definitions shall apply to this Section:

“Affiliate” means, with respect to any Person, any other Person that is directly or indirectly Controlling, Controlled by or under common Control with, such Person.

“Control” and derivative terms means the possession, directly or indirectly, and acting either alone or together with others, of the power or authority to direct or cause the direction of the management, material policies, material business decisions or the

affairs of a Person, whether through the ownership of equity securities or interests, by contract or other means.

“Person” means any natural person, business, corporation, company, and or association, Limited Liability Company, partnership, limited partnership, limited liability partnership, joint venture, business enterprise, trust, government authority or other legal entity.

BORROWER’S INITIALS: je

20. **Dispute Resolution: Waiver of Right to Jury Trial**

20.1 **ARBITRATION.** CONCURRENTLY HEREWITH, BORROWER AND ANY GUARANTOR SHALL EXECUTE THAT CERTAIN ARBITRATION AGREEMENT WHEREBY BORROWER, ANY GUARANTOR, AND LENDER AGREE TO ARBITRATE ANY DISPUTES TO RESOLVE ANY CLAIMS (AS DEFINED IN THE ARBITRATION AGREEMENT).

20.2 **WAIVER OF RIGHT TO JURY TRIAL.** TO THE EXTENT PERMITTED BY SAID APPLICABLE LAW, BORROWER, ANY GUARANTOR, AND LENDER AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING FROM THIS NOTE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. BORROWER AND, BY ITS ACCEPTANCE OF THE BENEFITS OF THIS NOTE, LENDER EACH (A) ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR BORROWER AND LENDER TO ENTER INTO A BUSINESS RELATIONSHIP, THAT BORROWER AND LENDER HAVE ALREADY RELIED ON THIS WAIVER BY ENTERING INTO THIS NOTE OR ACCEPTING ITS BENEFITS, AS THE CASE MAY BE, AND THAT EACH SHALL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS, AND (B) FURTHER WARRANTS AND REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS NOTE.

BORROWER’S INITIALS: je

21. **Representation on Use of Proceeds.** Borrower represents and warrants to Lender that the proceeds of this Note will be used solely for business, commercial investment, or similar purposes, and that no portion of it will be used for personal, family, or household purposes.

22. **Assignment.** Holder may, at its sole option, assign this Promissory Note and/or designate any other person or entity as the holder hereof.

23. **No Modifications or Amendments; No Waiver.** Except as specified herein, this Promissory Note may not be amended, modified or changed, nor shall any waiver of the provisions hereof be effective, except only by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought. Additionally, a waiver of any

provision in one event shall not be construed as a waiver of any other provision at any time, as a continuing waiver, or as a waiver of such provision on a subsequent event.

**24. Severability.** Any provision of this Promissory Note which shall be held by a court of competent jurisdiction to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision or term hereof, and such other provisions or terms shall remain in full force and effect.

**25. Successors and Assigns.** Whenever used herein, the terms "Lender" and "Borrower" shall be deemed to include their respective heirs, personal representatives, successors and assigns.


**26. Cooperation.** Borrower acknowledges that Lender and its successors and assigns may (a) sell, transfer, or assign the Mortgage, this Note, and other Loan Documents to one or more investors as a whole loan, in a rated or unrated public offering or private placement; (b) participate the Loan secured by the Mortgage to one or more investors in a rated or unrated public offering or private placement; (c) deposit the Mortgage, this Note, and other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets in a rated or unrated public offering or private placement; or (d) otherwise sell the Loan or interest therein to investors in a rated or unrated public offering or private placement. (The transactions referred to in clauses (a)-(d) are hereinafter referred to as "Secondary Market Transactions.") Borrower shall, at Lender's expense, cooperate in good faith with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements reasonably imposed by the participants involved in any Secondary Market Transaction (including, without limitation, a Rating Agency and/or an institutional purchaser, participant, or investor) including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the Rating Agency or such other purchasers, participants or investors, and addressing such matters as the Rating Agency or such other purchasers, participants, or investors may require; provided, however, that the Borrower shall not be required to modify any documents evidencing or securing the Loan that would modify (i) the interest rate payable under this Note, (ii) the stated maturity of this Note, (iii) the amortization of principal of this Note, or (iv) any other material terms or covenants of the Loan. Borrower shall provide such information and documents relating to Borrower, the Property, the Leases, and any lessees as Lender or the Rating Agency or such other purchasers, participants, or investors may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to the Rating Agency or prospective purchasers, participants, or investors any information in its possession including, without limitation, financial statements relating to Borrower, the Property, and any lessee. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Property may be included in a private placement memorandum, prospectus, or other disclosure documents.

**27. Obligations of Borrower Joint and Several.** If more than one Person is named as Borrower, each obligation of Borrower under this Note shall be the joint and several obligations of each such Person.

*[Signature page follows]*

**BORROWER:**

**5450 S. INDIANA LLC, AN ILLINOIS  
LIMITED LIABILITY COMPANY**

  
\_\_\_\_\_  
Jerome H. Cohen, Manager of Offsite  
Asset Management II, LLC, a  
Wyoming limited liability company,  
Manager of 5450 S. Indiana LLC, an  
Illinois limited liability company

**7749-59 S. YATES LLC, AN ILLINOIS  
LIMITED LIABILITY COMPANY**


  
\_\_\_\_\_  
Jerome H. Cohen, Manager of Offsite  
Asset Management II, LLC, a  
Wyoming limited liability company,  
Manager of 7749-59 S. Yates LLC, an  
Illinois limited liability company

EXHIBIT "A"  
BENEFICIARY LIST

**1111 Crest Dr. LLC, a California limited liability company, as to undivided 50% ownership** – Address: 6551 Van Nuys Blvd., Mezzanine Floor, Van Nuys CA 91401  
**Abraham Aaron Ebriani, a Single man, as to undivided 14% ownership** - Address: P.O. Box 1577, Torrance, CA 90505  
**Hamid Esmail , a Single man, as to undivided 14% ownership** – Address: P.O. Box 104, Bakersfield, CA 93302  
**Farsaa Inc., a California company, as to undivided 22% ownership** – Address: 1760 Roscomare Rd. Los Angeles, CA 90077