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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1427416064 Fee: \$206.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 10/01/2014 04:15 PM Pg: 1 of 85

Report Mortgage Fraud
800-532-8785

The property identified as:

PIN: 17-07-404-029-0000

Address:

Street: 1901 W. Carroll

Street line 2:

City: Chicago

State: IL

ZIP Code: 60612

Lender: Fulton Market Realty Company Parallel LLC

Borrower: 1901 W. Carroll, LLC

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

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

Certificate number: BA6F0A0D-8D90-499D-BE74-F1613BC9A666

Execution date: 10/01/2014

UNOFFICIAL COPY**RECORDING REQUESTED BY AND
UPON RECORDATION RETURN TO:**

Goodwin Procter LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018-1405
Attention: Christopher B. Price, Esq.

(For Recorder's Use Only)

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

1901 W. CARROLL, LLC,
a Delaware limited liability company
as mortgagor
(Borrower)

for the benefit of

FULTON MARKET REALTY COMPANY PARALLEL LLC,
a Delaware limited liability company
as mortgagee
(Lender)

Loan Amount: \$10,000,000.00
Premises: 1901 W. Carroll
In Chicago, Cook County, Illinois
Parcel ID #

17-07-404-029-0000
17-07-404-028-0000
17-07-404-027-0000
17-07-404-026-0000
17-07-404-025-0000
17-07-404-024-0000
17-07-404-011-0000
17-07-404-010-0000
17-07-404-009-0000
17-07-404-008-0000
17-07-404-007-0000
17-07-404-006-0000
17-07-404-005-0000
17-07-404-004-0000
17-07-404-003-0000
17-07-404-002-0000

8975133-TWS

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ATTENTION: COUNTY CLERK - THIS MORTGAGE COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS MORTGAGE SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE, BUT ALSO AS A FIXTURE FILING COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE BORROWER (DEBTOR) AND LENDER (SECURED PARTY) ARE SET FORTH IN THIS MORTGAGE.

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TABLE OF CONTENTS

	Page
ARTICLE I	
GRANT OF SECURITY AND WARRANTY OF TITLE	1
1.1 Property Granted.....	1
1.2 Warranty of Title.....	7
ARTICLE II	
COVENANTS, REPRESENTATIONS AND WARRANTIES OF BORROWER.....	7
2.1 General Covenants, Representations and Warranties	7
2.2 Additional Covenants, Representations and Warranties Concerning the Property.....	12
2.3 Insurance.....	18
2.4 Damage and Destruction.....	22
2.5 Condemnation.....	25
2.6 Liens and Liabilities.....	29
2.7 Taxes and Other Charges.....	29
2.8 Tax and Insurance Deposits.....	31
2.9 Inspection.....	32
2.10 Records, Reports and Audits, Maintenance of Records	32
2.11 Borrower's Certificates.....	33
2.12 Security Interest	33
2.13 Security Agreement	35
2.14 Interest Reserve Fund	36
2.15 Access Laws.....	37
2.16 Future Advances; Secured Indebtedness	37
2.17 OFAC.....	37
2.18 ERISA.....	38
2.19 No Suretyship Defenses.....	38
ARTICLE III	
ASSIGNMENT OF LEASES AND RENTS AND OTHER SUMS	41
3.1 Assignment	41
3.2 Leases and Rents.....	42
ARTICLE IV	
ADDITIONAL ADVANCES; EXPENSES; INDEMNITY	42
4.1 Additional Advances and Disbursements	42
4.2 Other Expenses	42
4.3 Indemnity	43
4.4 Interest After Default	44

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ARTICLE V	
	SALE, TRANSFER OR MORTGAGING OF THE PROPERTY; CHANGE OF CONTROL.....45
5.1	Continuous Ownership; Change of Control.....45
5.2	No Subordinate Financing46
ARTICLE VI	
	DEFAULTS46
6.1	Events of Default46
ARTICLE VII	
	REMEDIES49
7.1	Remedies Available49
7.2	Application of Proceeds.....53
7.3	Right and Authority of Receiver or Lender in the Event of Default; Power of Attorney54
7.4	Occupancy After Foreclosure56
7.5	Notice to Account Debtors.....56
7.6	Cumulative Remedies56
7.7	Intentionally Omitted.....56
7.8	Borrower's Waivers.....56
ARTICLE VIII	
	REPORTING AND WITHHOLDING REQUIREMENTS.....57
8.1	Withholding57
8.2	Form 1099-S57
8.3	Transfer Tax.....57
ARTICLE IX	
	MISCELLANEOUS TERMS AND CONDITIONS.....58
9.1	Time of Essence.....58
9.2	Release of This Security Instrument.....58
9.3	Certain Rights of Lender.....58
9.4	Additional Borrower's Waivers.....58
9.5	Notices59
9.6	Successors and Assigns.....61
9.7	Severability61
9.8	Waiver; Discontinuance of Proceedings.....61
9.9	Construction of Provisions.....62
9.10	Multisite Real Estate and Multiple Collateral Transaction.....63
9.11	Counting of Days.....63
9.12	Application of the Proceeds of the Note.....63
9.13	Unsecured Portion of Indebtedness64
9.14	Cross-Default64
9.15	Publicity64

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9.16	Construction of This Document.....	64
9.17	No Merger.....	64
9.18	Lender May File Proofs of Claim.....	64
9.19	Fixture Filing.....	64
9.20	Assignment by Lender.....	65
9.21	No Representation.....	65
9.22	Limited Recourse.....	65
9.23	Entire Agreement and Modifications.....	69
9.24	Commissions.....	69
9.25	Servicing Agent.....	69
9.26	Usury Savings Clause.....	69
9.27	Right to Deal.....	70
9.28	Sole Discretion of Lender.....	70
9.29	Provisions as to Covenants and Agreements.....	71
9.30	No Joint Venture.....	71
9.31	Indemnification Provisions.....	71
9.32	Applicable Law; Consent to Jurisdiction; No Jury.....	71
 ARTICLE X		
	ADDITIONAL REPRESENTATIONS, WARRANTIES AND WAIVERS OF BORROWER.....	72
10.1	Conditions to Exercise of Rights.....	72
10.2	Defenses.....	73
10.3	Lawfulness and Reasonableness.....	73
10.4	Enforceability.....	74
10.5	Reinstatement of Lien.....	74
 ARTICLE XI		
	STATE SPECIFIC PROVISIONS.....	74
11.1	Conflicting Provisions.....	74
11.2	Type of Real Estate.....	75
11.3	Interest Rate.....	75
11.4	Illinois Mortgage Foreclosure Law.....	75
11.5	Future Advances; Maximum Indebtedness.....	76
11.6	Insurance Disclosure.....	76
11.7	Leasing and Management Agreements.....	77
EXHIBIT A – LEGAL DESCRIPTION.....		A-1

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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING AND SECURITY AGREEMENT (this "**Security Instrument**") is made as of the 1st day of October, 2014, by **1901 W. CARROLL, LLC**, a Delaware limited liability company, having an address c/o Sterling Bay Capital Partners I, LLC, 1040 West Randolph Street, Chicago, Illinois 60607 ("**Borrower**"), in favor of **FULTON MARKET REALTY COMPANY PARALLEL LLC**, a Delaware limited liability company, having an address c/o J.P. Morgan Investment Management, Inc., 270 Park Avenue, 7th Floor, New York, New York 10017, as beneficiary ("**Lender**").

RECITALS:

- A. Borrower is the owner of the fee simple estate in the Real Estate (as hereinafter defined).
- B. Lender has made a loan (the "**Loan**") to Borrower and certain other borrowers affiliated with Borrower (the "**Other Borrowers**"). The Loan is evidenced by a promissory note of even date herewith from the Borrower and the Other Borrowers, jointly and severally, to Lender in the original principal amount of TEN MILLION AND NO/100 UNITED STATES DOLLARS (\$10,000,000.00) in lawful money of the United States of America (the note, together with all extensions, renewals, modifications, substitutions, and amendments thereof shall collectively be referred to as the "**Note**"), with interest from the date thereof at the rate of five percent (5.00%) per annum to the maturity date of September 30, 2015, principal and interest to be payable in accordance with the terms and conditions provided in the Note.
- C. In order to secure the Loan, the Other Borrowers have concurrently herewith executed certain mortgages to secure debt encumbering properties owned by the Other Borrowers (the "**Other Security Instruments**").
- D. Borrower desires to secure the payment and performance of the Obligations as defined in **Section 1.1** hereof.

ARTICLE I GRANT OF SECURITY AND WARRANTY OF TITLE

1.1 **Property Granted.** Borrower, for and in consideration of the sum of Ten Dollars (\$10.00), the indebtedness herein recited and other valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, hereby irrevocably gives, grants, sells, conveys, warrants, assigns, pledges, sets over, and mortgages unto Lender and its successors and assigns, forever, all of the Borrower's right, title, and interest in and to the following property, rights, interests, and estates now owned or hereafter acquired by Borrower (collectively, the "**Property**") described in the following paragraphs (a) through (r), inclusive (collectively, the "**Granting Clauses**"):

(a) All that certain real property owned in fee simple absolute situated in the Cook County, State of Illinois, and more particularly described in **Exhibit A** attached hereto and incorporated by this reference, as the description of such property may be amended, modified, or supplemented from time to time, together with all of the easements (in gross and/or appurtenant), rights, privileges, franchises, tenements, hereditaments, appurtenances, and additions now or

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hereafter belonging or in any way appertaining thereto and all of the estate, right, title, interest, claim, and demand whatsoever of Borrower in or to such property, either at law or in equity, in possession or in expectancy, now owned or hereafter acquired (collectively, the "**Real Estate**");

(b) All structures, buildings, and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate, including, without limitation, all gas and electric fixtures, radiators, heaters, washing machines, dryers, refrigerators, ovens, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, antennas, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to, contained in, or used in connection with the Real Estate or said buildings, structures, or improvements and all appurtenances and additions thereto and betterments, renewals, substitutions, and replacements thereof (collectively, the "**Improvements**");

(c) To the extent the same are not Improvements, all fixtures, appliances, machinery, furniture, furnishings, decorations, tools, and supplies now owned or hereafter acquired or leased by Borrower, including, without limitation, radios, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, restaurant and kitchen equipment, and all building materials and equipment hereafter situated on or about the Real Estate to be attached to or used in or in connection with the Improvements, including, without limitation, all heating, lighting, incinerating, waste removal, and power equipment and fixtures, engines, pipes, tanks, motors, conduits, switchboards, security and alarm systems, plumbing, lifting, cleaning, fire prevention and fire extinguishing apparatus, refrigeration systems, washing machines, dryers, stoves, ranges, refrigerators, ventilating, and communications apparatus, air cooling and air conditioning apparatus, escalators, elevators, ducts and compressors, materials and supplies, and all other goods, equipment, machinery, apparatus, chattels, tangible personal property, fixtures, and fittings now owned or hereafter acquired by Borrower wherever located, together with all additions, replacements, substitutions, parts, fittings, accessories, attachments, accessories, modifications, and alterations of any of the foregoing, and all warranties and guaranties relating to the foregoing (collectively, the "**Personal Property**");

(d) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, and, to the extent now or hereafter owned by or assigned to Borrower, all minerals, flowers, shrubs, crops, trees, timber, and other emblements or landscaping features now or hereafter serving the Real Estate or located on the Real Estate or under, above, or adjacent to the same or any part or parcel thereof and all ground leases, subleases, estates, rights, titles, liberties, privileges, interests, tenements, hereditaments, and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating, or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate, or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(e) All air rights, development rights, and powers to the extent now or hereafter owned by Borrower;

(f) All water, ditches, wells, reservoirs, and drains and all water, ditch, well, reservoir, and drainage rights which are appurtenant to, located on, under, or above or used in

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connection with the Real Estate or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

(g) All funds (including, without limitation, all reserve funds), accounts (including, without limitation, operating accounts), deposits, and other rights and evidence of rights to cash, now or hereafter created or held by Lender pursuant to this Security Instrument or any other of the Loan Documents (as hereinafter defined), including, without limitation, all funds now or hereafter on deposit with the Depository (as hereinafter defined) pursuant to **Section 2.8** and **Section 2.14** of this Security Instrument;

(h) All the leases, subleases, lettings, licenses, concessions, occupancy, and surrender agreements of the Real Estate or the Improvements now or hereafter entered into, and all estates, rights, titles, liberties, privileges, interests, tenements, hereditaments, and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating, or appertaining to the Real Estate or any part thereof, or which hereafter shall in any way belong, relate, or be appurtenant thereto, whether now owned or hereafter acquired by Borrower (collectively, the "**Leases**") and all rents (whether denoted as advance rent, minimum rent, percentage rent, additional rent, or otherwise), maintenance payments, assessments, receipts, issues, income, royalties, profits, earnings, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), lease termination fees or payments, rejection damages, buy-out fees, and any other fees made or to be made in lieu of rent, any award made hereafter to Borrower in any court proceeding involving any tenant, subtenant, lessee, licensee, or concessionaire under any Leases in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court, and all other payments, rights, and benefits of whatever nature from time to time arising from the use or enjoyment of all or any portion of the Real Estate or the Improvements or from any Lease, or any license, concession, occupancy agreement, or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined), including, without limitation, (i) rights to payment earned under Leases for space in the Improvements for the operation of ongoing businesses, if any, and (ii) all other income, consideration, issues, accounts, profits, or benefits of any nature arising from the ownership, possession, use, or operation of the Property, including, without limitation, all revenues, receipts, income, receivables, and accounts relating to or arising from rentals, rent equivalent income, income, and profits from vending machines, telephone and television systems, laundry facilities, and the provision or sale of other goods and services, including those now existing or hereafter created, substitutions therefor, and proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible), and the provision or sale of other goods and services, including those now existing or hereafter created, substitutions therefor, and proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) (collectively, the "**Rents and Profits**") and all cash or securities deposited to secure performance by the tenants, subtenants, lessees, or licensees, as applicable, of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rent coming due prior to the expiration of said terms;

(i) All contracts and agreements (including any license or franchise agreements) now or hereafter entered into relating to any part of the Real Estate or the Improvements or any other portion of the Property (collectively, the "**Contracts**") and all

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revenue, income and other benefits thereof, including, without limitation, management agreements, operating agreements, parking agreements, masterplan documents, condominium documents, declarations, reciprocal easement agreements, development agreements, construction contracts, service contracts, maintenance contracts, equipment leases, personal property leases, agreements relating to collection of receivables or the use of customer or tenant lists or other information, and any contracts or documents relating to construction on any part of the Real Estate or the Improvements or other portions of the Property (including, without limitation, plans, drawings, surveys, tests, reports, bonds, and governmental approvals) or to the management or operation of any part of the Real Estate or the Improvements;

(j) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Real Estate or the Improvements;

(k) All present and future funds, goods, accounts, instruments, accounts receivable, documents, causes of action, claims, and general intangibles (including, without limitation, copyrights, trademarks, trade names, intellectual property rights, servicemarks, and symbols) now or hereafter used in connection with any part of the Real Estate or the Improvements, all names by which the Real Estate or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest, and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions, or declarations now or hereafter relating to the Real Estate or the Improvements, and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Real Estate or the Improvements, and all customer or tenant lists, other lists, and business information relating in any way to the Real Estate, the Improvements, other portions of the Property or the use thereof (collectively, the "General Intangibles");

(l) All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals, and other rights and privileges now or hereafter obtained in connection with the Real Estate or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property, or components of any of the foregoing now or hereafter located or installed on the Real Estate or the Improvements;

(m) All building materials, supplies, and equipment now or hereafter placed on the Real Estate or in the Improvements, or to be attached to or used in connection with the Improvements, and all architectural renderings, models, drawings, plans, specifications, studies, and data now or hereafter relating to the Real Estate or the Improvements;

(n) All right, title, and interest of Borrower in any insurance policies or binders now or hereafter relating to and to the extent of the Property (whether or not Borrower is required to carry such insurance by Lender hereunder), including, without limitation, any unearned premiums thereon, proceeds of hazard, title, and other insurance and proceeds (including, without limitation, those proceeds received pursuant to any sales or rental agreements of Borrower in respect of the property described in these Granting Clauses), and all judgments, damages, awards, settlements, and compensation (including, without limitation, interest thereon) heretofore or hereafter made to the present and all subsequent owners of the Real Estate and/or

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any other property or rights conveyed or encumbered hereby for any injury to or decrease in the value thereof for any reason;

(o) All proceeds, products, substitutions, and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation or other awards, any awards for any change of grade of streets and all refunds, rights, or credits arising from a reduction in real estate taxes, assessments, and/or other Impositions (as hereinafter defined) charged against the Real Estate or the Improvements as a result of tax certiorari or any other applications or proceedings for reduction of any Impositions;

(p) All other or greater rights and interests of every nature in the Real Estate or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower;

(q) All extensions, additions, improvements, betterments, renewals, and replacements, substitutions, or proceeds of any of the foregoing, and all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, farm products, consumer goods, general intangibles, and other property of any nature constituting proceeds acquired with proceeds of any of the property described hereinabove; and

(r) any and all other rights of Borrower in and to the items set forth in clauses (a) through (q) above.

TO HAVE AND TO HOLD the above granted and described Property and all parts, rights, members and appurtenances thereof to the use, benefit and behoof of Lender and its successors and assigns in fee simple forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the indebtedness evidenced by the Note and secured by this Security Instrument at the time and in the manner provided in the Note, this Security Instrument, and the other Loan Documents, shall well and truly perform all of the other Obligations as set forth in this Security Instrument and the other Loan Documents, and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, this Security Instrument, and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate, and be void.

This Security Instrument and the grants, assignments, and transfers made in this **Section 1.1** are given **FOR THE PURPOSE OF SECURING TO LENDER:**

(1) The repayment of the Loan evidenced by the Note in the original principal amount of TEN MILLION AND NO/100 UNITED STATES DOLLARS (\$10,000,000.00), together with interest, fees, late charges, and any and all other amounts as provided in the Note, this Security Instrument, and the other Loan Documents (including, without limitation, interest at the Default Rate and any Late Charges (as such terms are defined in the Note));

(2) The full and prompt payment and performance by Borrower and the Other Borrowers of all of the provisions, agreements, covenants, and obligations herein contained and

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contained in the Loan Documents and any other agreements, documents, or instruments now or hereafter evidencing, securing, or otherwise relating to the indebtedness evidenced by the Note;

(3) Any and all additional advances made by Lender to protect or preserve the Property or the property of the Other Borrowers described in the Other Security Instruments or the lien or security interest created hereby on the Property or created by the Other Security Instruments on the property of the Other Borrowers, or for taxes, assessments, or insurance premiums as hereinafter provided or for performance of any of Borrower's or the Other Borrowers' obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents; and

(4) Any and all other indebtedness and obligations now owing or which may hereafter be owing by Borrower or any other Borrower Party (as hereinafter defined) to Lender arising from, in connection with or in any way relating to the Loan and/or any of the Property, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements, and extensions thereof.

All of the indebtedness and other obligations and matters referred to in Paragraphs (1) through (4) above are herein sometimes referred to collectively as the "**Obligations**". The Note, this Security Instrument and such other agreements, documents, and instruments executed and/or delivered in connection with the Loan, including, without limitation, each of the following documents, each dated as of the date hereof:

- (5) The Other Security Instruments;
- (6) Guaranty from Sterling Bay Capital Partners I, LLC, a Delaware limited liability company ("**Guarantor**"), in favor of Lender (the "**Guaranty**");
- (7) Environmental Indemnity Agreement from Borrower, the Other Borrowers, and Guarantor in favor of Lender (the "**Environmental Indemnity**");
- (8) Assignment of Contracts, Licenses, and Permits from Borrower and the Other Borrowers in favor of Lender (the "**Assignment of Contracts**");
- (9) Compliance with Law Certificates from Borrower and each of the Other Borrowers in favor of Lender;
- (10) No Adverse Change Certificates from Borrower and each of the Other Borrowers in favor of Lender;
- (11) Diligence Delivery Certificates from Borrower and each of the Other Borrowers in favor of Lender;
- (12) Uniform Commercial Code ("**UCC**") Financing Statements by Borrower and the Other Borrowers, as debtors, in favor of Lender, as secured party;

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together with any and all renewals, amendments, extensions, and modifications of any of the foregoing, are sometimes collectively referred to herein as the “**Loan Documents**”. Each of Borrower, the Other Borrowers, and Guarantor are sometimes referred to herein, individually, as a “**Borrower Party**” and, collectively, as the “**Borrower Parties**”).

1.2 **Warranty of Title.** Borrower hereby represents, warrants, covenants, and certifies: (a) Borrower has good, marketable and insurable, indefeasible fee simple absolute title to the Real Estate and Improvements located thereon, free and clear of all Liens (as hereinafter defined), subject only to those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the “**Permitted Encumbrances**”); (b) Borrower has and covenants that it will continue to have full power and lawful authority to encumber and convey the Property as provided herein, to the extent assignable by Borrower; (c) this Security Instrument is, and Borrower covenants that this Security Instrument will continue to remain a valid and enforceable first priority lien on and security interest in the Property; and (d) Borrower hereby warrants and will forever warrant and defend such title and the validity, enforceability, and priority of the lien and security interest hereof against the claims of all Persons whomsoever.

ARTICLE II COVENANTS, REPRESENTATIONS AND WARRANTIES OF BORROWER

2.1 **General Covenants, Representations and Warranties.** Borrower covenants, represents, and warrants to Lender as follows:

(a) **Payment of Obligations.** Borrower shall punctually pay when due and perform the Obligations as and when due in accordance with the provisions set forth in this Security Instrument, the Note, and the other Loan Documents.

(b) **Authority, Continuation of Existence.** Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, authorized to transact business in the State of Illinois, has all necessary licenses, authorizations, registrations, and/or approvals, and full power and authority, to own the Property. Borrower will maintain in good standing its existence, franchises, rights, and privileges under the laws of the State of Delaware and its rights to transact business in the State of Illinois and will not, without the prior written consent of Lender, (i) dissolve, terminate, or otherwise dispose, directly or indirectly or by operation of law, of all or substantially all of its assets or (ii) change its name or its legal structure or organizational form from a limited liability company organized under the laws of the State of Delaware.

(c) **Further Assurances.** Borrower will, at Borrower’s sole cost and expense, (i) promptly correct any defect or error which may be discovered in the contents of this Security Instrument or any other Loan Documents or in the execution, acknowledgment, or recordation thereof, and (ii) promptly do, execute, acknowledge, and deliver, any and all such further acts, mortgages, security deeds, conveyances, deeds of trust, security agreements, assignments, estoppel certificates, financing statements and continuations thereof, assignments of rents or leases, notices of assignment, transfers, certificates, assurances, and other instruments as Lender may reasonably require from time to time in order to carry out more effectively the purposes of this Security Instrument, the rights or interests covered or intended to be covered hereby, to

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perfect and maintain said lien and security interest, and to better assure, convey, grant, protect, continue, assign, transfer, and confirm unto Lender the rights granted or intended to be granted to Lender hereunder or under any other instrument executed in connection with this Security Instrument or which Borrower may be or become bound to confirm, convey, bargain, sell, release, warrant, transfer, mortgage, pledge, grant, assure, set over, or assign to Lender in order to carry out the intention or facilitate the performance of the provisions of this Security Instrument.

(d) Recordation and Re-Recordation of Security Instrument. Borrower will, at the request of Lender, promptly record and re-record, file and refile and register and re-register this Security Instrument, any financing or continuation statements, and every other instrument in addition or supplemental to any thereof that shall be required by any present or future law in order to perfect and maintain the validity, effectiveness, and priority of this Security Instrument and the lien and security interest intended to be created hereby, or to subject after-acquired property of Borrower to such lien and security interest, in such manner and places and within such times as may be necessary to accomplish such purposes and to preserve and protect the rights and remedies of Lender. Borrower will furnish to Lender evidence satisfactory to Lender of every such recording, filing or registration. Lender may, at Borrower's sole expense, file copies or reproductions of this instrument as financing statements at any time and from time to time at Lender's option without further authorization from Borrower. It is further agreed that Borrower hereby appoints Lender as its attorney-in-fact, which appointment is irrevocable and shall be deemed to be coupled with an interest, and which appointment shall be exercisable by Lender if Borrower fails to take any of the actions required in this **Section 2.1** within five (5) days after written request by Lender, with respect to the execution, acknowledgment, delivery and filing, registering or recording for and in the name of Borrower of any of the documents or instruments referred to in this **Section 2.1**.

(e) Defense of Title and Litigation. If the lien, security interest, validity, enforceability, or priority of this Security Instrument, or if title or any of the rights of Borrower or Lender in or to the Property, shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against Borrower or Lender with respect thereto, Borrower will promptly notify Lender thereof and will diligently cure any defect which may be developed or claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including, without limitation, the employment of counsel, the making of a demand for such defense under Borrower's title insurance policy, the prosecution or defense of litigation and, subject to Lender's prior written approval, the compromise, release, or discharge of any and all adverse claims. Lender (whether or not named as a party to such actions or proceedings) is hereby authorized and empowered (but shall not be obligated) to take such additional steps as it may deem necessary or proper for the defense of any such action or proceeding for the protection of the lien, security interest, validity, enforceability, or priority of this Security Instrument or of such title or rights, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, the purchase of any tax title and the removal of such prior liens and security interests. Borrower shall, on demand, pay or reimburse Lender for all expenses (including attorneys' fees and disbursements) incurred by it in connection with the foregoing matters. All such costs and expenses of Lender, until paid or reimbursed by Borrower, shall be part of the Obligations and shall be and shall be deemed to be secured by this Security Instrument. It is further agreed that

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Borrower hereby appoints Lender as its attorney-in-fact, which appointment is irrevocable and shall be deemed to be coupled with an interest, with respect to the taking of such steps as may be necessary or proper in the sole discretion of Lender with respect to the matters referred to in this **Section 2.1(e)**, which appointment shall be exercisable by Lender if Borrower fails to take any of the actions required in this **Section 2.1(e)** within five (5) days after written request by Lender.

(f) **SPE Covenants.** Borrower has not and shall not:

(1) without the prior written consent of Lender, amend, modify, supplement, terminate, or fail to comply with the provisions of Borrower's organizational documents as same may be further amended, modified, or supplemented;

(2) engage in any business or activity other than the acquisition, ownership, operation, development, management, and maintenance of the Property and activities incidental thereto;

(3) acquire or own any material asset other than the Property and such incidental personal property as may be necessary for the operation of the Property;

(4) merge into or consolidate with any Person or dissolve, terminate, or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's prior written consent;

(5) fail to preserve its existence as a limited liability company duly formed, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation;

(6) own any subsidiary or make any investment in or acquire the obligations or securities of any other Person without the prior written consent of Lender;

(7) commingle its assets with the assets of any of its partners, members, shareholders, affiliates, or of any other Person or transfer any assets to any such Person other than distributions on account of equity interests in Borrower permitted hereunder and properly accounted for;

(8) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan and trade payables incurred in the ordinary course of business;

(9) allow any Person to pay its debts and liabilities (except a guarantor or indemnitor of the Loan or one of the other Borrower Parties) or fail to pay its debts and liabilities solely from its own assets;

(10) fail to maintain its records, books of account, and bank accounts separate and apart from those of the direct or indirect shareholders, partners, members, principals, and affiliates of Borrower, the other Borrower Parties, the affiliates of a shareholder, partner, or member of Borrower, and any other Person, or fail to prepare and maintain its own financial statements on a comprehensive basis of accounting used for U.S. federal income tax

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purposes, or, if such financial statements are consolidated, fail to cause such financial statements to contain footnotes disclosing that the Property is actually owned by Borrower and the assets of Borrower are not available to satisfy any liabilities other than those of Borrower;

(11) enter into any contract or agreement with any Borrower Party, any shareholder, partner, member, principal, or affiliate of Borrower, any guarantor of all or a portion of the Loan or any shareholder, partner, member, principal, or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such Borrower Party, shareholder, partner, member, principal, or affiliate of Borrower, or shareholder, partner, member, principal, or affiliate thereof;

(12) seek dissolution, liquidation, or winding up in whole, or in part, or transfer all or substantially all of its assets, whether by consolidation, merger, or otherwise;

(13) except as otherwise expressly required by the terms of the Loan Documents, hold itself out to be responsible or pledge its assets or creditworthiness for the debts of another Person or allow any Person to hold itself out to be responsible or pledge its assets or creditworthiness for the debts of Borrower;

(14) make any loans or advances to any third party, including any other Borrower Party, any shareholder, partner, member, principal, or affiliate of Borrower, or any shareholder, partner, member, principal, or affiliate thereof;

(15) fail to file its own tax returns or to use separate contracts, purchase orders, stationary, invoices, and checks;

(16) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name in order not (x) to mislead others as to the entity with which such other party is transacting business or (y) to suggest that Borrower is responsible for the debts of any third party (including any other Borrower Party, any shareholder, partner, member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or affiliate thereof) other than as set forth in the Loan Documents;

(17) fail to allocate fairly and reasonably among Borrower and any third party any overhead for common employees, shared office space, or other overhead and administrative expenses;

(18) allow any Person to pay the salaries of its own employees or fail to maintain a sufficient number of employees for its contemplated business operations;

(19) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided that the foregoing shall not require any Person to make additional capital contributions to Borrower in connection therewith;

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(20) file a voluntary petition or otherwise initiate proceedings to have Borrower adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against Borrower, or file a petition seeking or consenting to reorganization or relief of Borrower, or as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to Borrower; or seek or consent (other than as requested by Lender or its agents) to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, or liquidator (or other similar official) of Borrower or of all or any substantial part of the properties and assets of Borrower, or make any general assignment for the benefit of creditors of Borrower, or admit in writing (other than a statement to Lender or a statement required in any legal proceeding or discovery request) the inability of Borrower to pay its debts generally as they become due or declare or effect a moratorium on Borrower's debt or take any action in furtherance of any such action;

(21) share any common logo with or hold itself out as or be considered as a department or division of (x) any shareholder, partner, principal, member, or affiliate of Borrower, (y) any affiliate of a shareholder, partner, principal, member, or affiliate of Borrower, or (z) any other Person or allow any Person to identify Borrower as a department or division of that Person; or

(22) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of Borrower or the creditors of any other Person.

(g) Intentionally Omitted.

(h) No Misrepresentations.

(1) All materials, reports, financial statements, and other information pertaining to the Borrower Parties and the Property which were prepared by the Borrower Parties (and/or their affiliates) and heretofore or hereafter delivered by the Borrower Parties to Lender, or delivered by any of the Borrower Parties (and/or their affiliates) to any Person (e.g., an appraiser, an engineer, an environmental engineer, etc.) preparing materials, reports, financial statements, and/or other information heretofore or hereafter delivered to Lender, are true, correct, and complete in all material respects;

(2) All materials, reports, financial statements, and other information pertaining to the Borrower Parties and the Property which were prepared by third parties unaffiliated with the Borrower Parties (as required by Lender or as to such matters Lender determines appropriate for the Borrower Parties to engage third parties to provide the same) and heretofore or hereafter delivered to Lender and any of the Borrower Parties or their affiliates are, to Borrower's actual knowledge (after having reviewed such materials, reports, financial statements, and other information), true, correct, and complete in all material respects; and

(3) All representations and warranties made in the Note, this Security Instrument, and the other Loan Documents, are true and correct in all material respects and do not omit to state any material fact or circumstances necessary to make the statements contained therein not materially misleading, except as otherwise disclosed in writing by Borrower to Lender.

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2.2 Additional Covenants, Representations and Warranties Concerning the Property.
Borrower covenants, represents, and warrants to Lender as follows:

(a) Repair and Maintenance.

(1) Borrower shall use commercially reasonable efforts, including, without limitation, the diligent enforcement of all Leases and other documents pertaining to the Property, to cause the Property to be maintained in its current condition. Notwithstanding the foregoing, any demolition by the Borrower of the Improvements located on the Property shall be permitted under this Security Instrument if such demolition is approved in advance by Lender and is accomplished in accordance with all applicable laws.

(2) Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law, or other public or private restriction limiting or defining the uses which may be made of the Property or any part thereof without Lender's prior written consent, which consent shall not unreasonably withheld, conditioned or delayed. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender.

(3) Borrower will not permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the sub-surface of the Real Estate regardless of the depth thereof or the method of mining or extraction thereof.

(b) Operation of the Property.

(1) Borrower has and will maintain all necessary certificates, licenses, authorizations, registrations, permits, and approvals necessary for the operation of all or any part of the Property, and the conduct of Borrower's business at the Property, including a permanent certificate of occupancy and all required zoning ordinance, building code, land use, environmental, and other similar permits or approvals, all of which as of the date hereof are in full force and effect and not subject to any revocation, amendment, release, suspension, or forfeiture and Borrower shall, promptly upon request by Lender, deliver to Lender copies of all of the same.

(2) Borrower represents and covenants that, to Borrower's knowledge, the Property and the present use and/or occupancy of the Property comply in all material respects with and do not conflict with or violate in any material respect any of the applicable zoning ordinances, building codes, certificates of occupancy, handicapped accessibility laws, including, without limitation, the Americans with Disabilities Act of 1990, environmental laws, and other similar applicable Governmental Regulations (as hereinafter defined).

(c) Compliance with Governmental Regulations.

(1) Borrower will perform and comply promptly with, and cause the Property to be maintained, used, and operated in accordance with, in all material respects, any and all (i) present and future Governmental Regulations, (ii) similarly applicable orders, rules, and regulations of any regulatory, licensing, accrediting, or rating organization or other body

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exercising similar functions, (iii) similarly applicable duties or obligations of any kind imposed under any Permitted Encumbrance or otherwise by law, covenant, condition, agreement, or easement, public or private, and (iv) policies of insurance or the rules and regulations of any insurance underwriting or rating organization, at any time in force with respect to the Property. If Borrower receives any notice that Borrower or the Property is in default under or is not in compliance with any of the foregoing (regardless of whether such notice involves de minimis or minor aspects of non-compliance), or notice of any proceeding initiated under or with respect to any of the foregoing, Borrower will promptly furnish a copy of such notice to Lender.

(2) The Government Regulations, including zoning ordinances and regulations, permit the current operation, use, and occupancy of the Property. There are no pending or threatened actions, suits, or proceedings to revoke, attach, invalidate, rescind, or modify the ordinances and regulations currently in effect and to which the Property is subject.

(d) Status of the Property.

(1) The Real Estate is not located in an area identified by the Federal Emergency Management Agency or a successor thereto as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968, or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or if the Real Estate is located in such an area, Borrower has obtained and will maintain the insurance for the Property as specified in Section 2.3(a)(iv) hereof;

(2) The Property is served by all utilities in adequate supply required for the use thereof as herein contemplated;

(3) The Property is free from damage caused by fire or other casualty as of the date hereof;

(4) All streets necessary to serve the Property have been completed and are serviceable, and Borrower has unrestricted access from public roads to the Real Estate and the Improvements; and

(5) There is no condemnation or similar proceeding pending or threatened affecting any part of the Property.

(e) Zoning; Title Matters. Borrower will not, without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned, or delayed:

(1) initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law, or other public or private restriction limiting or defining the uses which may be made of the Property or any part thereof. In the event any governmental agency promulgates any change in the underlying zoning of the Property (a "Zoning Change") which would negatively impact Borrower's use of all or any portion of the Property, Borrower shall promptly notify Lender of same and use commercially reasonable efforts to contest such Zoning Change in good faith at Borrower's sole cost and expense. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a legal nonconforming

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use, Borrower will not cause or permit the legal nonconforming use to be discontinued or abandoned without the express written consent of Lender;

(2) modify, amend, or supplement any of the Permitted Encumbrances;

(3) impose any restrictive covenants or encumbrances upon the Property, or execute or file any subdivision plat affecting the Property, or consent to the annexation of the Property to any municipality; or

(4) permit or suffer the Property to be used by the public or any Person in such manner as might make possible a colorable claim of adverse usage or possession or of any implied dedication or easement. Borrower will perform and comply with, and cause the Property to be maintained, used, and operated in accordance with, the Permitted Encumbrances.

(f) Hazardous Substances; Asbestos.

(1) The Property is not now nor has it ever been listed as a Super Fund Site on the National Priorities List or similar state registry. Borrower has not dumped, stored, released, discharged, disposed of, manufactured, or used any Hazardous Substances (as hereinafter defined) at or about the Property except as disclosed to Lender in the environmental reports delivered to Lender (the "Environmental Reports") or otherwise in compliance with applicable Governmental Regulations. Borrower represents that, to the best of its knowledge after due and diligent inquiry: (i) except as disclosed to Lender in the Environmental Reports or otherwise in compliance with applicable Governmental Regulations, there has been no dumping, discharge, storage, or disposal of any Hazardous Substances upon the Property; (ii) the Property is in compliance with all Governmental Regulations with respect to Hazardous Substances; and (iii) there are no violations of any Governmental Regulations relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling or to any emissions, discharges, releases, or threatened releases of Hazardous Substances at or about the Property. Borrower further represents that, to the best of Borrower's knowledge after due and diligent inquiry, there are no claims or actions pending or threatened against Borrower or the Property by any governmental entity or agency or by any other Person relating to Hazardous Substances or pursuant to Governmental Regulations relating thereto ("Hazardous Substances Claims"). Except as may be permitted in compliance with applicable Governmental Regulations, Borrower covenants that the Property shall be kept free of Hazardous Substances, and is not and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, discharge, transfer, produce, or process Hazardous Substances, and Borrower shall not cause, and shall not permit any other party to cause, as a result of any intentional or unintentional act or omission on the part of Borrower, any other Borrower Party or any tenant, subtenant, or occupant, the installation of Hazardous Substances in the Property or a release of Hazardous Substances onto the Property or onto any other property or suffer the presence of Hazardous Substances on the Property. Borrower covenants that, to the best of Borrower's knowledge after due and diligent inquiry, except for matters disclosed to Lender in the Environmental Reports, there are not now and shall not be any underground storage tanks containing petroleum based products or other Hazardous Substances located on the Real Estate. Borrower shall comply with and ensure compliance by all tenants, subtenants, and occupants with all Governmental

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Regulations with respect to Hazardous Substances, and shall keep the Property free and clear of any Liens imposed pursuant to Governmental Regulations with respect to Hazardous Substances. In the event that Borrower receives any notice from any governmental agency or any tenant, subtenant, or occupant with regard to such Hazardous Substances, on, from or affecting the Property, or notice of any Hazardous Substances Claims, or if Borrower discovers any Hazardous Substances on, under or about the Property, Borrower shall immediately notify Lender in writing. Borrower shall promptly conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove, or otherwise respond to all Hazardous Substances on, from, or affecting the Property as required by all applicable Governmental Regulations, as determined by Lender in its sole judgment. Upon reasonable prior notice to Borrower, Lender and its employees and agents, at Borrower's cost and expense, may, from time to time (whether before or after the commencement of a foreclosure proceeding), during normal business hours (except if Lender, in its sole judgment, determines that there is an emergency, then at any time), enter and inspect the Property for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any Hazardous Substances into, onto, beneath or from the Property.

(2) Borrower hereby agrees to defend, indemnify, and hold Lender and J.P. Morgan Investment Management Inc. and each of their respective successors, assigns, partners, officers, directors, agents, attorneys, administrators, trustees, parents, subsidiaries, advisors, affiliates, beneficiaries, shareholders, representatives, servants, and employees (hereinafter collectively referred to as the "indemnitees") harmless from and against any and all Losses and Liabilities (as hereinafter defined) arising directly or indirectly from, out of or by reason of (A) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation, or the presence (either in the past, currently, or in the future) of any Hazardous Substance at, from, or affecting the Property, (B) Borrower's failure to comply or inadequate compliance with any Governmental Regulations relating to Hazardous Substances, (C) Lender's exercise of its rights under this Security Instrument, or (D) the breach of any covenants (or representation and warranty) of Borrower under this Section 2.2(f). Notwithstanding anything herein to the contrary, if Borrower is not providing defense and indemnification satisfactory to any Indemnitee, such Indemnitee, in its discretion, may engage its own attorneys to resist or defend, or assist therein with respect to any Losses and Liabilities, and Borrower shall pay, or, on demand, shall reimburse each Indemnitee for the payment of the fees and disbursements of said attorneys. Each Indemnitee shall have the right to settle such claim, action, or proceeding with respect to Losses and Liabilities, without Borrower's consent.

If Lender acquires title to the Property through foreclosure of this Security Instrument or deed-in-lieu of foreclosure or otherwise, the foregoing indemnity shall not apply to any Losses and Liabilities incurred by Lender as a direct result of affirmative actions (other than mere discovery) taken by Lender or taken by any third-party (other than Borrower or its affiliates, employees, contractors or agents) after Lender has acquired title to the Property, which direct affirmative actions are the sole, exclusive and direct cause of damage resulting from the initial introduction and initial release of Hazardous Substances at the Property after such acquisition of title; provided, however, the foregoing indemnity shall otherwise remain in full force and effect forever, including, without limitation, with respect to Hazardous Substances which are discovered at the Property after the date Lender or its successors or assigns acquires

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title to the Property, whether by entry of a judgment of foreclosure, exercise of any power of sale or delivery of a deed in lieu of foreclosure of this Security Instrument or otherwise, but which were not actually introduced at the Property after the date Lender acquires title to the Property, and with respect to the continuing migration or release of any Hazardous Substances previously introduced at the Property.

(3) As used herein the term “**Hazardous Substances**” means all materials and substances now or hereafter subject to any Governmental Regulations that pertain to hazardous substances or hazardous materials, including, without limitation, (i) all substances which are designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act (“**FWPCA**”), 33 U.S.C. § 1251 et seq., (ii) any element, compound, mixture, solution, or substance which is designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. § 9601 et seq., (iii) any hazardous waste having the characteristics which are identified under or listed pursuant to Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (iv) any toxic pollutant listed under Section 307(a) of FWPCA, (v) any hazardous air pollutant which is listed under Section 112 of the Clean Air Act, 42 U.S.C. § 7401 et seq., (vi) any imminently hazardous chemical substance or mixture with respect to which action has been taken pursuant to Section 7 of the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (vii) “hazardous materials” within the meaning of the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 et seq., (viii) petroleum or petroleum by-products, (ix) asbestos and any asbestos containing materials, (x) any radioactive material or substance, (xi) all toxic wastes, hazardous wastes, and hazardous substances as defined by, used in, controlled by, or subject to all implementing regulations adopted and publications promulgated pursuant to the foregoing statutes, (xii) bacteria, mold, or fungus, and (xiii) any other hazardous or toxic substance or pollutant identified in or regulated under any other applicable federal, state, or local Governmental Regulations (including, without limitation, all applicable state, regional, county, municipal, and local environmental, sanitation and health, conservation and pollution, waste disposal and control, clean air and water laws, codes, rules, and regulations to the extent applicable to the Property).

(4) As used herein the term “**Governmental Regulations**” means, collectively, the provisions of all permits, licenses, and authorizations, and all statutes, laws, (including any health or safety law governing Borrower, its business, operations, property, assets, or equipment, or the Property), ordinances, judgments, decrees, injunctions, rules, requirements, resolutions, policy statements, orders, and regulations of, any board, agency, commission, office, authority, department, bureau, or instrumentality of any nature whatsoever or any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or hereafter in existence (hereinafter, collectively referred to as a “**Governmental Authority**”) having jurisdiction over Borrower or the Property or any part thereof and interpretations thereof now or hereafter applicable to, or bearing on, the construction, development, maintenance, use, alteration, operation, sale, financing, or leasing of the Property or any part thereof, or any adjoining vaults, sidewalks, streets, ways, parking areas, or driveways, or the formation, existence, business, or good standing of Borrower, including, without limitation, those relating to land use, subdivision, zoning, occupational health and safety, earthquake hazard reduction, if any, building and fire codes, Access Laws (as hereinafter defined), pollution or protection of the environment, including, without limitation, laws relating

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to the ADA (as hereinafter defined), the Interstate Land Sales Full Disclosure Act 15 U.S.C. Section 1701, et seq. and all permits, licenses, authorizations, and regulations relating thereto, and all State of Illinois and City of Chicago rules, regulations, orders, guidelines and requirements, and laws relating to emissions, discharges, releases, or threatened releases of Hazardous Substances into the environment (including, ambient air, surface water, groundwater, land surface, or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, including, but not limited to, the Illinois Environmental Protection Act and Title 35 of the Illinois Administrative Code.

(5) Borrower shall notify Lender promptly upon becoming aware of any Environmental Condition (as hereinafter defined) and shall provide periodic written reports to Lender concerning the nature and extent of such Environmental Condition, the actions proposed to be taken by Borrower to remediate such Environmental Condition, the progress of Borrower in remediating such Environmental Condition, and the completion of such remediation, together with copies of any notices and other written communications concerning such Remediation between Borrower and any Governmental Authority. For purposes hereof, the term “**Environmental Condition**” shall mean (A) any presence of Hazardous Substances on the Property not expressly disclosed in the Environmental Reports or (B) any disposal, escape, seepage, leakage, spillage, discharge, emission, or release of any Hazardous Substance at, from, or affecting the Property in violation of any Governmental Regulations.

(6) The obligations of Borrower and the rights of Lender under this **Section 2.2(f)** are in addition to and not in substitution of the obligations of Guarantor under the Environmental Indemnity. Notwithstanding anything contained herein or in any other document or agreement which may be construed to the contrary, the obligations and indebtedness of Borrower, and the rights of Lender, under this **Section 2.2(f)** and any Governmental Regulation shall survive the repayment of the Obligations and the termination, release, satisfaction, cancellation, or assignment of the Note, this Security Instrument, and the other Loan Documents.

(g) **Operating Agreements.** Borrower has delivered to Lender true, correct, and complete executed copies of any and all operating agreements, reciprocal easement agreements, parking agreements, declarations, and service and maintenance contracts and (together with any and all amendments and supplements thereto and all agreements collateral therewith) (collectively, “**Operating Agreements**”). Borrower shall (i) perform or cause to be performed its obligations under all Operating Agreements, (ii) enforce with reasonable diligence, using Borrower’s good faith business judgment, the reasonable performance by each party to any Operating Agreement of all of such party’s obligations thereunder, and (iii) give Lender prompt written notice, and a copy, of any notice of default, event of default, termination, or cancellation sent or received by Borrower with respect to an Operating Agreement. Borrower shall not enter into any new Operating Agreements or permit the amendment, modification, termination, or surrender of any Operating Agreement without the prior written consent of Lender, provided, however, no such consent shall be required with regard to any Operating Agreements which are terminable on thirty (30) days’ notice, without penalty or other cost to Borrower or any successor or assignee. In addition, Borrower may enter into any contract for services to be performed at the Property without Lender’s prior written consent if (i) such contract is substantially in the form attached as **Exhibit D** to that certain Property Management Agreement between 1245 W.

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Fulton, LLC, a Delaware limited liability company, as owner, and Sterling Bay Property Management, LLC, as manager, for the property commonly known as 1237-1245 W. Fulton, Chicago, Illinois, or (ii) such contract: (x) contains a clause whereby the service provider agrees to indemnify, defend and hold Lender and its members, employees, agents and representatives harmless from and against all claims, actions, suits, proceedings, losses, damages, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and disbursements) arising out of, resulting from or in connection with the acts or omissions of the service provider and its directors, officers, employees, contractors, subcontractors and agents, which constitute negligence, fraud, breach of the service agreement, breach of fiduciary duty, willful, reckless or criminal misconduct or any actions of the service provider beyond the scope of authority conferred upon the service provider pursuant to the terms of the contract; (y) as to contracts with contractors, subcontractors and other persons performing work at the Property, such contract obligates contractors, subcontractors or other persons to maintain commercially reasonable insurance coverage, naming Lender and such other persons as Lender may specify, from time to time, as additional insureds as their interests may appear; and (z) is terminable without a termination fee, premium or penalty in the event that the Property is sold or the Property is foreclosed or transferred by deed in lieu of foreclosure. Notwithstanding anything contained in the immediately preceding sentence to the contrary, as to contracts with utility companies or other providers of electricity, gas or other utilities, such contracts shall be in the form customarily used by such utility companies or providers, as the case may be. Borrower shall provide copies of any new or amended Operating Agreements to Lender on a monthly basis.

(h) Management Agreements. Borrower has delivered to Lender a copy of any and all property management agreements, development management, construction, and/or brokerage agreements, if any, affecting the Property (collectively, the "Management Agreements"). Borrower shall not enter into any new Management Agreements or permit the amendment or modification of the Management Agreements, in each case, without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

2.3 Insurance.

(a) Coverages. Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the coverages set forth herein:

(i) comprehensive all risk insurance on the Improvements and the Personal Property, including windstorm coverage, in each case (A) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing either an agreed amount endorsement or a waiver of all co-insurance provisions; (C) providing for a deductible of not greater than \$10,000; (D) if any of the Improvements or the use of the Property shall at any time constitute a legal non-conforming structure or use, Borrower shall obtain an "Ordinance or Law Coverage" or "Enforcement" endorsement, which shall include sufficient coverage for (1) costs to comply with building and zoning codes and ordinances, (2) demolition costs, and (3) increased costs of

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construction; and (E) with respect to the construction of any new Improvements, written on a so-called builder's risk completed value form on a non-reporting basis;

(ii) business income insurance (A) with Lender included as a Loss Payee; (B) covering all risks required to be covered by the insurance provided for in Section 2.3(a)(i); (C) on an agreed value actual loss sustained basis in an amount equal to 100% of the projected gross income from the Property for a period of twelve (12) months; and (D) if the Borrower is required to obtain an "Ordinance or Law Coverage" or "Enforcement" endorsement pursuant to Section 2.3(a)(i)(D), coverage for the increased period of restoration. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period. All insurance proceeds payable to Lender pursuant to this Section 2.3(a)(ii) shall be held by Lender and shall be applied to the Obligations from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Obligations on the respective dates of payment provided for in the Note, this Security Instrument and the other Loan Documents, except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) Intentionally Omitted.

(iv) If any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", Borrower shall obtain flood hazard insurance in an amount equal to the lesser of (x) Full Replacement Cost and (y) the outstanding principal balance of the Loan, plus twelve (12) months of business income insurance consistent with the requirements of Section 2.3(a)(ii);

(v) terrorism insurance for Certified Acts of Terrorism (as such terms are defined in means the Terrorism Risk Insurance Program Reauthorization Act of 2007) in an amount equal to the Full Replacement Cost plus twelve (12) months of business income insurance consistent with the requirements of Section 2.3(a)(ii);

(vi) steam boiler and machinery breakdown direct damage insurance, together with full comprehensive coverage on a repair and replacement cost basis, for all boilers and machinery which form a part of the Property, plus twelve (12) months of business income insurance consistent with the requirements of Section 2.3(a)(ii);

(vii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the "occurrence" form with a combined single limit (including "umbrella" coverage in place) of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate with excess "umbrella coverage" in an amount not less than \$5,000,000; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; and (4) blanket contractual liability for all written and oral contracts, to the extent the same is available;

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(viii) at all times during which structural construction, material repairs or alterations are being made with respect to the Improvements, owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy;

(ix) steam boiler and machinery third-party liability coverage (if not covered under the comprehensive general liability policy) consistent with the requirements of **Section 2.3(a)(vii)**;

(x) if Borrower owns or operates motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits reasonably acceptable to Lender;

(xi) if Borrower has employees, workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 aggregate coverage for disease in respect of any work or operations on or about the Property, or in connection with the Property or its operation;

(xii) a blanket fidelity bond or "Employee Dishonesty" coverage insuring against losses resulting from dishonest or fraudulent acts committed by personnel retained in connection with the operation of the Property; and

(xiii) such other insurance and in such amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) **Blanket Insurance; Separate Insurance.** Borrower shall not obtain (i) any umbrella or blanket liability or casualty Policy unless, in each case, such Policy is approved in advance in writing by Lender and Lender's interest is included therein as provided in this Security Instrument and such Policy is issued by a Qualified Insurer, or (ii) separate insurance concurrent in form or contributing in the event of loss with that required in **Section 2.3(a)** to be furnished by, or which may be reasonably required to be furnished by, Borrower. In the event Borrower obtains separate insurance or an umbrella or a blanket Policy, Borrower shall notify Lender of the same and shall cause certified copies of each Policy to be delivered as required in **Section 2.3(e)**. Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of **Section 2.3(a)**.

(c) **Insurers.** All policies of insurance required under this **Section 2.3** (collectively, the "**Policies**" and each, individually, a "**Policy**") shall be issued by companies having a general policy rating of "A"-VIII or better by Best Key Rating Guide or otherwise approved by Lender and which are licensed to do business in the State of Illinois or with such other companies satisfactory to Lender, and shall be subject to the approval of Lender as to amount, content, form and expiration date; it being agreed that the approval by Lender of any

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insurer shall not be construed to be a representation, certification or warranty of its solvency, and no approval by Lender as to the amount, type and/or form of any insurance shall be construed to be a representation, certification or warranty of its sufficiency.

(d) Insured Parties. The insurance required under subsections (i) through (vi), inclusive, of **Section 2.3(a)** shall name Lender as loss payee under a Non-Contributory Standard Lender Clause and a Lender's Loss Payable Endorsement (Form 438 BDUNS) or an equivalent standard form attached to, or otherwise made a part of such Policy in favor of Lender, and provide that the insurers waive any and all subrogation rights against Lender. The insurance maintained under subsections (vii) through (x), inclusive, of **Section 2.3(a)** shall name Lender as an additional insured. It is agreed that, and each Policy shall expressly state that, losses shall be payable jointly to Lender and Borrower notwithstanding (1) any act or negligence of Borrower or its agents or employees which might, absent such agreement, result in a forfeiture of all or part of such insurance payment, (2) the occupation or use of the Property or any part thereof for purposes more hazardous than permitted by the terms of such Policy, (3) any foreclosure or other action or proceeding taken pursuant to this Security Instrument, or (4) any change in title to or ownership of the Property or any part thereof. All Policies shall include effective waivers by the insurer of all claims for insurance premiums against any loss payees, additional insureds and named insureds (other than Borrower).

(e) Delivery of Policies. If not previously delivered to Lender, Borrower shall deliver to Lender no later than thirty (30) days after the date hereof certified copies of the existing Policies assuming copy of policy is provided by insurance carrier providing the insurance coverage required under **Section 2.7(a)** marked "premium paid" or accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**") annually in advance. Borrower shall deliver to Lender copies of new or renewal Policies (also marked "premium paid" or accompanied by evidence satisfactory to Lender of payment of the Insurance Premiums due thereunder annually in advance) upon receipt from carrier, together with certificates of insurance therefor, setting forth, among other things, the amounts of insurance maintained, the risks covered by such insurance and the insurance company or companies which carry such insurance. If requested by Lender, Borrower shall furnish verification of the adequacy of such insurance by an independent insurance broker or appraiser acceptable to Lender. Under no circumstances shall Borrower be permitted to finance the payment of any portion of the Insurance Premiums.

(f) Failure to Deliver Policies. If after notice and not less than five (5) business days to cure Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect, together with interest at the Default Rate (as defined in the Note) from the date incurred by Lender, shall be secured by this Security Instrument and payable by Borrower to Lender immediately upon Lender's demand.

(g) Transfer of Title. In the event of foreclosure of this Security Instrument or other transfer of title or assignment of the Property, by reason of a default hereunder, in

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extinguishment, in whole or in part, of the Obligations, all right, title and interest of Borrower in and to all Policies required under this **Section 2.3** or otherwise then in force with respect to the Property and all proceeds payable thereunder and unearned Insurance Premiums thereon shall immediately vest in the purchaser or other transferee of the Property.

2.4 Damage and Destruction.

(a) Borrower's Obligations. In the event of any damage to or loss or destruction of the Property that shall require \$500,000 or more, in the aggregate, to repair or restore, Borrower shall (i) promptly notify Lender of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property, and (ii) unless otherwise instructed by Lender, promptly, regardless whether the insurance proceeds, if any, shall be sufficient for the purpose, commence and diligently pursue to completion the restoration, replacement and rebuilding of the Property, as nearly as possible to their value, condition and character immediately prior to such damage, loss or destruction in a good and workmanlike manner and in accordance with all applicable Governmental Regulations and insurance requirements and recommendations and otherwise pursuant to plans and specifications approved by Lender and developed in connection with such restoration.

(b) Lender's Rights; Application of Proceeds. In the event that any portion of the Property is damaged, lost, or destroyed (a "**Casualty**"), and such Casualty is covered, in whole or in part, by insurance described in **Section 2.3**, then, (i) Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower, and is hereby authorized and empowered by Borrower to settle, adjust or compromise any claims for a Casualty thereunder, (ii) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Lender, and (iii) Lender shall apply the insurance proceeds, first, to reimburse Lender for all costs and expenses, including, without limitation, adjustors' and attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and, second, the remainder of such proceeds shall be applied, at Lender's option, (x) in payment of all or any part of the Obligations, in the order and manner determined by Lender (provided that to the extent that any Obligations shall remain outstanding after such application, such unpaid Obligations shall continue in full force and effect and Borrower shall not be excused in the payment thereof), (y) to the cure of any then current default hereunder, or (z) to the restoration, replacement, or rebuilding, in whole or in part, of the portion of the Property subject to a Casualty, provided that any insurance proceeds held by Lender to be applied to the restoration, replacement, or rebuilding of the Property shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Borrower with such provisions and requirements as reasonably may be imposed by Lender. (Borrower acknowledges and agrees that Lender shall have sole and exclusive dominion and control over such proceeds.) Notwithstanding the foregoing, and provided no Event of Default shall have occurred and be continuing under this Security Instrument, the Note or any of the other Loan Documents, Borrower may adjust losses aggregating not in excess of \$500,000 per occurrence with respect to any casualty which is a Minor Casualty (as hereinafter defined), provided such adjustment is carried out in a competent and timely manner with respect to restoration of the Property; provided further, however, that, in the event no Event of Default shall have occurred and be continuing, (A) insurance proceeds adjusted by Borrower as permitted pursuant to this sentence shall be used for the restoration of the Property (it being understood and agreed that (x) Borrower

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shall cause such restoration to be performed in a good and workmanlike manner and in accordance with all applicable Governmental Regulations and insurance company requirements and recommendations and otherwise pursuant to plans and specifications developed for such restoration, (y) Borrower shall obtain and deliver to Lender a copy of all waivers of liens for all restoration work, and (z) upon Lender's request, all construction and trade contracts and contracts for material, equipment, supplies, and labor shall be collaterally assigned to Lender and Borrower shall cause the general contractor to cause all other parties thereto to agree to perform for the benefit of Lender, at the request of Lender, provided Lender shall pay them for their respective services), and (B) Lender agrees to make the proceeds (less all reimbursable costs and expenses set forth in clause (iii) above) received in connection with a Minor Casualty available for the restoration of the Property on the terms and conditions hereinafter set forth.

For the purpose of this Security Instrument, a "**Minor Casualty**" shall mean any fire, earthquake, or other catastrophe or insured event that (I) does not result in an Environmental Condition and (II) does not render unrepairable the Property. In addition, Lender shall not be required to advance any proceeds for the restoration of the Property, even if a Minor Casualty, unless Borrower shall deliver to Lender, and Lender shall approve, in its reasonable discretion, in writing, the plans, specifications and construction budget for the repair and/or restoration of the Property and Lender shall determine that the Improvements located on the Real Estate can be developed so as to constitute a commercially viable building of the same quality and use and having the same usable square footage as contemplated immediately before the fire, other catastrophe or insured event for the amounts set forth in the construction budget. Upon receipt by Lender of proceeds from a Minor Casualty or if Lender, in its reasonable discretion, shall otherwise agree to make insurance proceeds from a non-Minor Casualty available for repair and restoration of the Property, the following shall apply.

(i) The actual out-of-pocket costs to Lender (including, without limitation, legal fees, appraisal fees, engineering surveys, consultants' and architects' charges and adjusters' fees) incurred in settling or adjusting any claim and in reviewing and approving all plans (collectively, "**Lender's Costs**") shall first be paid to Lender out of the proceeds of the insurance. Lender shall have the right, but not the obligation, to retain an architectural or engineering consultant at any time and from time to time, at Borrower's sole cost and expense, to examine plans, specifications, change orders and budgets with respect to such repair or restoration, the progress of same and to render reports and conduct site inspections with respect to the foregoing;

(ii) The contractor and major subcontractors engaged to perform the restoration work shall be subject to the prior written approval of Lender, such approval not to be unreasonably withheld, conditioned or delayed;

(iii) At Lender's request, the general contractor shall deliver a performance bond in respect of the work to be performed at the Property or a guarantee of such work in form, scope and substance acceptable to Lender from an entity acceptable to Lender or other substitute for such performance bond or guarantee acceptable to Lender in its sole discretion and the construction contract shall contain a time of the essence completion date satisfactory to Lender. All construction and trade contracts and contracts for material, equipment, supplies and labor shall be collaterally assigned to Lender and Borrower shall cause

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the general contractor to cause all other parties thereto to agree to perform for the benefit of Lender, at the request of Lender, provided Lender shall pay them for their respective services;

(iv) At Lender's request, Borrower shall procure and deliver to Lender, from a licensed architect selected by Borrower and approved by Lender, a certified statement setting forth the estimated cost of restoration and that the proceeds of such insurance are, in such architect's reasonable estimation (after deducting all of the Lender's Costs and such architect's fees and all other estimated costs for architects, plans, permits, and approvals and other so-called "soft costs"), sufficient to perform the repair and/or restoration of the Property using similar quality materials as those presently installed therein. If such proceeds are insufficient, and if Lender nevertheless agrees to make such proceeds available for repair and/or restoration, Lender may require Borrower to deposit with Lender the amount of any such deficiency, which funds shall be disbursed first in payment of such work. In addition, if thereafter it appears, at any time and from time to time, that the remaining proceeds shall be insufficient to pay for the remaining costs of construction, then Borrower shall deposit the amount of such deficiency (from time to time determined) with Lender for use as aforesaid;

(v) All proceeds allocated for repair and/or restoration shall be disbursed by Lender (not more frequently than monthly) based on the percentage of the work completed against a certification therefor by the aforesaid architect, invoices for the work to be paid for, waivers of lien for all prior work for which a payment was made and a title endorsement for the Property showing no additional exceptions to title of the Property other than the Permitted Encumbrances. In addition, prior to any disbursement of proceeds, Borrower must certify to Lender that (i) Borrower incurred the costs in the amount of the requested advance (as evidenced by a draw request signed by the general contractor and/or paid receipts), (ii) such costs have not been the basis for any previous requisition, (iii) there has been no change in Borrower's financial condition (other than due to the applicable casualty) which would have an adverse effect, as determined by Lender, on the ability of Borrower to complete the repairs and/or restorations in question in accordance with the terms of this Security Instrument, and (iv) Borrower has no defenses, counterclaims, or offsets to its obligations under the Loan Documents and that there exists no Event of Default under the Loan Documents or event which with the giving of notice or passage of time, or both, would constitute an Event of Default under the Loan Documents (other than due to the applicable casualty). Lender shall be entitled to retain up to ten percent (10%) of the amount of each such requisition unless the amount of the requisition already reflects ten percent (10%) retainage by Borrower. Such retainage shall be paid on a trade by trade basis upon final completion of the work by the applicable trade free of liens. If Lender shall have engaged an architectural or engineering consultant, then, as an additional precondition to any disbursement of proceeds hereunder, such consultant shall have approved, in writing, the progress of the work, conformity of the work with the approved plans and specifications and the quality and percentage of the work completed. For purposes of this provision, all work shall be deemed completed and all retainage shall be released upon delivery to Lender of the following, all in form and substance satisfactory to Lender: (x) evidence that all applicable licenses, permits, and approvals (including, without limitation, certificates of occupancy) related to the work for which payment of the retainage therefor is sought have been obtained, (y) the certifications of Borrower's architect, the general contractor and Lender's consulting architect or engineering consultant, if any, that such work has been completed in accordance with the approved plans and specifications (and approved change orders) therefor,

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and (z) all of the certificates, statements, waivers, title endorsements and other proofs required hereunder as a condition to any disbursement;

(vi) No Event of Default or event which with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder or under any other Loan Document shall exist; and

(vii) All work shall be performed in a good and workmanlike manner and in accordance with all applicable Governmental Regulations and insurance company requirements and recommendations and otherwise pursuant to plans and specifications approved by the aforesaid architect.

(c) Not Trust Funds. Subject to Borrower's right to adjust losses aggregating not in excess of \$500,000 per occurrence as described in **Section 2.4(b)** above, in the event that Borrower shall have received all or any portion of such insurance proceeds or any other proceeds in respect of such damage or destruction, Borrower, upon demand from Lender, shall pay to Lender an amount equal to the amount so received by Borrower, to be applied as Lender shall have the right pursuant to clause (iii) of **Section 2.4(b)**. Notwithstanding anything herein or at law or in equity to the contrary, none of the insurance proceeds or payments in lieu thereof paid to Lender as herein provided shall be deemed trust funds and Lender shall be entitled to dispose of such proceeds as provided in this **Section 2.4**. Borrower expressly assumes all risk of loss, including a decrease in the use, enjoyment or value, of the Property from any casualty whatsoever, whether or not insurable or insured against.

(d) Effect on the Obligations. Notwithstanding any fire or other casualty referred to in this **Section 2.4** causing injury to, or decrease in value of, the Property, or any interest therein, Borrower shall continue to pay and perform the Obligations as provided herein. Any reduction in the Obligations resulting from an application of insurance proceeds shall be deemed to take effect only on the date of receipt by Lender of such insurance proceeds and application against the Obligations, provided that if prior to the receipt by Lender of such insurance proceeds the Property shall have been sold on foreclosure of this Security Instrument, judicial or otherwise (including, without limitation, by power of sale), or shall have been transferred by deed in lieu of foreclosure of this Security Instrument, Lender shall have the right to receive the aforesaid insurance proceeds to the extent of any deficiency found to be due upon such sale or transfer, with legal interest thereon together with attorneys' fees and disbursements incurred by Lender in connection with the collection thereof. The provisions of this **Section 2.4(d)** shall survive the repayment, release, satisfaction and termination of this Security Instrument.

2.5 Condemnation.

(a) Borrower's Obligations; Proceedings. Borrower, promptly upon obtaining knowledge of any pending or threatened institution of any proceedings for the condemnation of the Property, or any part or interest therein or of any right of eminent domain, or of any other proceedings arising out of injury or damage to or decrease in the value of the Property (including a change in grade of any street), or any part thereof or interest therein (a "**Taking**"), will notify Lender of the threat or pendency thereof. Lender may participate in any such proceedings, at

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Borrower's sole cost and expense, and Borrower from time to time will execute and deliver to Lender all instruments requested by Lender or as may be required to permit such participation. Borrower shall, at its expense, diligently prosecute any proceedings involving a Taking, shall deliver to Lender copies of all papers served in connection therewith and shall consult and cooperate with Lender, its attorneys and agents, in the carrying on and defense of any such proceedings; provided that no settlement of any such proceeding shall be made by Borrower without Lender's prior written consent.

(b) Lender's Rights to Awards. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property (an "**Award**" or "**Awards**") are hereby assigned and shall be paid to Lender. Borrower agrees to execute and deliver such further assignments thereof as Lender may request and authorizes Lender to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such Award. Lender shall in no event be liable or responsible for failure to collect, or exercise diligence in the collection of, any of the same.

(c) Application of Awards. Lender shall have the right to apply any Awards first, to reimburse Lender for all costs and expenses, including, without limitation, attorneys' fees and disbursements incurred in connection with the proceeding in question or the collection of such amounts, and, second, the remainder thereof as provided in **Section 2.4(b)** for insurance proceeds held by Lender. Notwithstanding the foregoing, and provided no Event of Default shall have occurred and be continuing under this Security Instrument, the Note or any of the other Loan Documents, Borrower may adjust Awards that shall not exceed \$500,000, in the aggregate, per occurrence, with respect to a Minor Taking (as hereinafter defined), provided such adjustment is carried out in a competent and timely manner with respect to restorations of the Property; provided further, however, that, in the event no Event of Default shall have occurred and be continuing, Awards adjusted by Borrower as permitted pursuant to this sentence shall be used for the restoration of the Property (it being understood and agreed that (x) Borrower shall cause such restoration to be performed in a good and workmanlike manner and in accordance with all applicable Governmental Regulations and insurance company requirements and recommendations and otherwise pursuant to plans and specifications developed for such restoration, (y) Borrower shall obtain and deliver to Lender a copy of all waivers of liens for all restoration work, and (z) upon Lender's request, all construction and trade contracts and contracts for material, equipment, supplies and labor shall be collaterally assigned to Lender and Borrower shall cause the general contractor to cause all other parties thereto to agree to perform for the benefit of Lender, at the request of Lender, provided Lender shall pay them for their respective services). For the purpose of this Security Instrument, a "**Minor Taking**" shall mean any Taking that does not unduly restrict or limit access to, or use of, the Property. In addition, Lender shall not be required to advance any Awards for the restoration of the Property unless Borrower shall deliver to Lender, and Lender shall approve, in its reasonable discretion, in writing, the plans, specifications and construction budget for the restoration of the Property and Lender shall determine that the Improvements located on the Real Estate can be developed so as to constitute a commercially viable development project of the same quality and having the same usable square footage as contemplated immediately before the Taking for the amounts set forth in the construction budget. Upon receipt by Lender of an Award from a Minor Taking and/or if Lender, in its reasonable discretion, shall otherwise elect to make such Awards available for the restoration of the Property, the following shall apply:

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(i) The actual out-of-pocket costs to Lender (including, without limitation, legal fees, appraisal fees, engineering surveys, consultants' and architects' charges, and adjustors' fees) reasonably incurred in connection with the recovery of the Award and in reviewing and approving all plans (collectively, "**Lender's Award Costs**") shall first be paid to Lender out of the Award. Lender shall have the right, but not the obligation, to retain an architectural or engineering consultant at any time and from time to time, at Borrower's sole cost and expense, to examine plans, specifications, change orders and budgets with respect to such restoration, the progress of same and to render reports and conduct site inspections with respect to the foregoing;

(ii) The contractor and major subcontractors engaged to perform the restoration work shall be subject to the prior written approval of Lender, such approval not to be unreasonably withheld, conditioned or delayed;

(iii) If requested by Lender, the general contractor shall deliver a performance bond in respect of the work to be performed at the Property or a guarantee of such work in form, scope and substance reasonably acceptable to Lender from an entity reasonably acceptable to Lender or other substitute for such performance bond or guarantee acceptable to Lender in its sole discretion and the construction contract shall contain a time of the essence completion date satisfactory to Lender. All construction and trade contracts and contracts for material, equipment, supplies and labor shall be collaterally assigned to Lender and Borrower shall cause the general contractor to cause all other parties thereto to agree to perform for the benefit of Lender, at the request of Lender, provided Lender shall pay them for their respective services;

(iv) If requested by Lender, Borrower shall procure and deliver to Lender, from a licensed architect selected by Borrower and approved by Lender, a certified statement setting forth the estimated cost of restoration and that the Award, in such architect's reasonable estimation, is (after deducting all of the Lender's Award Costs and such architect's fees and all other estimated costs for architects, plans, permits and approvals and other so-called "soft costs") sufficient to perform the restoration of the Property using similar quality materials as those presently installed therein. If such Award is insufficient, and if Lender nevertheless agrees to make such Award available for the restoration, Lender may require Borrower to deposit with Lender the amount of any such deficiency, which funds shall be disbursed first in payment of such work. In addition, if thereafter it appears, at any time and from time to time, that the remaining portion of the Award shall be insufficient to pay for the remaining costs of construction, then Borrower shall deposit the amount of such deficiency (from time to time determined) with Lender for use as aforesaid;

(v) All Awards allocated for restoration shall be disbursed by Lender (not more frequently than monthly) based on the percentage of the work completed against a certification therefor by the aforesaid architect, invoices for the work to be paid for, waivers of lien for all prior work for which a payment was made and a title endorsement for the Property showing no additional exceptions to title of the Property other than the Permitted Encumbrances. In addition, prior to any disbursement from the Award, Borrower must certify to Lender that (i) Borrower incurred the costs in the amount of the requested advance (as evidenced by a draw request signed by the general contractor and/or paid receipts), (ii) such costs have not been the

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basis for any previous requisition, (iii) there has been no adverse change in Borrower's financial condition which would have an adverse effect, as determined by Lender, on the ability of Borrower to complete the repairs and/or restorations in question in accordance with the terms of this Security Instrument, and (iv) Borrower has no defenses, counterclaims or offsets to its obligations under the Loan Documents and that there exists no Event of Default under the Loan Documents or event which with the giving of notice or passage of time, or both, would constitute an Event of Default under the Loan Documents. Lender shall be entitled to retain up to ten percent (10%) of the amount of each such requisition unless the amount of the requisition already reflects ten percent (10%) retainage by Borrower. Such retainage shall be paid on a trade by trade basis upon final completion of the work by the applicable trade free of liens. If Lender shall have engaged an architectural or engineering consultant, then, as an additional precondition to any disbursement from the Award hereunder, such consultant shall have approved, in writing, the progress of the work, conformity of the work with the approved plans and specifications and the quality and percentage of the work completed. For purposes of this provision, all work shall be deemed completed and all retainage shall be released upon delivery to Lender of the following, all in form and substance satisfactory to Lender: (x) evidence that all applicable licenses, permits and approvals (including, without limitation, certificates of occupancy) related to the work for which payment of the retainage therefor is sought have been obtained, (y) the certifications of Borrower's architect, the general contractor and Lender's consulting architect or engineering consultant, if any, that such work has been completed in accordance with the approved plans and specifications (and approved change orders) therefor, and (z) all of the certificates, statements, waivers, title endorsements, and other proofs required hereunder as a condition to any disbursement;

(vi) No Event of Default or event which with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder or under any Loan Document shall exist; and

(vii) All work shall be performed in a good and workmanlike manner and in accordance with all Governmental Regulations and insurance company requirements and recommendations and otherwise pursuant to plans and specifications approved by the aforesaid architect.

(d) Not Trust Funds. In the event that Borrower shall have received all or any portion of such Award, Borrower, upon demand from Lender, shall pay to Lender an amount equal to the amount so received by Borrower. Notwithstanding anything herein or at law or in equity to the contrary, none of the Awards paid to, or received by, Lender as herein provided shall be deemed trust funds and Lender shall be entitled to dispose of such proceeds as provided in this **Section 2.5**. Borrower expressly assumes all risk of loss, including a decrease in the use, enjoyment or value, of the Property from any Taking whatsoever.

(e) Effect on the Obligations. Notwithstanding any Taking, Borrower shall continue to pay and perform the Obligations as provided herein. Any reduction in the Obligations resulting from an application of Awards shall be deemed to take effect only on the date of receipt by Lender of such Awards and application against the Obligations, provided that if prior to the receipt by Lender of such Awards the Property shall have been sold on foreclosure of this Security Instrument, judicial or otherwise (including, without limitation, by power of

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sale), or shall have been transferred by deed in lieu of foreclosure of this Security Instrument, Lender shall have the right to receive the same to the extent of any deficiency found to be due upon such sale or transfer, with legal interest thereon together with attorneys' fees and disbursements incurred by Lender in connection with the collection thereof. The provisions of this **Section 2.5** shall survive the repayment, release, satisfaction and termination of this Security Instrument.

2.6 Liens and Liabilities.

(a) Discharge of Liens. Borrower will pay, bond, or otherwise discharge, from time to time when the same shall become due (subject to the right to contest the same under Section 2.7(d) below), all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a Lien on the Property or on the revenues, rents, issues, income, or profits arising therefrom and, in general, Borrower shall do, or cause to be done, at Borrower's sole cost and expense, everything necessary to fully preserve the lien and priority of this Security Instrument. For the purposes hereof, the term "**Lien**" (or "**Liens**" as the case may be) shall mean any lien, mortgage, pledge, security interest, financing statement, or encumbrance of any kind (including any conditional sale or other title retention agreement or any lease in the nature thereof, but excluding Permitted Encumbrances) and any agreement to give or refrain from giving any lien, mortgage, pledge, security interest, or other encumbrance of any kind.

(b) Other Debt/Creation of Liens. Borrower will not, without Lender's consent, incur any other debt secured by all or any portion of the Property, and will not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any Lien against or covering the Property, which is prior to, on a parity with, or subordinate to the lien of this Security Instrument. If any of the foregoing becomes attached to the Property without such consent, Borrower will immediately cause the same to be discharged and released.

(c) No Consent. Nothing in the Loan Documents shall be deemed or construed in any way as constituting the consent or request by Lender, express or implied, to any contractor, subcontractor, laborer, mechanic, or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration, or repair of the Property. Borrower further agrees that Lender does not stand in any fiduciary relationship to Borrower.

2.7 Taxes and Other Charges.

(a) Taxes on the Property. Borrower will pay prior to delinquency and before any penalty, interest, or cost for non-payment thereof may be added thereto, (i) all taxes, assessments, water and sewer rents, rates, charges and assessments, levies, inspection and license fees, and other governmental and quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, heretofore or hereafter assessed, levied, or otherwise imposed against or upon, or which may become a Lien upon, the Property or any portion thereof, including, without limitation, any taxes with respect to the Rents and Profits or arising in respect of the occupancy, use or possession of the Real Estate and Improvements, (ii) income taxes,

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franchise taxes, and other taxes owing by Borrower the non-payment of which would result in a Lien against the Property or otherwise diminish or impair the security of this Security Instrument and (iii) all taxes, charges, filing, registration, and recording fees, excises and levies imposed upon Lender by reason of or in connection with the execution, delivery, and/or recording of the Loan Documents or the ownership of this Security Instrument or any security instrument supplemental hereto, any security instrument with respect to any equipment or any instrument of further assurance, and all corporate, stamp and other taxes required to be paid in connection with the Obligations (excluding, however, income taxes of Lender) (collectively, "**Impositions**"). Borrower will also pay any penalty, interest or cost for non-payment of Impositions which may become due and payable, and such penalties, interest, or costs shall be included within the term Impositions.

(b) **Receipts.** Unless Borrower is making monthly deposits pursuant to **Section 2.8** or unless Lender otherwise directs, Borrower will furnish to Lender upon Lender's request, written proof of payment of the Impositions at the time such payment is made, and thereafter, upon Borrower's receipt, furnish to Lender validated receipts showing payment in full of all Impositions.

(c) **Additional Taxes.** In the event of the enactment of or change in (including a change in interpretation of) any applicable Governmental Regulation (i) deducting or allowing Borrower to deduct from the value of the Property for the purpose of taxation any Lien or security interest thereon, or (ii) imposing, modifying, or deeming applicable any reserve or special requirement against deposits of Lender, or (iii) subjecting Lender to any tax or changing in any way any Governmental Regulation for the taxation of mortgages, deeds of trust, deeds to secure debt or security agreements or other liens or debts secured thereby, the interest of the grantee, mortgagee, Lender, trustee, or secured party in the property covered thereby, or the manner of collection of such taxes, in each such case, so as to affect this Security Instrument, the Obligations or Lender, and the result is to increase the taxes imposed upon or the cost to Lender or to reduce the amount of any payments receivable hereunder, then, and in any such event, Borrower shall, within fifteen (15) days after demand by Lender, pay to Lender additional amounts to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful or would constitute usury or render the Obligations wholly or partially usurious under applicable law, then Lender may, at its option, declare the Obligations immediately due and payable or require Borrower to pay or reimburse Lender for payment of the lawful and non-usurious portion thereof.

(d) **Contest of Certain Claims.** Notwithstanding anything to the contrary contained in **Section 2.6** or **Section 2.7** hereof, Borrower may, to the extent and in the manner not prohibited by Governmental Regulations, at Borrower's sole cost and expense, contest Governmental Regulations, Impositions, or any Lien or other claim that can lead to a Lien against the Property, and the failure of Borrower to pay the contested Imposition or Lien or other claim that may result in a Lien against the Property, pending such contest, shall not be or become a default, provided that (A) Borrower shall notify Lender of Borrower's intent to contest such payment as soon as practicable prior to commencing the contest; (B) Borrower shall deposit such payments or post such security as may be required by Governmental Regulation in connection with such contest; (C) Borrower shall furnish to Lender a cash deposit reasonably satisfactory to Lender, or an indemnity bond reasonably satisfactory to Lender, with a surety reasonably

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satisfactory to Lender, to assure payment (including, without limitation, interest, fines, and penalties) of, and/or compliance with, the matters under contest and/or to prevent any sale, loss, or forfeiture of all or any part of the Property; (D) Borrower diligently and in good faith pursues such contest by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and/or the sale, loss or forfeiture of all or any part of the Property to satisfy the same; (E) Borrower, promptly upon final determination thereof, shall pay the amount of any such claim so determined, together with all costs, fines, interest, and penalties payable in connection therewith (applying, in the first instance and to the extent available, the deposits referenced in clauses (B) and (C) above); (F) the failure to comply with the applicable Governmental Regulations or to make payment of any Imposition or other claim shall not subject Lender to any civil or criminal liability or to any Losses and Liabilities; and (G) such contest shall not otherwise interfere with the payment of any amounts required to be paid under this Security Instrument or any of the other Loan Documents or the satisfaction of any other Obligations.

2.8 Tax and Insurance Deposits.

(a) Amount of Deposits. At Lender's election, Lender may require at any time during the term of the Loan, at Borrower's expense, that Borrower deposit with Lender, or any servicer or financial institution that Lender may from time to time designate (collectively, the "**Depository**"), into an account in the name of Lender, monthly, one-twelfth (1/12th) of the annual Insurance Premiums for insurance and one-twelfth (1/12th) of the amount of all Impositions estimated by Lender to be due for the immediately succeeding calendar year. In addition, if required by Lender, Borrower shall also deposit with the Depository a sum of money which, together with the aforesaid monthly installments, will be sufficient to make each of said payments of Impositions and Insurance Premiums at least sixty (60) days before such payments are due. All such funds shall be held in an interest-bearing account. All interest earned on the funds held by the Depository, less Depository's administrative charges, shall be credited to, and remain in an account with the Depository, but the amount thereof shall be credited against future deposit obligations under this **Section 2.8**. Lender shall bear no liability for the failure to achieve any particular rate of return or yield on funds held by the Depository. If the amount of any such payments is not ascertainable at the time any such deposit is required to be made, the deposit shall be made on the basis of Lender's estimate thereof, and, when such amount is fixed for the then-current year, Borrower shall promptly deposit any deficiency with the Depository. Lender shall have the right to require Borrower to obtain, at Borrower's expense, a tax service reporting contract for the term of the Loan issued by a tax reporting agency acceptable to Lender. By its acceptance of this Security Instrument, Lender shall be deemed to acknowledge and agree that Borrower is not currently required to make the deposits pursuant to this **Section 2.8**, provided, however, that Lender retains the right to require Borrower to make the deposits specified herein in the future.

(b) Use of Deposits. All funds so deposited shall, until so applied by the Depository for the payment of Impositions or Insurance Premiums, constitute additional security for the Obligations (and Borrower hereby grants to Lender a first priority security interest in such funds), and may be commingled with other funds of the Depository. If an Event of Default shall have occurred and be continuing hereunder, or if the Obligations shall be accelerated as herein provided, all funds so deposited may, at Lender's option, be applied to the Obligations in the

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order determined by Lender or to cure said Event of Default or as provided in this Section 2.8. In addition, if an Event of Default shall have occurred and be continuing hereunder, Borrower shall have no further right to require that the Depository hold funds hereunder in an interest-bearing account.

(c) Transfer of Security Instrument. Upon an assignment or other transfer of this Security Instrument, the Depository shall have the right to pay over the balance of such deposits in its possession to the assignee or other successor, and the Depository shall thereupon be completely released from all liability with respect to such deposits and Borrower or the owner of the Property shall look solely to the assignee or transferee with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee or transferee.

(d) Transfer of the Property. Subject to Article V hereof, transfer of record title to the Property shall automatically transfer to the new owner all of Borrower's beneficial interest in any deposits under this Section 2.8, subject to the rights of Lender as provided herein. Upon full payment and satisfaction of this Security Instrument or, at Lender's option, at any prior time, the balance of amounts deposited in the Depository's possession shall be paid over to the record owner of the Property, and no other party shall have any right or claim thereto in any event.

2.9 Inspection. Borrower will allow Lender and its authorized representatives to enter upon and inspect the Property, and/or the books, records, and accounts of Borrower at the office of Borrower or other Person maintaining such books, records, and accounts (and in connection therewith, to make copies or extracts thereof as Lender shall desire), upon prior notice at all times during regular business hours and will assist Lender and such representatives in effecting said inspection.

2.10 Records; Reports and Audits; Maintenance of Records.

(a) Borrower shall keep and maintain or will cause to be kept and maintained on a calendar year basis, on a comprehensive basis of accounting used for U.S. federal income tax purposes consistently applied, proper and accurate books, records, and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property or in connection with any services, equipment, or furnishings provided in connection with the operation of the Property, whether such income or expense be realized by Borrower or by any other Person whatsoever excepting tenants unrelated to and unaffiliated with Borrower who have leased from Borrower portions of the Property for the purpose of occupying the same.

(b) Within ninety (90) days following the end of each calendar year, Borrower shall furnish Lender: (i) unaudited income statements, balance sheets, and cash flow statements of Borrower and the Property which shall be accompanied by a certification from Sterling Bay Capital Management, LLC, to the effect that the same have been prepared on a comprehensive basis of accounting used for U.S. federal income tax purposes consistently applied, and (ii) detailed operating and capital budgets with respect to the Property for the following year.

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(c) Within thirty (30) days following the end of each quarter, Borrower shall furnish Lender a quarterly unaudited financial statement which shall be certified by Sterling Bay Capital Management, LLC, and which shall include a balance sheet, an income statement, a statement of cash flows, a variance explanation, bank reconciliations and bank statements for the previous quarter.

(d) Within thirty (30) days following the date that Borrower is required to file any state or federal income tax returns, Borrower shall deliver to Lender copies of such returns as filed with the applicable taxing authorities together with evidence of the payment of all federal and state income taxes required to be paid by Borrower.

(e) Within ten (10) business days after Lender's request, Borrower shall deliver to Lender such additional financial information concerning Borrower, any Guarantor and/or the Property as may be reasonably requested by Lender, including, without limitation, a current budget for the Property.

2.11 Borrower's Certificates. Borrower, within ten (10) business days after Lender's request, shall furnish to Lender a written statement (a "**Borrower's Certificate**"), duly acknowledged, certifying to Lender and/or any proposed assignee of this Security Instrument or other prospective holder of the Loan or any portion thereof or interest therein, as to (a) the amount of the Obligations then owing under this Security Instrument, (b) the terms of payment and maturity date of the Obligations, (c) the date to which interest has been paid under the Note, (d) whether any offsets or defenses exist against the Obligations and, if any are alleged to exist, a detailed description thereof, and (e) as to any other matters reasonably requested by Lender.

2.12 Security Interest.

(a) This Security Instrument is also intended to, among other things, encumber and create a security interest in, and Borrower hereby unconditionally and irrevocably grants, bargains, assigns, conveys, pledges, mortgages, transfers, sets over, and confirms unto Lender and hereby grants to Lender a security interest in, all fixtures, chattels, accounts, deposit accounts, equipment, inventory, contract rights, general intangibles, and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "**Collateral**"), whether or not the same shall be attached to the Real Estate or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Real Estate and the Improvements. The foregoing security interest shall also cover Borrower's leasehold interest in any of the foregoing property which is leased by Borrower. Notwithstanding the foregoing, all of the foregoing property shall be owned by Borrower and no leasing or installment sales or other financing or title retention agreement in connection therewith, shall be permitted without the prior written approval of Lender. Borrower shall, from time to time upon the request of Lender, supply Lender with a current inventory of all of the property in which Lender is granted a security interest hereunder, in such detail as Lender may reasonably require. Borrower shall not, without the prior written consent of Lender, remove from the Real Estate or the Improvements any of the Collateral subject to the lien or security interest of this Security Instrument, except in the ordinary course of operating the Property and

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except such as is replaced by an article of equal suitability and value as above provided, owned by Borrower free and clear of any lien or security interest except that created by this Security Instrument and the other Loan Documents and except as otherwise expressly permitted by the terms of this Security Instrument. Other than proceeds of the Collateral, all of the Collateral shall be kept at the location of the Real Estate, except as otherwise required by the terms of the Loan Documents. Borrower shall not use any of the Collateral in violation of any Governmental Regulations.

(b) As additional security for the payment and performance by Borrower of all duties, responsibilities and obligations under the Note and the other Loan Documents, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, mortgages, transfers, delivers, deposits, sets over, and confirms unto Lender, and hereby grants to Lender a security interest in, (i) the amounts deposited with the Depository pursuant to the terms of **Section 2.8** and **Section 2.14** hereof (collectively, the “**Reserves**”), (ii) the accounts into which the Reserves have been deposited, (iii) all insurance of said accounts, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or hereafter evidencing the Reserves or such accounts, (viii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom), and (ix) all proceeds of the foregoing. Borrower hereby authorizes and consents to the account or accounts into which the Reserves have been deposited being held by Depository and hereby acknowledges and agrees that Lender shall have sole and exclusive dominion and control over said account or accounts. Notice of the assignment and security interest granted to Lender herein may be delivered by Lender at any time to the Depository wherein the Reserves have been established, and Lender shall have possession of all passbooks or other evidences of such accounts. Borrower hereby assumes all risk of loss with respect to amounts on deposit in the Reserves, except to the extent such loss is caused by the gross negligence or willful misconduct of Lender. Borrower hereby knowingly, voluntarily and intentionally stipulates, acknowledges and agrees that the advancement of the funds from the Reserves as set forth herein is at Borrower's direction and is not the exercise by Lender of any right of setoff or other remedy upon an Event of Default. Borrower hereby waives all right to withdraw funds from the Reserves. If an Event of Default shall occur hereunder or under any other of the Loan Documents, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including, without limitation, interest) then remaining in the Reserves and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, reasonable attorneys' fees, costs and expenses) to the indebtedness evidenced by the Note or any other Obligations of Borrower under the other Loan Documents in such manner or as Lender shall deem appropriate in its sole discretion, and the excess, if any, shall be paid to Borrower, (B) exercise any and all rights and remedies of a secured party under any applicable UCC, or (C) exercise any other remedies available at law or in equity. No such use or application of the funds contained in the Reserves shall be deemed to cure any default hereunder or under the other Loan Documents. Notwithstanding anything to the contrary set forth herein, Lender shall have no liability arising from or in connection with any act or omission of the Depository or the economic failure of the Depository.

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2.13 Security Agreement. This Security Instrument constitutes a security agreement between Borrower and Lender with respect to the Collateral (including, without limitation, the Reserves) in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under any applicable UCC. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower, which appointment shall be exercisable by Lender if Borrower fails to take any of the actions required in this **Section 2.13** within five (5) days after written request by Lender, to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements or other instruments as Lender may request or require in order to impose perfect or continue the perfection of the lien or security interest created hereby. Without limiting the foregoing, to the extent permitted by applicable law, Borrower hereby authorizes Lender to file any financing statements or continuation statements thereof on Borrower's behalf. Except with respect to Rents and Profits to the extent specifically provided herein to the contrary, Lender shall have the right of possession of all cash, securities, instruments, negotiable instruments, documents, certificates and any other evidences of cash or other property or evidences of rights to cash rather than property, which are now or hereafter a part of the Property, and, upon the occurrence of any default hereunder or under any other Loan Document, Borrower shall promptly deliver the same to Lender, endorsed to Lender, without further notice from Lender. Borrower agrees to furnish Lender with notice of any change in the name, identity, state of organization, residence, or principal place of business or mailing address of Borrower within ten (10) days of the effective date of any such change. Upon the occurrence and during the continuance of any Event of Default hereunder, Lender shall have the rights and remedies as prescribed in this Security Instrument, or as prescribed by general law, or as prescribed by any applicable UCC, all at Lender's election. Without implying any limitation upon the foregoing, Lender may, at its option, proceed against the Collateral in accordance with the provisions of the UCC as enacted in the State of Illinois, or Lender may proceed as to both the real and personal property comprising the Property in accordance with this Security Instrument, or as otherwise provided at law or in equity. Any disposition of the Collateral may be conducted by an employee or agent of Lender. Any Person, including both Borrower and Lender, shall be eligible to purchase any part or all of the Collateral at any such disposition. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Lender's attorneys' fees and legal expenses), together with interest thereon at the Default Rate from the date incurred by Lender until actually paid by Borrower, shall be paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Upon the occurrence and during the continuance of any Event of Default hereunder, Lender shall have the right to enter upon the Real Estate and the Improvements or any real property where any of the property which is the subject of the security interests granted herein is located to take possession of, assemble and collect the same or to render it unusable, or Borrower, upon demand of Lender, shall assemble such property and make it available to Lender at the Real Estate, a place which is hereby deemed to be reasonably convenient to Lender and Borrower. If notice is required by law, Lender shall give Borrower not less than ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be

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and is reasonable notice to Borrower. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Lender pursuant to any applicable UCC:

(a) In the event of a foreclosure sale, judicial or otherwise (including, without limitation, by power of sale), a transfer of the Property by deed in lieu of foreclosure of this Security Instrument, the Collateral may, at the option of Lender, be sold as a whole;

(b) It shall not be necessary that Lender take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this **Section 2.13** is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and

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

The name and address of Borrower (as Debtor under any applicable UCC) are:

1901 W. Carroll, LLC,
c/o Sterling Bay Capital Partners I, LLC
1040 West Randolph Street
Chicago, Illinois 60607
Attention: Andrew Gloor

The name and address of Lender (as Secured Party under any applicable UCC) are:

Fulton Market Realty Company Parallel LLC
c/o JPMorgan Investment Management, Inc.
270 Park Avenue, 7th Floor
New York, New York 10017
Attn: Robert G. Stephens

2.14 Interest Reserve Fund.

(a) Deposit to Interest Reserve Fund. On the date hereof, Lender shall deposit a portion of the Loan in the amount of \$500,000.00 into a separate fund controlled by Lender (the "**Interest Reserve Fund**"). Amounts in the Interest Reserve Fund shall be applied by Lender in accordance with Section 13 of the Note.

(b) Prohibition Against Further Encumbrance. Borrower shall not, without the prior written consent of Lender, further pledge, assign or grant any security interest in the Interest Reserve Fund or permit any lien or encumbrance to attach thereto, or any levy to be made thereon or a UCC-1 financing statement, except those naming Lender as the Secured Party, to be filed with respect thereto.

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2.15 Access Laws. Borrower covenants to cause the Property to at all times comply in all material respects to the extent applicable with the requirements of the Americans with Disabilities Act of 1990 (as amended, the “ADA”), the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the ADA Accessibility Guidelines for Buildings and Facilities (collectively, “Access Laws”). Notwithstanding any provisions set forth herein or in any other document regarding Lender’s approval of alterations of the Property, Borrower shall not alter, or permit others to alter, the Property in any manner which would increase Borrower’s responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. Lender may condition any such approval upon receipt of a certificate of Access Law compliance, in form and substance satisfactory to Lender, from an architect, engineer, or other Person acceptable to Lender. Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

2.16 Future Advances; Secured Indebtedness. It is understood and agreed that this Security Instrument shall secure payment of not only the indebtedness evidenced by the Note, but also any and all substitution, replacements, renewals and extensions of the Note, any and all indebtedness and obligations arising pursuant to the terms hereof and any and all indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents (other than the Environmental Indemnity), all of which indebtedness is equally secured with and has the same priority as any amounts advanced as of the date hereof. It is agreed that any future advances made by Lender to or for the benefit of Borrower from time to time under this Security Instrument or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Lender, or otherwise, and all interest accruing thereon, shall be equally secured by this Security Instrument and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Security Instrument.

2.17 OFAC. At all times throughout the term of the Loan, Borrower and all of its respective Affiliates shall (i) not be a Prohibited Person (defined below), and (ii) be in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury.

The term “Prohibited Person” shall mean any Person:

(a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the “Executive Order”);

(b) that is owned or controlled by, or acting for or on behalf of, any Person that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

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(d) who commits, threatens or conspires to commit or supports "**Terrorism**" as defined in the Executive Order; or

(e) that is named as a "**Specially Designated National and Blocked Person**" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, www.ustreas.gov/offices/enforcement/ofac or at any replacement website or other replacement official publication of such list; or who is an Affiliate of or affiliated with a Person listed above.

2.18 ERISA.

(a) As of the date hereof and throughout the term of the Loan, (i) Borrower does not and shall not sponsor, is not obligated to contribute to and shall not contribute to and is not and shall not be an "employee benefit plan," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), (ii) none of the assets of Borrower constitutes or shall constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (iii) Borrower is not and shall not be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with Borrower are not and shall not be subject to any statute, rule or regulation regulating investments of, or fiduciary obligations with respect to, "governmental plans" within the meaning of Section 3(32) of ERISA.

(b) Borrower shall not engage in any transaction which would cause any obligation, or any action taken or to be taken, hereunder or under the other Loan Documents (or the exercise by Lender of any of its rights under this Security Instrument or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(c) Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that Borrower is in compliance with the representations, warranties and covenants contained in this **Section 2.18**.

2.19 No Suretyship Defenses. Borrower acknowledges that this Security Instrument secures the Obligations of the Other Borrowers in addition to the obligations of Borrower, and that to the extent this Security Instrument secures the obligations of the Other Borrowers, Borrower may be deemed to be a guarantor or surety with respect to the Other Borrowers. Insofar as Borrower may be such a guarantor or surety, Borrower agrees as follows:

(a) Warranties. Borrower warrants that: (i) to the extent this Security Instrument secures the obligations of the Other Borrowers, it is executed at the behest of the Other Borrowers; (ii) this Security Instrument complies with all agreements between Borrower and the Other Borrowers regarding Borrower's execution hereof; (iii) Lender has made no representation to Borrower as to the creditworthiness of the Other Borrowers; (iv) Borrower has reviewed, is fully aware of, and approves of the content, terms, and conditions set forth in all documentation relating to the obligations of the Other Borrowers for which the lien of this Security Instrument

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serves as security; and (v) Borrower has established adequate means of obtaining from the Other Borrowers on a continuing basis financial and other information pertaining to the Other Borrowers' financial condition. Borrower further agrees that Lender shall have no obligation to disclose to Borrower information or material acquired in the course of Lender's relationship with the Other Borrowers.

(b) Waivers.

(i) Borrower waives any right to require Lender to: (a) proceed against any person, including any of the Other Borrowers or any guarantor or indemnitor; (b) proceed against or exhaust any collateral held by any of the Other Borrowers or any other person; (c) give notice of the terms, time, and place of any public or private sale of personal property security held by any of the Other Borrowers; (d) pursue any remedy in Lender's power; or (e) make any presentment, demand, for performance, or give any notice of nonperformance, protest, notice of protest, or notice of dishonor in connection with any obligation or evidence of indebtedness held by Lender as security in connection with the Obligations, or in connection with the creation of new or additional obligations.

(ii) Borrower waives any defense arising by reason of: (a) any bankruptcy, disability, or other defense of any of the Other Borrowers or any other person, including but not limited to the insolvency or bankruptcy of any of the Other Borrowers or any other person, or any stay in connection with any such bankruptcy proceedings; (b) the cessation from any cause whatsoever, other than payment in full, of the Obligations of any of the Other Borrowers or any other person; (c) the application by any of the Other Borrowers of the proceeds of any Obligation secured hereby for purposes other than the purposes represented by the Other Borrowers to Lender or intended or understood by Lender or Borrower; (d) any act or omission by Lender which directly or indirectly results in or aids the discharge or release of any of the Other Borrowers, any other person, any Obligation secured hereby, or any collateral, by operation of law or otherwise; or (e) any modification of any Obligation secured hereby consented to by Borrower, in any form whatsoever, including, without limitation, the renewal, extension, acceleration, or other change in time for payment of such Obligations, increase or decrease of the rate of interest thereon, or other change in the terms of such Obligations or any part thereof.

(iii) Borrower waives all right which Borrower may have under: (a) any law which may limit the amount of a deficiency judgment based on any Obligation secured hereby; (b) any bar to deficiency judgments, (c) any requirement of law that Lender exhaust this or any other security for the Obligations secured hereby, before proceeding against Borrower; (d) any law which may prohibit Lender from enforcing its rights and remedies against Borrower by both a private trustee's sale and an action in court; or (e) any law which requires that a court action to enforce Lender's rights be an action to foreclose this Security Instrument.

(iv) Borrower waives all rights of subrogation as to Lender, and Borrower further waives any right to enforce any remedy which Lender now has or later may have against any of the Other Borrowers or any other person, and waives any benefit of, and any right to participate in, any security now or later held by Lender.

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(v) Without limiting any of the foregoing, Borrower waives all rights and defenses that Borrower may have because the Other Borrowers' debts are secured by real property. This means, among other things: (a) Lender may collect from Borrower without first foreclosing on any real or personal property collateral pledged by the Other Borrowers; and (b) if Lender forecloses on any real property collateral pledged by any of the Other Borrowers, (1) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (2) Lender may collect from Borrower even if Lender, by foreclosing on the real property collateral pledged by any of the Other Borrowers, has destroyed any right Borrower may have to collect from any of the Other Borrowers. This is an unconditional and irrevocable waiver of any rights and defenses Borrower may have because the Other Borrowers' debts are secured by real property. In addition, Borrower waives all rights and defenses arising out of an election of remedies by Lender, even if that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Borrower's rights of subrogation and reimbursement against the Other Borrowers.

(c) Borrower's Understandings with Respect To Waivers. Borrower agrees that each of the waivers set forth above are made with Borrower's full knowledge of their significance and consequences, with the understanding that events giving rise to any defense waived may diminish, destroy or otherwise adversely affect rights which Borrower otherwise may have against the Other Borrowers, Lender or others, or against collateral, and that under the circumstances existing in connection herewith, the waivers are reasonable and not contrary to public policy or law. If any of the waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective to the maximum extent permitted by law.

(d) Subordination. All indebtedness of the Other Borrowers to Borrower now or later existing is subordinated to the Obligations secured hereby. All notes, documents, instruments, accounts, general intangibles, and chattel paper now or later evidencing indebtedness of the Other Borrowers to Borrower shall be marked with a legend that the indebtedness is subject to this Security Instrument and, if Lender so requests, shall be delivered to Lender. Borrower will, and Lender is authorized, in the name of Borrower from time to time to execute and file financing statements and continuation statements and execute such other documents and take such other action as Lender deems necessary or appropriate to perfect, preserve and enforce its rights hereunder.

(e) Proceedings Affecting the Other Borrowers. Borrower's interest in the Property shall not be discharged, released, or exonerated from the lien or charge hereof by the voluntary or involuntary participation by any of the Other Borrowers in any settlement or composition for the benefit of the creditors of Borrower, either in liquidation, readjustment, receivership, bankruptcy, or otherwise.

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ARTICLE III ASSIGNMENT OF LEASES AND RENTS AND OTHER SUMS

3.1 Assignment.

(a) Borrower has, by this Security Instrument, irrevocably assigned to Lender, all of its right, title, and interest in and to the Leases and the Rents and Profits described therein. This assignment is intended to be and is an absolute present assignment from Borrower to Lender and not merely the passing of a security interest. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Lender hereby grants Borrower a license to collect all Rents and Profits and to receive the proceeds of any claims arising pursuant to the Leases and the right to enforce all of the landlord's rights under the Leases.

(b) Except as otherwise expressly provided herein, Borrower shall have the right and license to enter into the Leases following the prior written consent of Lender. If Borrower, following the consent of Lender, enters into new Leases after the date hereof, then Borrower agrees to use such Rents and Profits and the proceeds of any such claim to discharge and pay all then current Obligations which are or become due (including, without limitation, all Impositions and Insurance Premiums then payable) and all other costs, charges, accruals or expenses then incurred on, against or in connection with the operation of the Property. When obtaining Lender's consent for purposes of this **Section 3.1(b)**, Borrower shall provide written notice (which can be sent via electronic mail) to Lender of Borrower's proposed action to be taken. Unless an Event of Default shall have occurred and be continuing hereunder, if Lender does not respond to Borrower in writing within two (2) business days after receiving such written notice from Borrower, Lender shall be deemed to have consented to such action by Borrower.

(c) Upon the occurrence and during the continuance of any Event of Default, the right and license set forth in subsection (b) of this **Section 3.1** shall be deemed automatically revoked by Lender as of the date of such Event of Default, whereupon Lender shall have the right and authority to exercise any of the rights or remedies referred to or set forth in Article VII. In addition, upon the occurrence and during the continuance of any such Event of Default, Borrower shall promptly pay to Lender or cause to be delivered to Lender (i) all rent prepayments and security or other deposits paid to Borrower pursuant to any Lease assigned hereunder, (ii) all original security deposits in the form of letters of credit, and (iii) all deposits for the payment of operating expenses and charges for services or facilities or for escalations which were paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default.

(d) Borrower will, as and when requested from time to time by Lender, execute, acknowledge, and deliver to Lender, one or more general or specific assignments of the landlord's interest under any Lease now or hereafter affecting the whole or any part of the Property. Borrower will, on demand, pay to Lender, or reimburse Lender for the payment of any costs or expenses incurred in connection with the preparation and recording of any such assignment.

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3.2 Leases and Rents.

Borrower will (i) perform or cause to be performed the landlord's obligations under all Leases now or hereafter affecting the whole or any part of the Property, (ii) enforce, in a reasonable manner using Borrower's good faith business judgment, the performance by each tenant under its respective Lease of all of said tenant's obligations thereunder, and (iii) give Lender prompt written notice and a copy of any notice of default, event of default, termination or cancellation sent or received by Borrower with respect to any Lease; provided that Borrower shall not be required to give notice to Lender of the termination any month-to-month Lease.

ARTICLE IV ADDITIONAL ADVANCES; EXPENSES; INDEMNITY

4.1 Additional Advances and Disbursements. Borrower agrees that upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, but not the obligation, in Borrower's name or in Lender's own name, and without notice to Borrower, to advance all or any part of amounts owing or to perform any or all required actions, and, Borrower expressly grants to Lender, in addition and without prejudice to any other rights and remedies hereunder, the right to enter upon and take possession of the Property to such extent and as often as it may deem necessary or desirable to prevent or remedy any such Event of Default. No such advance or performance shall be deemed to have cured such default by Borrower or any Event of Default with respect thereto. All sums advanced and all expenses incurred by Lender in connection with such advances or actions, and all other sums advanced or expenses incurred by Lender hereunder or under applicable law (whether required or optional and whether indemnified hereunder or not) shall be part of the Obligations, shall bear interest at the Default Rate until paid in full and shall be secured by this Security Instrument. Lender, upon making any such advance, shall be subrogated to all of the rights of the Person receiving such advance.

4.2 Other Expenses.

(a) Borrower will pay or, on demand, reimburse Lender for the payment of, all appraisal fees, recording and filing fees, taxes, brokerage fees and commissions, abstract fees, title insurance premiums and fees, UCC search fees, escrow fees, consultants' fees and disbursements, environmental engineers' fees and disbursements, attorneys' fees and disbursements, servicing fees, and all other costs and expenses of every character incurred by Lender in connection with the closing of the transactions contemplated hereunder or under the other Loan Documents (including the granting and preparation of the Loan Documents), the administration and enforcement of the Loan Documents, and/or otherwise attributable or chargeable to Borrower as owner of the Property.

(b) Borrower will pay or, on demand, reimburse Lender for the payment of any costs or expenses (including attorneys' fees and disbursements and collection costs) incurred or expended in connection with or incidental to (i) the occurrence of any default or Event of Default by Borrower hereunder or under any of the other Loan Documents, or (ii) the exercise or enforcement by or on behalf of Lender of any of its rights or remedies hereunder or the enforcement of or Borrower's obligations under this Security Instrument or under the other Loan

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Documents, including, without limitation, the enforcement, compromise or settlement of this Security Instrument or the Obligations or the defense or assertion of the rights and claims of Lender hereunder in respect thereof, by litigation or otherwise.

4.3 Indemnity.

(a) Borrower agrees to indemnify, defend, and hold harmless the Indemnitees from and against any and all Losses and Liabilities (as defined herein) which may be imposed on, incurred or paid by or asserted against any Indemnitee by reason or on account of, or in connection with, or arising from:

(i) any default or Event of Default by Borrower or any other Borrower Party hereunder or under the other Loan Documents;

(ii) Lender's exercise of any of its rights and remedies, or the performance of any of its duties, hereunder (including, without limitation, under any Lease or in connection with the enforcement of any Lease) or under the other Loan Documents to which Borrower or any other Borrower Party is a party;

(iii) the demolition, construction, reconstruction, or alteration of the Property;

(iv) an actual, alleged or threatened Environmental Condition;

(v) any negligence or willful misconduct of Borrower, any other Borrower Party, any tenant of the Property, or any of their respective agents, contractors, subcontractors, servants, employees, licensees, or invitees or any affiliates of any of the foregoing;

(vi) any accident, injury, death, or damage to any Person or property occurring in, on or about the Property or any street, drive, sidewalk, curb or passageway adjacent thereto;

(vii) any of the foregoing which may be instituted against, or alleged with respect to, any Indemnitee by reason of any alleged obligation or undertaking on Lender's part to perform or discharge any of the terms, covenants, or agreements contained in any Lease, agreement, or contract relating to the Property to which Lender is not a direct and express party;

(viii) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Property, the Loan, or the Obligations hereunder;

(ix) the failure of any Person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; or

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(x) any other transaction arising out of the ownership, management, leasing or operation of the Property or Borrower's obligations under the Loan Documents except to the extent caused by the willful misconduct or gross negligence of Lender.

Any amount payable to Lender under this **Section 4.3** shall be payable within five (5) days after written demand by Lender, shall be part of the Obligations, shall bear interest at the Default Rate if not paid within such five (5) day period, and shall be secured by this Security Instrument.

(b) Borrower's obligations under this **Section 4.3** (and any other obligation of Borrower to indemnify or defend Lender or any other Indemnitee under this Security Instrument or any other Loan Document) shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal by any insurance carrier to perform any obligation on its part under any such Policy. If any claim, action or proceeding is made or brought against any Indemnitee which is subject to the indemnity set forth in this **Section 4.3** (or any such other indemnity, as aforesaid), Borrower shall resist or defend against the same, if necessary in the name of Lender, by attorneys for Borrower's insurance carrier (if the same is covered by insurance) or otherwise by attorneys approved by Lender. A waiver of subrogation shall be obtained by Borrower from its insurance carrier and consequently, Borrower waives any and all right to claim or recover against Lender or Lender's officers, employees, agents, and representatives, for loss of or damage to Borrower, any other Borrower Party, the Property, Borrower's property, or the property of others under Borrower's or any other Borrower Parties' control from any cause insured against or required to be insured against by the provisions of this Security Instrument. Notwithstanding the foregoing, any Indemnitee, in its discretion, may engage its own attorneys to resist or defend, or assist therein, and Borrower shall pay, or, on demand, shall reimburse such Indemnitee for the payment of, the fees and disbursements of said attorneys. Any Indemnitee shall have the right to settle any such claim, action or proceeding without Borrower's consent. **THE INDEMNITIES HEREIN PROVIDED BY BORROWER SHALL APPLY REGARDLESS OF WHETHER THE MATTER FROM WHICH THE INDEMNIFICATION OBLIGATION ARISES WAS CAUSED IN WHOLE OR IN PART BY SIMPLE NEGLIGENCE (BUT NOT WILLFUL MISCONDUCT OR GROSS NEGLIGENCE) OF ANY APPLICABLE INDEMNITEE.**

(c) As used herein the term "**Losses and Liabilities**" shall mean, collectively, all claims, losses, liabilities (including, without limitation, strict liabilities and/or any environmental liability), suits, causes of actions, actions, proceedings, obligations, fines, debts, damages, injuries, diminutions in value, judgments, awards, demands, administrative orders, consent agreements and orders, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, penalties, interest, demands, claims, charges, fees, costs and expenses (including, without limitation, environmental inspection and clean-up costs, attorneys' and paralegals' fees and disbursements and other costs of defense) of whatever kind or nature, except to the extent caused by the gross negligence or willful misconduct of Lender.

4.4 Interest After Default. Subject to the terms of the Note, if any payment due hereunder or under the other Loan Documents is not paid in full within five (5) days after the date due, whether on any stated due date, any accelerated due date or on demand or at any other time specified under any of the provisions hereof or thereof, then the same shall bear interest hereunder at the Default Rate from the due date until fully paid, whether or not an action against

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Borrower shall have been commenced, and if commenced whether or not a judgment against Borrower shall have been obtained, and such interest shall be added to and become a part of the Obligations and shall be secured hereby.

ARTICLE V SALE, TRANSFER OR MORTGAGING OF THE PROPERTY; CHANGE OF CONTROL

5.1 Continuous Ownership; Change of Control.

(a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, managing members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for payment and performance of the Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the payment or the performance of the Obligations, Lender can recover the Debt by a sale of the Property. Borrower shall not, whether voluntarily or involuntarily, sell, grant, convey, assign or otherwise transfer, by operation of law or otherwise (collectively, "**Transfer**") the Property, or any legal, beneficial or equitable interest therein, or the management thereof while the Loan is outstanding, without Lender's prior written consent (which consent shall be granted or withheld in Lender's sole and absolute discretion). For purposes of this Security Instrument, but without limiting the foregoing, except as expressly set forth in this sentence, (i) the issuance of, or any Transfer of, any equity interest in Borrower (whether stock, partnership interest or otherwise) to any Person or group of related Persons, whether in a single transaction or a series of related or unrelated transactions, in such quantities that after such issuance such Person shall have control of Borrower (if such Person did not previously have control of Borrower), shall be deemed a Transfer of the Property, (ii) notwithstanding the second sentence of this Paragraph to the contrary, a Transfer of more than 49% in interest of Borrower (whether stock, partnership interest or otherwise) by any party or parties in interest whether in a single transaction or a series of related or unrelated transactions shall be deemed a Transfer, (iii) a take-over agreement shall be deemed a Transfer, (iv) a Transfer of all or substantially all of the assets of any of Borrower, or any Guarantor under the Environmental Indemnity, shall be deemed a Transfer of the Property, and (v) any Person or legal representative of Borrower to whom Borrower's interest in the Property passes by operation of law, or otherwise, shall be bound by the provisions of this clause (a).

For purposes hereof, a "**Transfer**" shall not include (A) transfer by devise or descent or by operation of law upon the death of a partner, member or stockholder of Borrower or any general partner thereof, (B) a sale, transfer, or hypothecation of a partnership, shareholder, or membership interest in Borrower, whichever the case may be, by the current partner(s), shareholder(s), or member(s), as applicable, to an immediate family member (i.e., parents, spouses, siblings, children, or grandchildren) of such partner, shareholder, or member (or a trust for the benefit of any such Persons) and/or for estate planning purposes, (C) a transfer of less than 49% in the aggregate of direct or indirect interests of Borrower (whether stock, partnership interest or otherwise) by any party or parties in interest that does not result in a change of control

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of Borrower, and (D) any joint venture by SBCP Fulton Market Venture Holdings, LLC, with, or transfer of interest in Borrower to, Lender or any affiliate thereof.

(b) In the event that (i) Borrower shall Transfer the Property or any legal, beneficial, or equitable interest therein, (ii) Borrower shall Transfer responsibility for the management of the Property in violation of the terms hereof, or (iii) any other Transfer shall otherwise occur in violation of the terms of this Security Instrument or any other Loan Document, the same shall constitute an “**Event of Default**” and Lender may elect to declare the Obligations, together with any other sums secured hereby, immediately due and payable. Lender may withhold its consent to any proposed Transfer for no reason or any reason, including the failure of the prospective transferee of the Property to reach an agreement in writing with Lender increasing the interest payable on the Obligations to such rate as Lender shall request.

(c) The provisions of this **Section 5.1** shall apply to each and every such Transfer of all or any portion of the Property or any legal or equitable interest therein or the management thereof, regardless of whether or not Lender has consented to, or waived by its action or inaction its rights hereunder with respect to any previous Transfer of all or any portion of the Property or any legal or equitable interest therein, or the management thereof.

5.2 **No Subordinate Financing.** Borrower covenants and agrees that it will not further encumber, mortgage, or grant a security interest in the Property or any part thereof or any interest therein.

ARTICLE VI DEFAULTS

6.1 **Events of Default.** The term “**Event of Default**,” as used in this Security Instrument, shall mean the occurrence of any of the following events:

(a) a default in the payment of any amounts required to be paid or expended by Borrower or any of the Other Borrowers under this Security Instrument, the Note, the Environmental Indemnity, or under any other Loan Document, whether of principal, interest, premium, Impositions, or otherwise, and whether on any stated due date, upon demand, at maturity, or upon acceleration that remains uncured for more than five (5) days after written notice from Lender;

(b) any representation or warranty made herein or in the other Loan Documents (including any certificates, schedules, and financial statements delivered in connection with any of the foregoing), or otherwise made by or on behalf of Borrower or any other Borrower Party in connection with the transactions contemplated hereunder, shall be false or misleading in any material respect when made;

(c) any Transfer shall be made in violation of the terms of this Security Instrument or the other Loan Documents;

(d) if (i) Borrower or any other Borrower Party shall commence any case, proceeding or other action (A) under any existing or future Governmental Regulations of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization,

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conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator, or other similar official for it or for all or any substantial part of its assets, or (ii) Borrower or any other Borrower Party shall make a general assignment for the benefit of its creditors; or (iii) there shall be commenced against Borrower or any other Borrower Party, any case, a proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment, or (B) remains undismissed, undischarged, or unbonded for a period of sixty (60) days; or (iv) there shall be commenced against Borrower or any other Borrower Party, any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint, or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, stayed, or bonded pending appeal within sixty (60) days from the entry thereof; or (v) Borrower or any other Borrower Party or any of their affiliates shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (i), (ii), (iii) or (iv) above; or (v) Borrower or any other Borrower Party shall admit in writing its inability to, pay its debts as they become due;

(e) Borrower abandons the Property;

(f) there shall occur any event of default or non-performance (beyond any applicable notice and/or cure periods, if any) under the terms of any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property, whether it be superior or junior in lien to this Security Instrument, provided that nothing contained herein shall be deemed to represent Lender's consent to any such mortgage, deed of trust, deed to secure debt or other security agreement;

(g) Borrower shall fail at any time to obtain, provide, maintain, keep in force or deliver to Lender the Policies required by Section 2.3 hereof;

(h) Borrower shall consent to any claim that this Security Instrument or any other document or instrument securing the Obligations is junior to any other Lien or any such claim shall be upheld by any court of competent jurisdiction;

(i) the existence of any Environmental Condition which is not fully remediated in accordance with the requirements of all applicable Governmental Regulations within thirty (30) days following the date that Borrower first acquires knowledge of such Environmental Condition; provided, however, if such remediation cannot be accomplished within such thirty (30) day period, the time for Borrower's completion of such remediation shall be extended for such additional period as may be reasonably required by Borrower for such completion, provided further that Borrower (1) shall commence such remediation within thirty (30) days following the date Borrower first acquires knowledge of such Environmental Condition and thereafter exercises its commercially reasonable efforts to prosecute the completion of such remediation and (ii) such remediation is completed no later than the date ninety (90) days following the date that Borrower first acquires knowledge of such Environmental Condition;

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(j) subject to the Borrower's rights of contest set forth in **Section 2.7(d)** hereof, if the Property becomes subject to any mechanic's, materialmen's or other Lien (including without limitation, any federal tax lien but excluding any Lien for local real estate taxes and assessments not then due and payable) and such Lien shall not be insured over and shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days after notice thereof to Borrower;

(k) if Borrower shall fail to reimburse Lender within ten (10) days after demand, with interest calculated at the Default Rate commencing at the end of such ten (10) day period, for all Insurance Premiums or Impositions, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument;

(l) if any default occurs in the performance of Guarantor's obligations under the Guaranty and such default continues after the expiration of applicable grace periods set forth in the Guaranty, or if any representation or warranty of Guarantor thereunder shall be false or misleading in any material respect when made;

(m) there shall have occurred any default, event of default or non-performance by Borrower under the terms of any of the Leases which default, event of default or non-performance shall not have been cured within any applicable grace period therefor under the applicable Lease and may result in the termination of the applicable Lease;

(n) there shall have occurred any "Material Default" under (i) that certain Limited Liability Company Agreement of Fulton Market Venture, LLC, by and between Fulton Market Realty Company LLC and SBCP Fulton Market Venture Holdings LLC dated as of July 1, 2014, or (ii) any limited liability company agreement entered into during the term of the Loan with respect to a "single asset execution" joint venture entered into pursuant to that certain Joint Venture Term Sheet – Fulton Market Development Program, Chicago, Illinois, by and between Sterling Bay Companies and JPMorgan Investment Management, Inc.;

(o) any other event occurs and continues beyond any express notice or grace period applicable thereto which, under the terms of the Loan Documents, would permit Lender to accelerate the Obligations; or

(p) if (i) for more than ten (10) days, in the aggregate, after notice from Lender, Borrower shall continue to be in default under any term, covenant, or condition of the Note, this Security Instrument, or any of the other Loan Documents not otherwise described in this **Section 6.1** in the case of any default which can be cured by the payment of a sum of money (other than payments of money covered by **Section 6.1(a)** above), or (ii) for more than thirty (30) days, in the aggregate, after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, said thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days, in the aggregate.

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ARTICLE VII REMEDIES

7.1 Remedies Available. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as Lender deems advisable to protect and enforce Lender's rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(a) Acceleration. Accelerate the Maturity Date of the Note and declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest, notice of nonpayment or nonperformance, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable. Upon any such acceleration of the Note, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee and/or any amount payable upon such prepayment provided for in the Note shall then be immediately due and payable.

(b) Entry on the Property. Either in Person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, without force or with such force as is permitted by law, without notice or process or with such notice or process as is required by law unless such notice and process is waivable, in which case Borrower hereby waives such notice and process, and without liability for trespass, damages or otherwise, and do any and all acts, perform any and all work and take possession of any and all books, records and accounts which may be desirable or necessary in Lender's judgment to complete any unfinished construction on the Real Estate, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and all sums expended by Lender therefor, together with interest thereon at the Default Rate, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue for or otherwise collect the Rents and Profits, including those past due and unpaid.

(d) Appointment of Receiver. Upon, or at any time prior or after, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Borrower and without regard to the adequacy of the Property for the repayment of the Obligations or the solvency of Borrower or any Person or Persons liable for the payment of the indebtedness secured hereby, and Borrower does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Lender, but nothing herein is

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to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed; provided, however, that, the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in **Section 7.3** hereinbelow. Such receivership shall, at the option of Lender, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Security Instrument, judicial or otherwise (including, without limitation, by power of sale) or deed in lieu of foreclosure.

(e) Foreclosure. Lender may foreclose the lien hereof in accordance with the laws of the State of Illinois and:

(i) In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional Obligations in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title or to the value of the Property; and

(ii) all expenditures and expenses of the nature mentioned in this subparagraph c, and such expenses and fees as may be incurred in the protection of the Property in the maintenance of the lien of this Security Instrument, including the fees of any attorney employed by Lender in any litigation and proceedings affecting this Security Instrument, the Note or the Property or the rights of Lender hereunder or as to which Lender may be made a party by virtue of its interest in the Property pursuant to this Security Instrument or otherwise, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall constitute so much additional Indebtedness, and shall be immediately due and payable by Borrower, with interest thereon at the default rate as indicated in the Note.

(iii) Borrower hereby expressly waives any and all rights of redemption from sale, if any, under any order or decree of foreclosure of this Security Instrument, on its own behalf and on behalf of each and every person, it being the intent herein that any and all such rights of redemption of Borrower and all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of 735 ILCS 5/15-1601 or other applicable law or replacement statutes. Borrower hereby agrees that it shall not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein, or otherwise granted or delegated to Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted;

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

(f) Other Remedies. If an Event of Default shall have occurred and be continuing, this Security Instrument may, to the maximum extent permitted by law, be enforced, and Lender may exercise any right, power or remedy permitted to it hereunder, under the Loan Documents or by law or in equity, and, without limiting the generality of the foregoing, Lender may, personally or by its agents, to the maximum extent permitted by law:

(1) enter into and take possession of the Property or any part thereof, exclude Borrower and all parties claiming under Borrower whose claims are junior to this Security Instrument, wholly or partly therefrom, and hold, store, use, operate, manage, maintain and control the Property or any part thereof either in the name of Borrower or otherwise as Lender shall deem best, and upon such entry, from time to time at the expense of Borrower and the Property, make all such repairs, replacements, alterations, additions or improvements to the Property or any part thereof as Lender may deem proper and, whether or not Lender has so entered and taken possession of the Property or any part thereof, collect and receive all Rents and Profits and apply the same to the payment of all expenses that Lender may be authorized to make under this Security Instrument, the remainder to be applied to the payment of obligations under the Loan Documents until the same shall have been repaid in full; if Lender demands or attempts to take possession of the Property or any part thereof in the exercise of any rights hereunder, Borrower shall promptly turn over and deliver complete possession thereof to Lender;

(2) cause any or all of the Property to be sold under the power of sale in any manner permitted by applicable law. For any sale under the power of sale granted by this Security Instrument, Lender shall record and give all notices required by law and then, upon the expiration of such time as is required by law, may sell the Property, and all estate, right, title, interest, claim and demand of Borrower therein, and all rights of redemption thereof, at one or more sales, as an entity or in parcels, with such elements of real and/or personal property (and, to the extent permitted by applicable law, may elect to deem all of the Property to be real property for purposes thereof), and at such time or place and upon such terms as Lender may deem expedient, or as may be required by applicable law. Upon any sale, Lender shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property sold, but without any covenant or warranty, express or implied, and the recitals in the deed or deeds of any facts affecting the regularity or validity of the sale will be conclusive against all Persons. In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Security Instrument Property;

(3) proceed to protect and enforce their rights under this Security Instrument, by suit for specific performance of any covenant contained herein or in the Loan Documents or in aid of the execution of any power granted herein or in the Loan Documents, or for the enforcement of any other right as Lender shall elect, provided, that in the event of a sale,

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by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien on, and security interest in, the remaining portion of the Property; or

(4) exercise any or all of the remedies available to a secured party under the applicable UCC, including, without limitation:

(i) either personally or by means of a court-appointed receiver, take possession of all or any of the Property and exclude therefrom Borrower and all parties claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect of the Property or any part thereof; if Lender demands or attempts to take possession of the Property in the exercise of any rights hereunder, Borrower shall promptly turn over and deliver complete possession thereof to Lender;

(ii) without further notice to or demand upon Borrower, make such payments and do such acts as Lender may deem necessary to protect its security interest in the Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority paying all expenses incurred in connection therewith which expenses shall thereafter become part of the obligations secured by this Security Instrument;

(iii) require Borrower to assemble the Property or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and promptly to deliver the Property to Lender, or an agent or representative designated by it; Lender, and each of its agents and representatives, shall have the right to enter upon the premises and property of Borrower to exercise the rights of Lender hereunder;

(iv) sell, lease or otherwise dispose of the Property, with or without having the Property at the place of sale, and upon such terms and in such manner as Lender may determine (and Lender may be a purchaser at any such sale); provided, however, that Lender, may dispose of the Property in accordance with Lender's rights and remedies in respect of the Property pursuant to the provisions of this Security Instrument in lieu of proceeding under the applicable UCC; and

(v) unless the Property is perishable or threatens to decline speedily in value, is of a type customarily sold on a recognized market or is sold pursuant to the provisions of this Security Instrument in lieu of proceeding under the applicable UCC as provided in this subsection, Lender shall give Borrower at least ten (10) days' prior notice of the time and place of any sale of the Property or other intended disposition thereof, which notice Borrower agrees is commercially reasonable.

(g) Lender may resort for the payment of the Loan to any other security for the debt held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Loan, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and

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none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

(h) Lost Documents. All rights of action under the Note, this Security Instrument, or any of the other Loan Documents may be enforced by Lender without the possession of the original Loan Documents and without the production thereof at any trial or other proceeding relative thereto.

(i) Borrower's Right to Prepay Note. Notwithstanding any provision in this Security Instrument to the contrary, upon the occurrence and during the continuance of any Event of Default, Borrower shall have the right to prepay the Note in whole or in part, but solely in accordance with Section 6(a) or 6(b) of the Note, and Lender shall accept any such payments made in accordance with Section 6(a) or 6(b) of the Note.

7.2 Application of Proceeds. (a) To the fullest extent permitted by law, the proceeds of any foreclosure sale under this Security Instrument shall be applied to the extent funds are so available to the following items in such order as Lender in its discretion may determine:

(i) to payment of the costs, expenses, and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing, and selling the same and of otherwise enforcing Lender's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

(ii) to payment of all sums expended by Lender under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate.

(iii) to payment of the secured indebtedness and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Rate and, to the extent permitted by applicable law, any payment due upon a deemed prepayment of the principal balance of the Note, and any applicable prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Lender chooses in its sole discretion.

(iv) to the extent permitted by Governmental Regulations, to be set aside by Lender as adequate security in its judgment for the payment of sums which would have been paid by application under clauses (i) through (iii) above to Lender, arising out of an obligation or liability with respect to which Borrower has agreed to indemnify Lender, but which sums are not yet due and payable or liquidated.

The remainder, if any, of such funds shall be disbursed to Borrower or to the Person or Persons legally entitled thereto, except as otherwise provided by law.

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(b) No sale or other disposition of all or any part of the Property pursuant to **Section 7.1** shall be deemed to relieve Borrower of its obligations under the Loan Documents, except to the extent the proceeds thereof are applied to the payment of such obligations.

7.3 Right and Authority of Receiver or Lender in the Event of Default; Power of Attorney. Upon the occurrence of an Event of Default and entry upon the Property pursuant to **Section 7.1(b)** hereof or appointment of a receiver pursuant to **Section 7.1(d)** hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Lender's or the receiver's sole discretion, all at Borrower's expense, Lender, or said receiver, or such other Persons as they shall hire, direct or engage, as the case may be, may (but shall have no obligation to) do or permit one or more of the following, successively or concurrently:

- (a) enter upon and take possession and control of any and all of the Property;
- (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property;
- (c) exclude Borrower and its agents, servants and employees wholly from the Property;
- (d) manage and operate the Property;
- (e) preserve and maintain the Property;
- (f) make repairs and alterations to the Property;
- (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Lender may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Lender's sole discretion, make it or any part thereof readily marketable or rentable;
- (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable;
- (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted;
- (j) execute and deliver, in the name of Borrower as attorney-in-fact and agent of Borrower or in its own name as Lender, such documents and instruments as are necessary or appropriate to consummate authorized transactions;

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(k) enter into such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable;

(l) collect and receive the Rents and Profits from the Property;

(m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements;

(n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Borrower or Lender or such receiver;

(o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent;

(p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due;

(q) delegate or assign any and all rights and powers given to Lender by this Security Instrument; and/or

(r) do any other acts which Lender in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Security Instrument. This Security Instrument shall constitute a direction to and full authority to any tenant, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Lender, at the request of Lender upon the occurrence and during the continuance of an Event of Default, to pay all amounts owing under any lease, contract, concession, license or other agreement to Lender without proof of the default relied upon. Any such tenant or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request, notice or demand by Lender for the payment to Lender of any Rents and Profits or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any default under this Security Instrument or under any of the other Loan Documents has actually occurred or is then existing. Borrower hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Borrower's name, place and stead, upon the occurrence and during the continuance of an Event of Default, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any indebtedness secured hereby is outstanding. Any money advanced by Lender in connection with any action taken under this **Section 7.3**, together with interest thereon at the Default Rate from the date of making such advancement by Lender until actually paid by Borrower, shall be a demand obligation owing by Borrower to Lender and shall be secured by this Security Instrument and by every other instrument securing the secured indebtedness.

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7.4 Occupancy After Foreclosure. In case the liens or security interests of this Security Instrument shall be foreclosed, judicially or otherwise (including, without limitation, by power of sale), and Borrower or Borrower's representatives, successors or assigns, or any other Persons claiming any interest in the Property by, through or under Borrower are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Lender or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy at sufferance, terminable at the will of landlord, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to forthwith surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Real Estate is located, and anyone occupying the Property after demand made for possession thereof shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.5 Notice to Account Debtors. Lender may, at any time after the occurrence and during the continuance of an Event of Default, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Borrower included in the Property to pay Lender directly. Borrower shall at any time or from time to time upon the request of Lender provide to Lender a current list of all such account debtors and obligors and their addresses.

7.6 Cumulative Remedies. All remedies contained in this Security Instrument are cumulative and Lender shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Lender and may be exercised in any order and as often as occasion therefor shall arise. No act of Lender shall be construed as an election to proceed under any particular provisions of this Security Instrument to the exclusion of any other provision of this Security Instrument or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Lender. No delay or failure by Lender to exercise any right or remedy under this Security Instrument shall be construed to be a waiver of that right or remedy or of any default hereunder. Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

7.7 Intentionally Omitted.

7.8 Borrower's Waivers. BORROWER HEREBY WAIVES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE UNDER APPLICABLE LAWS TO NOTICE, EXCEPT AS OTHERWISE HEREIN SPECIFICALLY PROVIDED OR AS EXPRESSLY PROVIDED BY APPLICABLE LAW, OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS SECURITY INSTRUMENT TO LENDER, AND WAIVES ITS RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS HEREOF ON THE GROUNDS (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. BORROWER'S WAIVERS UNDER THIS SECTION 7.8 HAVE BEEN MADE VOLUNTARILY,

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INTELLIGENTLY, AND KNOWINGLY AND AFTER BORROWER HAS BEEN APPRISED AND COUNSELED BY ITS ATTORNEY AS TO THE NATURE THEREOF AND ITS POSSIBLE ALTERNATIVE RIGHTS.

ARTICLE VIII REPORTING AND WITHHOLDING REQUIREMENTS

8.1 Withholding. In the event of a foreclosure, judicial or otherwise (including, without limitation, by power of sale) or delivery of a deed-in-lieu of foreclosure, Borrower agrees that Lender shall have the right to withhold any and all amounts necessary to comply with the requirements of Section 1445 of the Code, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

8.2 Form 1099-S. Borrower shall have supplied or caused to be supplied to Lender either (a) a copy of a completed Form 1099-S, Statement for Recipients of Proceeds from Real Estate Transactions prepared by Borrower's attorney together with a certification from Borrower's attorney to the effect that such form has, to the best of such Person's knowledge, been accurately prepared and that such Person will timely file such form, or (b) a certification from Borrower that the mortgage loan is a refinancing of the Property or is otherwise not required to be reported to the Internal Revenue Service pursuant to Section 6045(e) of the Code.

8.3 Transfer Tax.

(a) Covenants. Borrower covenants and agrees that, in the event of a sale or other Transfer, it will duly complete, execute and deliver to Lender contemporaneously with their submission to the applicable taxing authority or recording officer, all forms and supporting documentation required by such taxing authority or recording officer to estimate and fix the real estate transfer tax ("Transfer Tax"), if any, payable by reason of such sale or other Transfer or recording of the deed evidencing such sale or other Transfer. This Section 8.3 shall apply only if this Security Instrument is outstanding after any such sale or transfer.

(b) Payment. Borrower agrees to pay all Transfer Taxes that may hereafter become due and payable with respect to any Transfer, and in default thereof Lender shall have the right, but not the obligation, to pay the same and the amount of such payment shall be added to the Obligations and be secured by this Security Instrument. The provisions of this Article shall survive any Transfer, foreclosure or deed in lieu of foreclosure and the delivery of the deed in connection with any Transfer, foreclosure or deed in lieu of foreclosure. Nothing in this Article shall be deemed to limit Lender's rights hereunder in the event any Transfer shall be made in violation of the provisions of this Security Instrument.

(c) Foreclosure. The provisions of this Section 8.3 shall be applicable also in the event of a foreclosure, judicial or otherwise (including, without limitation, by power of sale) or delivery of a deed in lieu of foreclosure to the extent that Lender shall, in its sole judgment and discretion, determine that any tax (including a Transfer Tax) shall be payable by it.

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ARTICLE IX MISCELLANEOUS TERMS AND CONDITIONS

9.1 Time of Essence. Time is of the essence for the performance of each and every covenant of Borrower hereunder. No excuse, delay, act of God, or other reason, whether or not within the control of Borrower, shall operate to defer, reduce or waive Borrower's performance of any such payment covenants or obligations.

9.2 Release of This Security Instrument. If the Property secured hereby shall be released from the lien of this Security Instrument pursuant to a prepayment in part of the Note in accordance with Section 6(b) of the Note or if all of the Obligations secured hereby shall have been paid and/or performed, then and in those events only, all rights under this Security Instrument shall terminate, except for any indemnities granted by Borrower hereunder to Lender and any other provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Lender, to the extent required by law to effect a full and proper termination, release and reconveyance in due form at Borrower's cost. No release of this Security Instrument or the lien hereof shall be valid unless executed by Lender, which Lender agrees to provide on a timely basis.

9.3 Certain Rights of Lender. Without affecting Borrower's liability for the payment of any of the indebtedness secured hereby, Lender may from time to time and without notice to Borrower: (a) release any Person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of the indebtedness secured hereby; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby; (d) release any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Security Instrument or any agreement subordinating any lien or security interest granted hereby.

9.4 Additional Borrower's Waivers. To the full extent permitted by law, Borrower agrees that Borrower shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the Obligations prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. Borrower, for Borrower and Borrower's successors and assigns, and for any and all Persons ever claiming any interest in the Property including, without limitation, any Borrower Party, to the full extent permitted by law, hereby knowingly, intentionally, and voluntarily with and upon the advice of competent counsel: (a) waives, releases, relinquishes, and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement, and notice of election or intention to mature or declare due the Obligations (except such notices as are specifically provided for herein); (b) waives, releases, relinquishes, and forever forgoes all right to a marshaling of the assets of Borrower or any other Borrower Party, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having

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jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; (c) waives, releases, relinquishes, and forever forgoes all rights and periods of redemption provided under Governmental Regulations; and (d) waives notice of intention to accelerate the indebtedness, notice of acceleration of the indebtedness, demand, protest and notice of demand, protest and nonpayment and all other notices not required by applicable law or expressly provided for herein or any other Loan Document. To the full extent permitted by law, Borrower shall not have or assert any right under any Governmental Regulations pertaining to the exemption of homestead or other exemption under any Governmental Regulations now or hereafter in effect, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Lender under the terms of this Security Instrument to a sale of the Property, for the collection of the Obligations without any prior or different resort for collection, or the right of Lender under the terms of this Security Instrument to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatever. Further, Borrower hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, releases, relinquishes, and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Security Instrument or to collect any of the Obligations to the fullest extent permitted by law. Borrower covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Borrower shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. § 105 or any other provision of the United States Bankruptcy Code, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against any guarantor or indemnitor of the Obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

9.5 Notices. Any notice, demand, consent, approval, direction, waiver, agreement or other communication (any "**Notice**") required or permitted hereunder or under any other documents in connection herewith shall be in writing and shall be directed as follows:

If to Borrower:

1901 W. Carroll, LLC,
c/o Sterling Bay Companies, LLC
1040 West Randolph Street
Chicago, Illinois 60607
Attention: Andrew Gloor
Telephone: 312-466-4100
Facsimile: 312-466-4101
Electronic Mail: agloor@sterlingbay.com

with a copy to:

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Sterling Bay Companies, LLC
 1040 West Randolph Street
 Chicago, Illinois 60607
 Attention: Dean Marks
 Telephone: 312-466-4100
 Facsimile: 312-466-4101
 Electronic Mail: dmarks@sterlingbay.com

If to Lender:

Fulton Market Realty Company Parallel LLC
 c/o JPMorgan Investment Management, Inc.
 270 Park Avenue, 7th Floor
 New York, New York 10017
 Attention: Robert G. Stephens
 Telephone: 212-648-2148
 Facsimile: 212-648-2266
 Electronic Mail: robert.g.stephens@jpmorgan.com

with a copy to:

Fulton Market Realty Company Parallel LLC
 c/o JPMorgan Investment Management, Inc.
 270 Park Avenue, 7th Floor
 New York, New York 10017
 Attention: Michael F. Buckley
 Telephone: 212-648-2349
 Facsimile: 212-648-2266
 Electronic Mail: michael.f.buckley@jpmorgan.com

and

Goodwin Procter LLP
 The New York Times Building
 620 Eighth Avenue
 New York, New York 10018-1405
 Attention: Christopher B. Price, Esq.
 Telephone: 212-813-8951
 Facsimile: 212-355-3333
 Electronic Mail: cbprice@goodwinprocter.com

or to such changed address as a party hereto shall designate to the other party hereto from time to time in writing. Any counsel designated above or replacement counsel which may be designated respectively by each party by written notice to the other party hereto is hereby authorized to give notices hereunder on behalf of its respective client.

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Notices shall be (a) personally delivered to the offices set forth above or sent by electronic mail, in which case they shall be deemed delivered on the date of delivery or first (1st) business day thereafter if delivered other than on a business day (or after 5:00 p.m. New York City time) to said offices; (b) sent by registered or certified mail, postage prepaid, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or delayed by the addressee in which event they shall be deemed delivered on the earliest to occur of the first (1st) business day on or after the date of delivery or the third (3rd) business day after such notice has been deposited in the U.S. Mail in accordance with the terms hereof; or (c) sent by a nationally recognized overnight courier, in which case they shall be deemed delivered on the first (1st) business day on or after the date following the date such notice was delivered to or picked up by the courier.

9.6 Successors and Assigns. The provisions hereof shall be binding upon Borrower and the heirs, devisees, representatives, permitted successors, and permitted assigns of Borrower, including successors in interest of Borrower in and to all or any part of the Property, and shall inure to the benefit of Lender and its heirs, successors, and assigns. All references in this Security Instrument to Borrower or Lender shall be construed as including all of such other Persons with respect to the Person referred to. Where two or more Persons have executed this Security Instrument, the obligations of such Persons shall be joint and several except to the extent the context clearly indicates otherwise.

9.7 Severability. In the event that any provision of this Security Instrument or the application thereof to Borrower shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation, or rule of law, and the remainder of this Security Instrument and the application of any such invalid or unenforceable provision to parties, jurisdictions, or circumstances other than to whom or to which it shall be held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Security Instrument.

9.8 Waiver; Discontinuance of Proceedings. Lender may waive any single default by Borrower hereunder without waiving any other prior or subsequent default. Lender may remedy any default by Borrower hereunder without waiving the default remedied. Neither the failure by Lender to exercise, nor the delay by Lender in exercising, any right, power or remedy upon any default by Borrower hereunder shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Lender of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Lender of any payment in an amount less than the amount then due on any of the secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder. In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted hereunder or under the other

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Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right to do so and, in such an event, Borrower and Lender shall be restored to their former positions with respect to the indebtedness secured hereby, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses, and powers of Lender shall continue as if the same had never been invoked.

9.9 Construction of Provisions. The following rules of construction shall be applicable for all purposes of this Security Instrument and of the other Loan Documents or instruments supplemental hereto, unless the context otherwise requires:

(a) All references herein to numbered Articles or Sections or to lettered Exhibits are references to the Articles and Sections hereof and the Exhibits annexed to this Security Instrument, unless expressly otherwise designated in context.

(b) The terms “include”, “including” and similar terms shall be construed as if followed by the phrase “without being limited to.”

(c) The term “Property” shall be construed as if followed by the phrase “or any part thereof.”

(d) The term “Obligations” shall be construed as if followed by the phrase “or any other sums secured hereby, or any part thereof.”

(e) Words of masculine, feminine, or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

(f) The term “Person” shall include natural persons, firms, partnerships, limited partnership, general partnership, joint stock company, limited liability company, limited liability partnership, joint venture, association, company, trust, bank, trust company, land trust, business trust, or other organization, whether or not a legal entity, or any nongovernmental entity or Governmental Authority.

(g) The term “provisions”, when used with respect here to or to any other document or instrument, shall be construed as if preceded by the phrase “terms, covenants, agreements, requirements, conditions, and/or”.

(h) All Article, Section, and Exhibit captions herein are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Security Instrument.

(i) No inference in favor of any party shall be drawn from the fact that such party has drafted any portion hereof.

(j) The cover page of and all recitals set forth in, and all Exhibits to, this Security Instrument are hereby incorporated in this Security Instrument.

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(k) All obligations of Borrower hereunder shall be performed and satisfied by or on behalf of Borrower at Borrower's sole cost and expense.

(l) The term "**landlord**" shall mean "landlord, sublandlord, lessor and sublessor", as the case may be, and the term "**tenant**" shall mean "tenant, subtenant, lessee and sublessee", as the case may be.

(m) The term "**business day**" shall mean any day of the year other than (a) Saturday, Sunday, (b) a day on which banks in the City of New York are authorized or required by law to remain closed, or (c) a day on which the New York Stock Exchange is closed.

9.10 Multisite Real Estate and Multiple Collateral Transaction. Borrower acknowledges that each of the Other Security Instruments also secures the Loan, the indebtedness evidenced by the Note, and the other obligations of Borrower under the Loan Documents. Borrower agrees that the lien of this Security Instrument shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Lender or any other holder of any of the indebtedness secured hereby, and, without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance of any collateral by Lender or any other holder of any of the indebtedness secured hereby or by any failure, neglect, or omission on the part of Lender or any other holder of any of the indebtedness secured hereby to realize upon or protect any of the indebtedness secured hereby or any collateral or security therefor including, without limitation, the Other Security Instruments. The lien and security interest hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification, or disposition of any of the indebtedness secured hereby, or of any of the collateral or security therefor, including, without limitation, the Other Security Instruments, or of any instrument or agreement setting forth the terms and conditions pertaining to the foregoing. Lender may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Security Instruments without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Lender's rights and remedies under any or all of the Other Security Instruments shall not in any manner impair the indebtedness secured hereby, except to the extent of payment, or the lien of this Security Instrument, and any exercise of the rights and remedies of the Lender hereunder shall not impair the lien of any of the Other Security Instruments or any of Lender's rights and remedies thereunder. Borrower specifically consents and agrees that Lender may exercise its rights and remedies hereunder and under the Other Security Instruments separately or concurrently and in any order that it may deem appropriate.

9.11 Counting of Days. The term "**days**" when used herein shall mean calendar days. If any time period ends on a day which is not a business day, the period shall be deemed to end on the next succeeding business day.

9.12 Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding Lien, security interest, charge, or prior encumbrance against the Property, such proceeds have been advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights, security interests and Liens owned

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by any owner or holder of such outstanding Liens, security interests, charges or encumbrances, irrespective of whether said Liens, security interests, charges or encumbrances are released.

9.13 Unsecured Portion of Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Security Instrument or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Security Instrument.

9.14 Cross-Default. An Event of Default hereunder which has not been cured within any applicable notice, grace or cure period shall constitute a default under each of the other Loan Documents.

9.15 Publicity. Neither Borrower nor any Borrower Party (or their affiliates) shall use the name of Lender, J.P. Morgan Investment Management Inc., JPMorgan Chase Bank, N.A. or any subsidiary or affiliate thereof, in any advertising, press release, "tombstone," or on any sign erected on the Property without the prior written approval of Lender in each instance.

9.16 Construction of This Document. This document may be construed as a mortgage, security deed, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

9.17 No Merger. It is the desire and intention of the parties hereto that this Security Instrument and the lien hereof do not merge in fee simple title to the Property. It is hereby understood and agreed that should Lender acquire any additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in such other or additional interests in or to the Property, toward the end that this Security Instrument may be foreclosed as if owned by a stranger to said other or additional interests.

9.18 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, or other proceedings affecting Borrower or the Property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire secured indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

9.19 Fixture Filing. This Security Instrument constitutes a financing statement filed as a fixture filing under Section 9-502(c) of the Illinois UCC, as amended or recodified from time to time, covering any portion of the Property which is or later may become fixtures and is to be recorded in the real estate records. The following addresses are the mailing addresses of Borrower, as debtor under the Code, and Lender, as secured party under the Code, respectively:

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Borrower: 1901 W. Carroll, LLC,
c/o Sterling Bay Capital Partners I, LLC
1040 West Randolph Street
Chicago, Illinois 60607
Attention: Andrew Gloor

Borrower's Organization (Delaware) #: 5419201
Borrower's Organization (Illinois) #: 0452324-5

Lender: Fulton Market Realty Company Parallel LLC
c/o J.P. Morgan Investment Management, Inc.
270 Park Avenue, 7th Floor
New York, New York 10017
Attn: Robert G. Stephens

Address of Property: 1901 W. Carroll, Chicago, Cook County, Illinois

9.20 Assignment by Lender. Borrower agrees that Lender may assign, sell, or transfer the Loan, its rights under this Security Instrument and the other Loan Documents, and any servicing rights with respect to the Loan, whether in whole or in part, and/or grant participations in the Loan. In the event of any assignment of the Loan by Lender, Lender (and its partners, officers, directors, agents, attorneys, administrators, trustees, parents, subsidiaries, advisors, affiliates, beneficiaries, shareholders, representatives, servants, and employees and their respective affiliates) will be deemed released of and from any obligation or liability (including, without limitation, any Losses and Liabilities of any Person) with respect to the Loan, this Security Instrument, and the other Loan Documents (without any further action or agreement required) with respect to the Loan. Lender may forward to any potential assignee or transferee of any interest in the Loan or any servicing rights with respect to the Loan any and all documents and information which Lender now has or may hereafter acquire relating to the Loan and to the Borrower Parties and the Property, whether furnished by the Borrower Parties or otherwise, as Lender determines necessary or desirable. Borrower, on behalf of itself and the Borrower Parties, agrees to cooperate with Lender in connection with any transaction contemplated in this **Section 9.20.**

9.21 No Representation. By accepting delivery of any item required to be observed, performed, or fulfilled or to be given to Lender pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss, or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent, or affirmation with respect thereto by Lender.

9.22 Limited Recourse.

(a) Except as otherwise provided in this **Section 9.22**, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note or this Security Instrument or the other Loan Documents by any action or proceeding

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wherein a money judgment shall be sought against Borrower, except that Lender may sell the Property under any power of sale or right of non-judicial foreclosure or bring a foreclosure action, confirmation action, action for specific performance or other appropriate action or proceeding to enable Lender to enforce and realize upon the Note, this Security Instrument, the other Loan Documents, and the Property, the Rents and Profits and any other collateral given to Lender created by the Note, this Security Instrument and the other Loan Documents; provided, however, that any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, the Rents and Profits received by Borrower after an Event of Default, and any other collateral given to Lender. Lender, by accepting the Note and this Security Instrument, agrees that it shall not, except as otherwise provided in the Note or this Security Instrument, sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding, under or by reason of or under or in connection with the Note, this Security Instrument, or the other Loan Documents. The provisions of this **Section 9.22** shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by the Note, this Security Instrument, or the other Loan Documents; (ii) impair the right of Lender to obtain a deficiency judgment against Borrower, but not Guarantor (unless any Recourse Obligation of Borrower, including any Full Recourse Event, (each as hereinafter defined) has occurred and exclusive of any obligations of Guarantor under the Environmental Indemnity Agreement), in any action or proceeding with respect to the Loan Documents in order to preserve its rights and remedies including, without limitation, foreclosure, non-judicial foreclosure, or the exercise of a power of sale, under this Security Instrument and the other Loan Documents; however, Lender agrees that it shall not enforce such deficiency judgment against any assets of Borrower other than Borrower's interest in the Property; (iii) impair the right of Lender to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Security Instrument; (iv) affect the validity or enforceability of any indemnity, pledge, master lease, or similar instrument made in connection with the Note, this Security Instrument, or the other Loan Documents; (v) impair the right of Lender to obtain the appointment of a receiver; (vi) impair the enforcement of the Assignment of Leases and Rents executed in connection herewith; (vii) impair the right of Lender to obtain a deficiency judgment against Borrower, but not Guarantor (unless any Recourse Obligation of Borrower, including any Full Recourse Event, has occurred and exclusive of any obligations of Guarantor under the Environmental Indemnity Agreement), or judgment on the Note against Borrower if necessary to obtain any insurance proceeds or condemnation awards to which Lender would otherwise be entitled under this Security Instrument; (viii) impair, release, or limit the liability of Borrower (or any other Person) under the Environmental Indemnity or any of the other Loan Documents or affect in any way the validity, enforceability, or recourse of such Environmental Indemnity or any of the other Loan Documents; or (ix) impair, release, or affect in any way the validity, enforceability, or recourse against Guarantor under any Guaranty.

(b) Notwithstanding anything to the contrary contained herein, Borrower and Guarantor shall be personally liable to Lender for the Recourse Obligations of Borrower. Unless a Full Recourse Event shall have occurred, the term "**Recourse Obligations of Borrower**" shall mean any and all Losses and Liabilities actually sustained or incurred by Lender to the extent arising out of or with respect to:

(i) fraud or any willful and material misrepresentation by Borrower or any other member of the "Borrower Group" (as defined below) in connection with the Loan

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Documents. As used in this Security Instrument, the term “**Borrower Group**” shall mean Borrower, the Other Borrowers, Guarantor, 345 N. Morgan Manager, LLC, a Delaware limited liability company, SBCP Fulton Market Venture Holdings, LLC, a Delaware limited liability company, 1901 W. Carroll Manager, LLC, a Delaware limited liability company, and Sterling Bay Capital Management, LLC, a Delaware limited liability company;

(ii) Borrower’s misapplication (i.e., application in violation of the terms of the Loan Documents) or misappropriation of rents, if any, profits or condemnation or insurance proceeds attributable to the Property;

(iii) material physical waste with respect to the Property (as measured against the condition of the Property as of the date of this Security Instrument), excluding any intentional material physical waste caused by the acts of any court appointed (at Lender’s request) receiver, trustee, liquidator or conservator in control of the Property;

(iv) Borrower’s failure to pay to Lender all rents and profits and other sums attributable to the Property or other collateral for Borrower’s obligations under the Loan Documents that are received by Borrower from and after the occurrence of any Event of Default;

(v) Borrower’s failure to pay any taxes, assessments and related charges that can create liens on the Property, any mortgage/recording taxes, assessments, fees and other charges or any insurance premiums to the extent there is sufficient net cash flow generated by the Property and made available to Borrower to pay the same;

(vi) any violation of Section 2.1(f) hereof;

(vii) any violation of Section 2.6 hereof with regard to mechanics’ liens (“**Mechanics’ Lien Violation**”);

(viii) any violation of Section 8.3 hereof;

(ix) any Environmental Condition; or

(x) after an Event of Default has occurred, Borrower (or any other member of the Borrower Group) takes any action to stay, hinder, interfere, delay or impede Lender from foreclosing the Security Instrument or exercising its other remedies under the Loan Documents; provided that neither Borrower nor any other member of the Borrower Group shall be liable to the extent of any applicable Losses and Liabilities arising solely from a defense of Borrower or any other member of the Borrower Group raised in good faith.

(c) Notwithstanding anything to the contrary contained herein, in the event of the occurrence of any Full Recourse Event, the term “**Recourse Obligations of Borrower**” shall be deemed to include all the Obligations. For purposes hereof, the term “**Full Recourse Event**” shall mean:

(i) Borrower or any other member of the Borrower Group challenging or disputing the validity or enforceability of this Security Instrument or any of the other Loan Documents or the validity, enforceability or priority of the liens and security interests securing

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payment of amounts owing or payable under the terms of the Note, this Security Instrument or any of the other Loan Documents;

(ii) (A) Borrower files any petition or commences any proceeding pursuant to any reorganization, bankruptcy, insolvency or similar law or any such petition or proceeding is filed or commenced against Borrower by any other member of the Borrower Group and Borrower or any other member of the Borrower Group objects to a motion by Lender for relief from any stay or injunction from pursuing a foreclosure or any other remedial action permitted under the Loan Documents; or (B) if the Property or any part thereof shall become an asset in (1) a voluntary bankruptcy or insolvency proceeding, or (2) an involuntary bankruptcy or insolvency proceeding which is commenced by any member of the Borrower Group, or (C) if a court of competent jurisdiction holds that the granting, execution or delivery of this Security Instrument or any other Loan Documents is or constitutes a fraudulent conveyance under any bankruptcy, insolvency or fraudulent conveyance law or is otherwise voidable under any such laws;

(iii) any violation of Section 2.6(b) hereof (other than a Mechanics' Lien Violation) if such violation is not cured by a prepayment of the Loan in whole or part in accordance with Section 6(a) or 6(b) of the Note;

(iv) any Transfer (excluding Transfers by operation of law) is made in violation of the provisions of Section 5.1 hereof; or

(v) any violation of Section 2.1(f) hereof, and such violation is a substantial factor in the consolidation of the assets and liabilities of Borrower by the applicable bankruptcy court and any other Person.

Notwithstanding anything to the contrary contained in this Security Instrument, if a Full Recourse Event occurs involving the Property, and if such Full Recourse Event would not have occurred or continue to exist if the Property did not serve as security for the Obligations, and if Borrower subsequently obtains a release of the Property from the lien of this Security Instrument, then, after such release of the Property, such Full Recourse Event shall be deemed to have not occurred.

(d) Nothing herein shall be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim against Borrower, but not Guarantor (unless any Recourse Obligation of Borrower, including any Full Recourse Event has occurred and exclusive of any obligations of Guarantor under the Environmental Indemnity Agreement), for the full amount of the Obligations or to require that all collateral shall continue to secure all of the Obligations owing to Lender in accordance with the Note, this Security Instrument and the other Loan Documents.

(e) The Recourse Obligations of Borrower and the Full Recourse Events shall not include and neither Borrower nor Guarantor shall have any liability for any events first arising after the date on which Lender or a third party that is not an Affiliate of Borrower or Guarantor acquires title to the Property or to the interests in Borrower through foreclosure, private power of sale or the acceptance of a deed in lieu of foreclosure (the "**Title Transfer**

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Date”), except with respect to (a) acts taken by Borrower or Guarantor and (b) any events or acts which arose or were taken prior to the Title Transfer Date but were not discovered by Lender or a third party until after the Title Transfer Date.

9.23 Entire Agreement and Modifications. This Security Instrument cannot be altered, amended, modified, terminated, or discharged, except in a writing signed by the party against whom enforcement of such alteration, amendment, modification, termination, or discharge is sought. It is expressly understood and agreed that neither this Security Instrument nor any of the other Loan Documents can be modified orally and no oral modifications or other agreements with respect to this Security Instrument or any other Loan Document shall be valid or enforceable. Borrower agrees that the written agreements evidenced by this Security Instrument and the other Loan Documents represent the final agreement between the parties hereto and thereto and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

9.24 Commissions. Borrower agrees to pay and to indemnify and hold Lender harmless from any and all loss, cost, or expense (including attorneys’ fees and expenses) arising from the claims of any brokers or anyone claiming a right to any fees in connection with the financing of the Property by, through or under Borrower or its Affiliates (as defined in the Note). Notwithstanding the foregoing, Borrower acknowledges that Lender or its affiliates may have a contractual relationship with the broker, if any, that arranged the Loan on Borrower’s behalf, and that such broker may be entitled to fees from Lender or its affiliates in connection with the origination, closing, or servicing of the Loan, which fees shall be in addition to any brokerage fees owed by Borrower to such broker. Borrower shall not be responsible for any such additional fees. Borrower acknowledges and agrees that it has made and will make such inquiries of the broker, if any, that arranged the Loan with respect to the nature or existence of such arrangement. No agreement by Lender to pay any such fees or compensation to such broker (if any) shall be binding upon Lender unless it is set forth in separate written instrument that has been duly executed by Lender and such broker.

9.25 Servicing Agent. Borrower does hereby acknowledge that the Loan Documents may be serviced by an agent designated by Lender from time to time, and that such servicing agent shall have the authority to collect payments on the secured indebtedness and to exercise the rights and remedies of Lender under the Loan Documents for and on behalf of Lender.

9.26 Usury Savings Clause. It is the intention of Borrower and Lender to conform strictly to all applicable usury laws now or hereinafter in force. All agreements in this Security Instrument and in the other Loan Documents are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement or acceleration of maturity of the Obligations, or otherwise, shall the amount paid or agreed to be paid hereunder or thereunder for the use, forbearance or detention of money, to the extent that any sums secured hereby or by the other Loan Documents shall not be exempt from such laws, exceed the highest lawful rate permitted under applicable usury laws as now or hereinafter construed by the court having jurisdiction over such matters. If, from any circumstance whatsoever, fulfillment of any provision of the Loan Documents, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be

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reduced to the limit of such validity and if, from any circumstance whatsoever, Lender shall ever receive as interest an amount which would exceed the highest lawful rate, the receipt of such excess shall, at the option of Lender, be deemed a mistake and such excess shall be rebated to Borrower or, held in trust by Lender for the benefit of Borrower and shall be credited against the principal amount of the Obligations to which the same may lawfully be credited, and any portion of such excess not capable of being so credited shall be rebated to Borrower. The aggregate of all interest (whether designated as interest, service charges, points, or otherwise) contracted for, chargeable, or receivable under the Note, this Security Instrument, or any other Loan Document shall under no circumstances exceed the maximum legal rates upon the unpaid principal balance of the Note remaining from time to time. In the event such interest does exceed the maximum legal rate, it shall be deemed a mistake and such excess shall be canceled automatically and if theretofore paid, rebated to Borrower or credited on the principal amount of the Note, or if the Note has been repaid, then such excess shall be rebated to Borrower.

9.27 Right to Deal. In the event that ownership of the Property becomes vested in a Person other than Borrower, Lender may, without notice to Borrower, deal with such successor or successors in interest with reference to this Security Instrument or the Obligations in the same manner as with Borrower, without in any way vitiating or discharging Borrower's liability hereunder or for the payment of the Obligations or being deemed a consent to such vesting. It being agreed that Lender's dealing with any such successor or successors as aforesaid shall not relieve Borrower of its obligations or liabilities hereunder or under the Loan Documents (including, without limitation, the Obligations), all of which shall remain the primary obligations and liabilities of Borrower as a principal hereunder and thereunder, and not as merely a guarantor or by way of stand-by liability.

9.28 Sole Discretion of Lender.

(a) Whenever Lender's judgment, consent, or approval is required under this Security Instrument or any of the other Loan Documents for any matter, or Lender shall have an option or election under this Security Instrument or any of the other Loan Documents, such judgment, the decision as to whether or not to consent to or approve the same or the exercise of such option or election shall (except as otherwise expressly provided herein or therein) be made in the sole, absolute, unfettered, and subjective discretion of Lender, and as to which decision no standard of reasonableness shall apply or be deemed to apply, and, furthermore, shall be final and conclusive. The use of the phrase "in Lender's sole discretion", "in the sole discretion of Lender" and words of similar import, when used in this Security Instrument or any other Loan Document (as well as the absence thereof) with respect to a particular matter shall not be deemed in any way to limit or modify the provisions of the preceding sentence with respect to such matter.

(b) If at any time Borrower believes that Lender has not acted reasonably in granting or withholding any approval or consent under this Security Instrument or any of the other Loan Documents as to which approval or consent Lender has expressly agreed to act reasonably, then Borrower's sole and exclusive remedy shall be to seek injunctive relief or specific performance and no action for monetary damages, punitive damages or any other Losses and Liabilities shall in any event or under any circumstances be sought or maintained by Borrower against Lender.

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9.29 Provisions as to Covenants and Agreements. All of Borrower's covenants and agreements hereunder shall run with the land.

9.30 No Joint Venture. The parties intend and agree that the relationship between them shall be solely that of contracting parties. Nothing contained in this Security Instrument or in any of the Loan Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture, or co-ownership by or between Borrower and Lender. Lender shall not in any way be responsible for the debts, losses, or obligations of Borrower with respect to the Property or otherwise. All obligations to pay the Impositions arising from the ownership, operation, or occupancy of the Property and to perform all other agreements and contracts relating to the Property shall be the sole responsibility of Borrower. Borrower, subject to the terms and provisions of the Loan Documents (including this Security Instrument), shall be free to determine and follow its own policies and practices in the conduct of its business.

9.31 Indemnification Provisions. THIS SECURITY INSTRUMENT CONTAINS INDEMNIFICATION PROVISIONS WHICH, AMONG OTHER MATTERS AND IN CERTAIN CIRCUMSTANCES, INDEMNIFY LENDER AND OTHER INDEMNITEES AGAINST THE CONSEQUENCES OF THEIR OWN NEGLIGENCE AND AGAINST ANY STRICT LIABILITY WHICH COULD BE IMPOSED ON LENDER AND SUCH OTHER INDEMNITEES.

9.32 Applicable Law; Consent to Jurisdiction; No Jury. **TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER HEREBY AGREE THAT THIS SECURITY INSTRUMENT SHALL BE INTERPRETED, CONSTRUED, GOVERNED AND ENFORCED ACCORDING TO THE SUBSTANTIVE LAWS OF THE STATE OF ILLINOIS WITHOUT GIVING EFFECT TO ITS PRINCIPLES OF CHOICE OF LAW OR CONFLICTS OF LAW THAT WOULD DEFER TO THE SUBSTANTIVE LAW OF ANOTHER JURISDICTION, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY IRREVOCABLY: (A) SUBMITS IN ANY LEGAL PROCEEDING RELATING TO THIS SECURITY INSTRUMENT TO THE NON-EXCLUSIVE IN PERSONAM JURISDICTION OF ANY STATE OR THE UNITED STATES COURT OF COMPETENT JURISDICTION SITTING IN THE STATE OF NEW YORK OR, THE STATE OF ILLINOIS, AND AGREES TO SUIT BEING BROUGHT IN SUCH COURTS, AS LENDER MAY ELECT; (B) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF SUCH PROCEEDING IN ANY SUCH COURT OR THAT SUCH PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT; (C) BORROWER DOES HEREBY DESIGNATE AND APPOINT: C T CORPORATION SYSTEM, 111 8TH AVENUE, NEW YORK, NEW YORK 10011 AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION, OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT**

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SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK; AND (D) AGREES THAT NOTHING HEREIN SHALL AFFECT LENDER'S RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW, AND THAT LENDER SHALL HAVE THE RIGHT TO BRING ANY LEGAL PROCEEDINGS (INCLUDING A PROCEEDING FOR THE ENFORCEMENT OF A JUDGMENT ENTERED BY ANY OF THE AFOREMENTIONED COURTS) AGAINST BORROWER IN ANY OTHER COURT OR JURISDICTION IN NEW YORK IN ACCORDANCE WITH APPLICABLE LAW.

BORROWER AND LENDER EACH WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE LOAN SECURED BY THIS SECURITY INSTRUMENT, OR ANY OF THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BORROWER AND LENDER AND BORROWER ACKNOWLEDGES THAT NEITHER LENDER NOR ANY PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION AND AS EVIDENCE OF THIS FACT HAS EXECUTED THIS SECURITY INSTRUMENT BELOW. BORROWER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY LENDER EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY LENDER.

ARTICLE X ADDITIONAL REPRESENTATIONS, WARRANTIES AND WAIVERS OF BORROWER

10.1 Conditions to Exercise of Rights. Borrower hereby waives any right it may now or hereafter have to require Lender, as a condition to the exercise of any remedy or other right against Borrower hereunder or under any other document executed by Borrower in connection with the Loan and the Obligations:

- (a) to pursue any other right or remedy in Lender's power; or

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(b) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest, or other demand or notice of any kind in connection with any Obligation or any collateral (other than the Property) for any Obligation secured by this Security Instrument or any of the other Loan Documents.

10.2 Defenses. Borrower hereby waives any defense it may now or hereafter have that relates to:

(a) any disability or other defense of any other Borrower Party or other Person;

(b) the unenforceability or invalidity of any collateral assignment (other than this Security Instrument) or guaranty with respect to any Obligation, or the lack of perfection or continuing perfection or lack of priority of any Lien (other than the lien hereof) which secures any Obligation;

(c) any failure of Lender to marshal assets in favor of Borrower or any other Person;

(d) any modification of any Obligation, including any renewal, extension, acceleration, or increase in any applicable interest rate;

(e) any and all rights and defenses arising out of an election of remedies by Lender;

(f) any failure of Lender to file or enforce a claim in any bankruptcy proceeding of any Person, of the application or non-application of Section 111(b)(2) of the United States Bankruptcy Code;

(g) any extension of credit or the grant of any Lien under Section 364 of the United States Bankruptcy Code;

(h) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or

(i) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person.

10.3 Lawfulness and Reasonableness. Borrower warrants that all of the waivers in this Security Instrument are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Borrower may destroy or impair rights which Borrower would otherwise have against Lender, any other Borrower Party and other Persons, or against Collateral. Borrower agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.

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10.4 Enforceability.

(a) Borrower hereby acknowledges that:

(1) the obligations undertaken by Borrower in this Security Instrument are complex in nature;

(2) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter;

(3) as part of Lender's consideration for entering into this transaction, Lender has specifically bargained for the waiver and relinquishment by Borrower of all such defenses; and

(4) Borrower has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein.

(b) Borrower does hereby represent and confirm to Lender that Borrower is fully informed regarding, and that Borrower does thoroughly understand:

(1) the nature of all of the possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter;

(2) the circumstances under which such defenses may arise;

(3) the benefits which such defenses might confer upon Borrower; and

(4) the legal consequences to Borrower of waiving such defenses.

(c) Borrower acknowledges that Borrower makes this Security Instrument with the intent that this Security Instrument and all of the informed waivers herein shall each and all be fully enforceable by Lender, and that Lender is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

10.5 Reinstatement of Lien. Lender's rights hereunder shall be reinstated and revived, and the enforceability of this Security Instrument shall continue, with respect to any amount at any time paid on account of any Obligation which Lender is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to any Person.

ARTICLE XI STATE SPECIFIC PROVISIONS

11.1 Conflicting Provisions. The provisions of this Article are intended to supplement, and not limit, the other provisions of this Security Instrument; provided, however, that in the event the provisions of this Article contradict any other provision of this Security Instrument, the provisions of this Article shall govern.

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11.2 Type of Real Estate. Borrower acknowledges that the transaction of which this Security Instrument is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.; "**Foreclosure Act**") or residential real estate (as defined in Section 15-1219 of the Foreclosure Act).

11.3 Interest Rate. To the extent the provisions of the Illinois Interest Act (815 ILCS 205/4(l)) apply, the Obligations constitute business loans to a business association which come within the purview of 815 ILCS 205/4(1)(c), as well as loans secured by a mortgage on real estate which comes within the purview of 815 ILCS 205/4(1)(l).

11.4 Illinois Mortgage Foreclosure Law.

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

(b) If any provision of this Security Instrument shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Foreclosure Act in the absence of said provision, Lender shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all reasonable expenses incurred by Lender to the extent reimbursable under Sections 15-1510(b) and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Security Instrument, shall be added to the indebtedness secured by this Security Instrument or by the judgment of foreclosure.

(d) In addition to any provision of this Security Instrument authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Foreclosure Act, to be placed in possession of the Property or, at its request, to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties, as provided for in Sections 5/15-1701, 5/15-1702, 5/15-1703 and 5/15-1704 of the Foreclosure Act.

(e) BORROWER SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY APPRAISEMENT, VALUATION, STAY, EXTENSION, OR EXEMPTION LAWS, OR ANY SO-CALLED "MORATORIUM LAWS," NOW EXISTING OR HEREAFTER ENACTED IN ORDER TO PREVENT OR HINDER THE ENFORCEMENT OR FORECLOSURE OF THIS SECURITY INSTRUMENT, BUT HEREBY WAIVES THE BENEFIT OF SUCH LAWS. BORROWER FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT WAIVES ANY AND ALL RIGHT TO HAVE THE PROPERTY AND ESTATES COMPRISING THE PROPERTY MARSHALLED UPON ANY

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FORECLOSURE OF THE LIEN HEREOF AND AGREES THAT ANY COURT HAVING JURISDICTION TO FORECLOSE SUCH LIEN MAY ORDER THE PROPERTY SOLD AS AN ENTIRETY. IN THE EVENT OF ANY SALE MADE UNDER OR BY VIRTUE OF THIS SECURITY INSTRUMENT, THE WHOLE OF THE MORTGAGED PROPERTY MAY BE SOLD IN ONE PARCEL AS AN ENTIRETY OR IN SEPARATE LOTS OR PARCELS AT THE SAME OR DIFFERENT TIMES, ALL AS LENDER MAY DETERMINE. LENDER SHALL HAVE THE RIGHT TO BECOME THE PURCHASER AT ANY SALE MADE UNDER OR BY VIRTUE OF THIS SECURITY INSTRUMENT AND LENDER SHALL BE ENTITLED TO CREDIT BID THE INDEBTEDNESS OR ANY PORTION THEREOF IN LENDER'S SOLE DISCRETION.

(10) THE BORROWER, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS SECURITY INSTRUMENT, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE FORECLOSURE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15 1602) AND REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT, OR DECREE OF FORECLOSURE OF THIS SECURITY INSTRUMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15 1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE, OR JUDGMENT OF ANY COURT.

11.5 Future Advances; Maximum Indebtedness. This Security Instrument is granted to secure not only existing indebtedness, but also future advances made pursuant to or as provided in the Loan Documents, whether such advances are obligatory or to be made at the option of Lender, or otherwise, to the same extent as if such future advances were made on the date of execution of this Security Instrument, although there may be no advance made at the time of execution hereof, and although there may be no indebtedness outstanding at the time any advance is made. Notwithstanding anything in this Security Instrument to the contrary, the maximum principal amount of the indebtedness secured by this Security Instrument shall not exceed \$10,000,000.00, plus all costs of enforcement and collection of this Security Instrument and the other Loan Documents, including reasonable attorney's fees, plus the total amount of any advances made pursuant to the Loan Documents to protect the collateral and the security interest and lien created hereby, or the priority thereof, together with interest on all of the foregoing as provided in the Loan Documents.

11.6 Insurance Disclosure. The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless the Borrower provides evidence of the insurance coverage required by the Loan Documents, the Lender may purchase such insurance at the Borrower's expense to protect the Lender's interests in the Borrower's collateral. This insurance may, but need not, protect the Borrower's interests. The coverage that the Lender purchases may not pay any claim that the Borrower may make or any claim that is made against the Borrower in connection with the collateral. The Borrower may later cancel any insurance purchased by the Lender, but only after providing evidence that the Borrower has obtained insurance as required by the Loan Documents. If the Lender purchases insurance for the collateral, the Borrower will be

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responsible for the costs of that insurance, including the insurance premium, interest, and any other charges that the Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations of the Borrower. The costs of the insurance may be more than the cost of insurance that the Borrower may be able to obtain on the Borrower's own.

11.7 Leasing and Management Agreements. Borrower covenants and agrees that all agreements to pay leasing commissions (a) shall provide that the obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement, (b) shall be subordinate to the lien of this Security Instrument, and (c) shall not be enforceable against Lender. Borrower further covenants and agrees that any property management agreement and operating agreement for the Property, whether now in effect or entered into hereafter by Borrower, with a property manager or operator, shall contain a "no lien" provision whereby, to the maximum extent permitted by law, the property manager or operator waives and releases, and to the extent that the above is not permitted by applicable law, subordinates to the lien hereof, any and all mechanics' lien rights that it or anyone claiming through or under it may have pursuant to 770 ILCS 60/1.

[SIGNATURE PAGE FOLLOWS]

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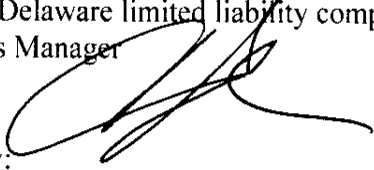
IN WITNESS WHEREOF, Borrower has executed this Security Instrument as of the day and year first above written.

BORROWER:

1901 W. CARROLL, LLC,
a Delaware limited liability company

By: 1901 W. Carroll Manager, LLC,
a Delaware limited liability company,
Its Manager

By: Sterling Bay Capital Management, LLC,
a Delaware limited liability company,
Its Manager

By: 
Name: Andrew Gilson
Title: Manager

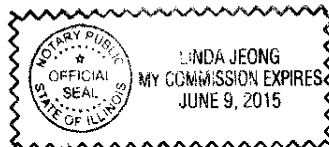
STATE OF Illinois)
COUNTY OF Cook)

I, Linda Jeong, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Andrew Gilson, a Manager of Sterling Bay Capital Management, LLC, a Delaware limited liability company, the manager of 1901 W. Carroll Manager, LLC, a Delaware limited liability company, the manager of 1901 W. Carroll, LLC, a Delaware limited liability company, 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 he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24th day of September, 2014.


Notary Public

My Commission Expires:



[Signature Page to Mortgage]

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EXHIBIT A LEGAL DESCRIPTION

SUB LOTS 1 AND 2 OF EACH OF LOTS 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 45 AND 46, SUB LOT 1 OF LOT 36, SUB LOT 2 OF LOT 44, SUB LOT 1 AND THE WEST 5 FEET OF SUBLOT 2 OF LOT 47, ALL IN J.R. WALLER'S RESUBDIVISION OF THOMAS R. GREEN'S SUBDIVISION OF BLOCK 36 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 1901 W. CARROLL AVENUE, CHICAGO, IL 60612

PIN:

17-07-404-029-0000
17-07-404-028-0000
17-07-404-027-0000
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