

**Illinois Anti-Predatory
Lending Database
Program**

Certificate of Exemption

**Report Mortgage Fraud
800-532-8783**

The property identified as: **PIN: 17-09-403-001-0000**

Address:

Street: 400 South Franklin Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60607

Lender: COMPUTERSHARE TRUST COMPANY, N.A.

Borrower: ENWAVE CHICAGO INC.

Loan / Mortgage Amount: \$300,000,000.00

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: 63FB249F-77E0-4E5E-9D91-62B5CA8A464E

Execution date: 11/13/2014

Mar 29 2014 10:26 AM

Property of Cook County Clerk's Office

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**ENWAVE CHICAGO INC., as mortgagor
("Mortgagor")**

to

**COMPUTERSHARE TRUST COMPANY, N.A., as Collateral Agent, as mortgagee
("Agent")**

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

Dated: As of November 13, 2014

Location: 400 South Franklin
Chicago, Illinois 60607

PREPARED BY AND UPON
RECORDATION RETURN TO:

Torys LLP
1114 Avenue of the Americas, 23rd Floor
New York, New York 10036
Attention: Jonathan B. Wiener, Esq.

1401-8976126 4046 402

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

This MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as the same may be amended, restated, replaced, supplemented or otherwise modified, being hereinafter referred to as this "Security Instrument"), is made as of November 13, 2014, by ENWAVE CHICAGO INC., an Illinois corporation, having its principal place of business at Brookfield Place, 250 Vescey Street, 15th Floor, New York, New York 10281, as mortgagor (together with its permitted successors and permitted assigns, "Mortgagor"), and COMPUTERSHARE TRUST COMPANY, N.A., having an address at 8742 Lucent Boulevard, Suite 225, Highlands Ranch, CO 80129, acting as Collateral Agent for the Lenders (as defined in the Loan Agreement described below) and for the Note Purchasers (as defined in the Note Purchase Agreement described below), as mortgagee (together with its respective successors and assigns as Collateral Agent, "Agent").

WITNESSETH:

WHEREAS, this Security Instrument is given to secure Mortgagor's obligations under:

(i) that certain Guaranty Agreement dated effective November 13, 2014 (as amended, modified, renewed, extended or restated from time to time, the "Loan Agreement Guaranty") made by Brookfield District Energy South USA, LLC, Brookfield District Energy Midwest USA, LLC and each of their Subsidiaries, including the Mortgagor in favor of The Bank of Nova Scotia, as Administrative Agent for the Lenders (as defined below), which Loan Agreement Guaranty guarantees, among other obligations, the promissory notes, letters of credit, agreements, documents, obligations, indebtedness, liabilities and all other portions of the Obligations (as defined in the Loan Agreement described below and with an initial combined maximum principal amount of \$50,000,000 at any one time outstanding) set forth in (i) the Credit Agreement dated effective November 13, 2014, (as amended, modified, renewed, extended or restated from time to time, the "Loan Agreement"), among Brookfield District Energy Finance LLC, (the "Borrower"), Brookfield District Energy South USA, LLC and Brookfield District Energy Midwest USA, LLC and certain lenders from time to time party thereto (the "Lenders") and The Bank of Nova Scotia, as Administrative Agent (the "Administrative Agent") for those Lenders and (ii) any other loan documents executed and delivered in connection with the Loan Agreement including all renewals, extensions, supplements, amendments or modifications and all promissory notes given in substitution therefor or in restatement, renewal or extension thereof;

(ii) that certain Guaranty Agreement dated effective November 13 2014 (as amended, modified, renewed, extended or restated from time to time, the "Note Purchase Agreement Guaranty") made by Brookfield District Energy South USA, LLC, Brookfield District Energy Midwest USA, LLC and each of their Subsidiaries, including the Mortgagor,

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from time to time party thereto in favor of the Note Purchasers (as defined below) which Note Purchase Agreement Guaranty guarantees, among other obligations, the Note Obligations (as defined in the Note Purchase Agreement described below) in an initial maximum combined principal amount of \$250,000,000 set forth in (i) the Note Purchase Agreement dated effective November 13, 2014, (as amended, modified, renewed, extended or restated from time to time, the "Note Purchase Agreement") among Borrower, Brookfield District Energy South USA, LLC, and Brookfield District Energy Midwest USA, LLC and the purchasers from time to time party thereto (the "Note Purchasers") and (ii) any other documents executed and delivered in connection with the Note Purchase Agreement including all renewals, extensions, supplements, amendments or modifications and all promissory notes given in substitution therefor or in restatement, renewal or extension thereof;

(ii) that certain Collateral Agency and Intercreditor Agreement dated effective November 13, 2014, by and among Borrower, Brookfield District Energy South USA, LLC, Brookfield District Energy Midwest USA, LLC, the Note Purchasers, The Bank of Nova Scotia, as Administrative Agent for the Lenders and Agent (as amended, modified, renewed, extended or restated from time to time, the "Intercreditor Agreement"). The indebtedness, obligations and liabilities referred to in Paragraphs (i), (ii) and (iii) above are hereinafter collectively referred to as the "Guaranteed Obligations." This Security Instrument, the Loan Agreement Guaranty, the Note Purchase Agreement Guaranty, the Loan Agreement, the Note Purchase Agreement, the Intercreditor Agreement any and all other instruments, certificates, affidavits, documents, and agreements evidencing, governing, securing, guaranteeing, or relating to the Indebtedness, all as amended, modified, renewed, extended or restated from time to time, are hereinafter called the "Loan Documents."

WHEREAS, Mortgagor desires to secure the payment and the performance of the Guaranteed Obligations; and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, the Loan Agreement Guaranty, the Note Purchase Agreement, the Note Purchase Agreement Guaranty and the Intercreditor Agreement and payment, fulfillment and performance by Mortgagor of the Guaranteed Obligations are secured hereby, and each and every term and provision of the Loan Agreement, the Loan Agreement Guaranty, the Note Purchase Agreement, the Note Purchase Agreement Guaranty and the Intercreditor Agreement, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument;

NOW THEREFORE, in consideration of the loan by the Lenders under the Loan Agreement and the purchase of notes by the Note Purchasers under the Note Purchase Agreement and the covenants, agreements, representations and warranties set forth in this Security Instrument:

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ARTICLE 1

GRANTS OF SECURITY

Section 1.1 Property Mortgaged.

Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Agent, with power of sale, subject to the terms hereof, for the benefit and security of Agent, all of the real, personal, tangible and intangible property, rights, interests and estates now owned, or hereafter acquired by Mortgagor, including, without limitation, the following (collectively, the "Property"):

(a) Land. The real property described in Exhibit "A" attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise, be expressly made subject to the lien of this Security Instrument;

(c) Improvements. All buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, permits, licenses, rights of way and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Mortgagor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, heating, ventilation or air conditioning equipment, garbage equipment and apparatus, incinerators, boilers, furnaces, motors, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "Equipment"). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Mortgagor shall have any right or interest therein;

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(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Mortgagor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "Fixtures"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases, except to the extent that Mortgagor shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Mortgagor, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "Personal Property"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the "Uniform Commercial Code"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases (including, without limitation, ground leases, subleases or subsubleases), lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "Leases"), whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") and all right, title and interest of Mortgagor, its

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successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, deposits (including, without limitation, security, utility and other deposits) accounts and receipts from the Land and the Improvements whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Guaranteed Obligations and the performance of the Guaranteed Obligations;

(j) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to all or any portion of the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property including, without limitation, any award or awards, or settlements or payments, hereafter made resulting from (i) condemnation proceedings or the taking of all or any portion of the Improvements, the Equipment, the Fixtures, the Leases or the Personal Property, or any part thereof, under the power of eminent domain; or (ii) the alteration of grade or the location or the discontinuance of any street adjoining the Property or any portion thereof; and Mortgagor hereby agrees to execute and deliver from time to time such further instruments as may be requested by Agent to confirm such assignment to Agent of any such award, damage, payment or other compensation;

(j) Insurance Proceeds. All insurance proceeds in respect of the Property under any insurance policies covering the Property, subject to the rights of Mortgagor under the other Loan Documents to receive and apply the proceeds of any insurance policies, judgments, or settlements made in lieu thereof, in connection with a casualty to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Taxes charged against the Property;

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, insurance proceeds and awards, into cash or liquidation claims;

(m) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Agent in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Property and any part thereof and any Improvements or any business or activity conducted on the Property and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the

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right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(o) Trademarks. All trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(p) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the other Loan Documents; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof; and

(q) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (p) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Mortgagor expressly grants to Agent, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "Real Property") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2 Assignment of Rents

Mortgagor hereby absolutely and unconditionally assigns to Agent all of Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the other Loan Documents, and Section 7.1(h) of this Security Instrument, Agent grants to Mortgagor a revocable license to collect, receive, use and enjoy the Rents and Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Guaranteed Obligations, for use in the payment of such sums.

Section 1.3 Security Agreement

This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property including all accounts established by Agent pursuant to the other Loan Documents. By executing and delivering this Security Instrument, Mortgagor hereby grants to Agent, as security for the Guaranteed Obligations, a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full

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extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). If an Event of Default shall occur and be continuing, Agent, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Agent may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Agent after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at its expense, assemble the Collateral and make it available to Agent at a convenient place (at the Land if tangible property) reasonably acceptable to Agent. Mortgagor shall pay to Agent on demand any and all expenses, including reasonable legal expenses and attorneys' fees and costs, incurred or paid by Agent in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Agent with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Agent to the payment of the Guaranteed Obligations in such priority and proportions as required by the Intercreditor Agreement. Mortgagor's (debtor's) principal place of business is as set forth on the first page hereof and the address of Agent (secured party) is as set forth on the first page hereof.

Section 1.4 Fixture Filing.

Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement (naming Mortgagor as the Debtor and Agent as the Secured Party) filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Pledges of Monies Held.

Mortgagor hereby pledges to Agent any and all monies now or hereafter held by Agent or on behalf of Agent in connection with the Loan as additional security for the Guaranteed Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Agent and its successors and assigns, forever;

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WITH POWER OF SALE, to secure Mortgagor's payment to Agent of the Guaranteed Obligations and performance of the Guaranteed Obligations at the time and in the manner provided in the other Loan Documents and this Security Instrument.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly (a) pay to the Lenders and the Note Purchasers the Guaranteed Obligations at the time and in the manner provided in the Loan Documents, (b) perform its obligations as set forth in the Loan Documents, and (c) abide by and comply with each and every covenant and condition set forth herein and in the Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE 2

OBLIGATIONS SECURED

Section 2.1 Guaranteed Obligations.

This Security Instrument and the grants, assignments and transfers made in Article 1 hereof are given for the purpose of securing the Guaranteed Obligations.

ARTICLE 3

MORTGAGOR COVENANTS

Mortgagor covenants and agrees that

Section 3.1 Payment of Obligations.

Borrower and/or Mortgagor will pay the Guaranteed Obligations at the time and in the manner provided in the Loan Documents.

Section 3.2 Incorporation by Reference.

All the covenants, conditions and agreements contained in the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 Insurance.

Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Property as required pursuant to the other Loan Documents.

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Section 3.4 Maintenance of Property.

Mortgagor shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Agent or as otherwise permitted pursuant to the other Loan Documents. Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any condemnation, subject to and in accordance with the terms of the Loan Documents.

Section 3.5 Waste.

Mortgagor shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any insurance policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Mortgagor will not, without the prior written consent of Agent, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 Payment for Labor and Materials.

(a) Mortgagor (i) will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") incurred in connection with the Property, (ii) never permit to exist beyond the due date thereof in respect of the Property, or any part thereof, any Lien or security interest, even though inferior to the Liens and security interests created hereby and by the other Loan Documents, and (iii) never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests created hereby and by the other Loan Documents except for the Permitted Liens (as defined in the Loan Agreement and the Note Purchase Agreement) or such other Liens as are permitted pursuant to the other Loan Documents.

(b) After prior written notice to Agent, Mortgagor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the any of the other Loan Documents, (ii) Mortgagor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Mortgagor and from the Property or Mortgagor shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in

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danger of being sold, forfeited, terminated, canceled or lost, and (vi) Mortgagor shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Agent, in its reasonable discretion, to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

Section 3.7 Performance of Other Agreements.

Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Documents and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 3.8 Change of Name, Identity or Structure.

Mortgagor shall not change Mortgagor's name, identity (including its trade name or names) or, if not an individual, Mortgagor's corporate, partnership or other structure (except as expressly permitted in the Loan Documents) without notifying Agent of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Mortgagor's structure (that is, existence as a limited liability company), without first obtaining the prior written consent of Agent. Mortgagor shall execute and deliver to Agent, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change necessary to establish or maintain the validity, perfection and priority of the security interests granted herein. At the request of Agent from time to time, Mortgagor shall execute a certificate in form satisfactory to Agent listing the trade names under which Mortgagor is operating or intends to operate the Property, and representing and warranting that Mortgagor does business under no other trade name with respect to the Property.

Section 3.9 Title.

Mortgagor has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear all Liens whatsoever except the Permitted Liens, such other liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Liens in the aggregate do not materially and adversely affect the value, operation or use of the Property or Mortgagor's ability to pay the Guaranteed Obligations. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Liens and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Liens, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Except as previously disclosed to Agent in writing, there are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of this Security Instrument.

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ARTICLE 4

OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Mortgagor and Agent.

The relationship between Mortgagor and Agent is solely that of debtor and creditor, and Agent has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Mortgagor and Agent to be other than that of debtor and creditor.

Section 4.2 No Reliance on Agent.

The general partners, members, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Agent are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Agent's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Agent Obligations.

(a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2 hereof, Agent is not undertaking the performance of (i) any obligations under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Agent pursuant to the Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Agent shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Agent.

Section 4.4 Reliance.

Mortgagor recognizes and acknowledges that in accepting the Loan Documents, Agent is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 6 of the Loan Agreement and Section 5 of the Note Purchase Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Agent; that such reliance existed on the part of Lenders and the Note Purchasers prior to the date hereof, that the warranties and representations are a material inducement to Lenders and the Note Purchasers in advancing the sums provided under the Loan Agreement and the Note Purchase Agreement; and that Lenders and the Note Purchasers would not be willing to advance the sums provided under the Loan Agreement and the Note Purchase Agreement and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 6 of the Loan Agreement and Section 5 of the Note Purchase Agreement.

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ARTICLE 5

FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, etc.

Mortgagor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and to fully protect and perfect the Lien or security interest hereof upon, and the interest of Agent in, the Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, etc.

Mortgagor will, at the cost of Mortgagor, and without expense to Agent, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as may be required for the better assuring, conveying, assigning, transferring, and confirming unto Agent the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Agent, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Mortgagor, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Agent to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Agent may lawfully do so, one or more financing statements to evidence more effectively the security interest of Agent in the Property. Mortgagor grants to Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Agent at law and in equity, including, without limitation, such rights and remedies available to Agent pursuant to this Section 5.2.

Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Guaranteed Obligations from the value of the Property for the

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purpose of taxation or which imposes a tax, either directly or indirectly, on the Guaranteed Obligations or Agent's interest in the Property, Mortgagor will pay the tax, with interest and penalties thereon, if any. If Agent is advised by counsel chosen by it that the payment of tax by Mortgagor would be unlawful or taxable to Agent, unenforceable or provide the basis for a defense of usury, then Agent shall have the option, by written notice of not less than five (5) days, to declare the Guaranteed Obligations immediately due and payable, in which case, no yield maintenance or other prepayment premium or prepayment penalty shall be due in connection with any such prepayment.

(b) Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Guaranteed Obligations for any part of the Taxes assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Guaranteed Obligations. If such claim, credit or deduction shall be required by law, Agent shall have the option, by written notice of not less than five (5) days, to declare the Guaranteed Obligations immediately due and payable, in which case, no yield maintenance or other prepayment premium or prepayment penalty shall be due in connection with any such prepayment.

(c) If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents, or shall impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

Section 5.4 Severing of Security Instrument.

This Security Instrument, the Loan Agreement Guaranty and the Note Purchase Agreement Guaranty may, at any time until the same shall be fully paid and satisfied, at the sole election of Agent, be severed into two or more guarantees and two or more security instruments in such denominations as Agent shall determine in its sole discretion, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Mortgagor, upon written request of Agent, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Agent and/or its designee or designees, substitute guarantees and security instruments in such principal amounts, aggregating not more than the amount of the Guaranteed Obligations, and containing terms, provisions and clauses similar to those contained herein and in the Guaranty, and such other documents and instruments as may be required by Agent, provided that none of the foregoing materially increases Mortgagor's obligations or liabilities, or materially reduces Mortgagor's rights, from those set forth in the Loan Documents as of the date hereof.

Section 5.5 Replacement Documents.

Upon receipt of an affidavit of an officer of Agent as to the loss, theft, destruction or mutilation of any Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Loan Document or a replacement of such Loan Document, Mortgagor will issue, in lieu thereof, a replacement Loan Document, dated the

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date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE 6

DUE ON SALE/TRANSFER

Section 6.1 Agent Reliance.

Mortgagor acknowledges that Agent, the Lenders and the Note Purchasers have examined and relied on the experience of Mortgagor and its general partners, members, principals and (if Mortgagor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing provide the Guaranteed Obligations, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for the repayment of and the performance of the Guaranteed Obligations. Mortgagor acknowledges that Agent has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the repayment of or the performance of the Guaranteed Obligations, Agent can recover the Guaranteed Obligations by a sale of the Property.

Section 6.2 No Sale/Transfer.

Except as expressly permitted in the other Loan Documents, the Mortgagor shall not sell, convey or otherwise transfer any interest in the Property (whether voluntarily or by operation of law), or agree to do so, without the Agent's prior written consent, including (a) any sale, conveyance, encumbrance, assignment, or other transfer of (including installment land sale contracts), or the grant of a security interest in, all or any part of the legal or equitable title to the Property, except as otherwise permitted hereunder; or (b) any lease of all or any portion of the Property.

ARTICLE 7

RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Remedies.

Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Agent may take such action, without notice or demand, to the fullest extent permitted by law, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, to the extent not prohibited by applicable law, 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 Agent may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Agent:

(a) except as may be otherwise provided in the other Loan Documents, declare the Guaranteed Obligations to be immediately due and payable;

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(b) institute judicial proceedings for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property, or any interest therein, may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Guaranteed Obligations then due and payable, subject to the continuing Lien and security interest of this Security Instrument for the balance of the Guaranteed Obligations not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; and, without limiting the foregoing:

(i) in connection with any sale or sales hereunder, Agent shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Agent shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;

(ii) Agent shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Agent so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Agent;

(iii) should Agent elect to sell or transfer any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Agent has elected under applicable law to sell or transfer together with Real Property in accordance with the laws governing a sale of the Real Property, Agent shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property as may then be required by law. Thereafter, upon the giving of such notice of sale and the expiration of any required time period as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Mortgagor or Agent at the time and place specified in the notice of sale, shall sell or transfer such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Agent may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

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(iv) if the Property consists of several lots, parcels or items of property, Agent shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell or transfer such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Agent designates in Agent's sole discretion. Any Person, including Mortgagor or Agent, may purchase at any sale hereunder. Should Agent desire that more than one sale or other disposition of the Property be conducted, Agent shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Agent may designate, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Property not sold until all the Guaranteed Obligations have been satisfied in full. In the event Agent elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Mortgagor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the other Loan Documents;

(f) recover judgment on the Loan Agreement Guaranty and the Note Purchase Agreement Guaranty either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Guaranteed Obligations and without regard for the solvency of Mortgagor, any guarantor or indemnitor or any Person otherwise liable for the payment of the Guaranteed Obligations or any part thereof;

(h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and Agent may enter into or upon the Property, either personally or by its agents, nominees or attorneys, and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise, and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Agent upon demand, and thereupon Agent may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat, (ii) complete any construction on the Property in such manner and form as Agent deems advisable, (iii) make alterations, additions, renewals, replacements and improvements to or on the Property, (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof, (v) require Mortgagor to pay monthly in advance to Agent, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor, (vi) require Mortgagor to vacate and surrender

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possession of the Property to Agent or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise, and (vii) apply the receipts from the Property to the payment of and the performance of the Guaranteed Obligations, in such order, priority and proportions as Agent shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Agent, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property or any part thereof, and to take such other measures as Agent may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and/or the Personal Property; and (ii) request Mortgagor at its expense to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to Agent at a convenient place acceptable to Agent. Any notice of sale, disposition or other intended action by Agent with respect to the Fixtures, the Equipment and/or the Personal Property sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(j) apply, subject to this Security Instrument or any other Loan Document, any sums then deposited or held in escrow or otherwise by or on behalf of Agent to the payment of the following items in any order in its sole discretion:

- (i) Taxes;
- (ii) Insurance premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;
- (v) All other sums payable pursuant to this Security Instrument and the other Loan Documents, and any advances made by Agent pursuant to the terms of this Security Instrument; or
- (k) Pursue such other remedies as Agent may have under applicable law.

In the event of a sale, by foreclosure, power of sale 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 Property unimpaired and without loss of priority.

Agent shall incur no liability as a result of the sale of the Property, or any part thereof, at any private sale pursuant to this Security Instrument conducted in accordance with the requirements of applicable laws. Mortgagor hereby waives any claims against Agent, the Administrative Agent, Lenders and the Note Purchasers arising by reason of the fact that the

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price at which the Property may have been sold at such a private sale was less than the price that might have been obtained at a public sale or was less than the aggregate amount of the Guaranteed Obligations, even if Agent accepts the first offer received and does not offer the Property to more than one offeree, provided that such private sale is conducted in accordance with applicable laws and this Security Instrument. Mortgagor hereby agrees that in respect of any sale of any of the Property pursuant to the terms hereof, Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable laws, or in order to obtain any required approval of the sale or of the purchaser by any governmental authority or official, and Mortgagor further agrees that such compliance shall not, in and of itself, result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall Agent be liable or accountable to Mortgagor for any discount allowed by reason of the fact that such Property is sold in compliance with any such limitation or restriction.

In the event that Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any remedy or obligation for the benefit of another, which in the Agent's sole discretion may cause Agent to be considered an "owner or operator" under any environmental laws or otherwise cause the Agent to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law to the extent provided in the Intercreditor Agreement, Agent reserves the right, instead of taking such action, either to resign as collateral agent or to arrange for the transfer of the title or control of the asset to a court appointed receiver unless it has been provided with security or indemnity satisfactory to it against any and all liability or expense which may be incurred by it by reason of taking or continuing to take such action. Agent will not be liable to any Person for any environmental liability or any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Agent's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.

Section 7.2 Application of Proceeds.

The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Agent pursuant to this Security Instrument or the other Loan Documents, may be applied by Agent to the payment of the Guaranteed Obligations in such priority and proportions as may be required by the Intercreditor Agreement.

Section 7.3 Right to Cure Defaults.

Upon the occurrence and during the continuance of any Default or Event of Default, Agent may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any Guaranteed Obligations hereunder, make any payment or do any act required of Mortgagor hereunder or in the other Loan Documents with respect to any Guaranteed Obligations which payment or action on the part of Agent shall be in such manner and to such extent as Agent may deem reasonably necessary to protect the security hereof. Agent is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this

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Security Instrument or to collect the Guaranteed Obligations, and the cost and expense thereof (including reasonable attorneys' fees and expenses to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Guaranteed Obligations and shall be due and payable to Agent upon demand. All such costs and expenses incurred by Agent in remedying any Default or Event of Default or in appearing in, defending, or bringing any such action or proceeding, as hereinabove provided, shall bear interest at the Default Rate, for the period beginning on the first day after notice from Agent that such cost or expense was incurred and continuing until the date of payment to Agent. All such costs and expenses incurred by Agent, together with interest thereon calculated at the Default Rate, shall be deemed to constitute a portion of the Guaranteed Obligations and to be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Agent therefor.

Section 7.4 Actions and Proceedings.

Subject to the terms of the other Loan Documents, Agent has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Agent, in its sole and absolute discretion, decides should be brought to protect its interest in the Property.

Section 7.5 Recovery of Sums Required To Be Paid.

Subject to the terms of the other Loan Documents, Agent shall have the right, from time to time, to take action to recover any sum or sums which constitute a part of the Guaranteed Obligations as the same become due, without regard to whether or not the balance of the Guaranteed Obligations shall be due, and without prejudice to the right of Agent thereafter to bring an action of foreclosure, or any other action, for any default or Event of Default by Mortgagor existing at the time such earlier action was commenced.

Section 7.6 Examination of Books and Records.

At reasonable times and upon prior reasonable notice, Agent, its agents, accountants and attorneys (provided there is no Event of Default and/or Mortgagor is not liable for the payment of the applicable cost or expense hereunder or under any other Loan Document, at Agent's own cost and expense) shall have the right to examine the records, books and management and other papers of Mortgagor which reflect upon its financial condition, at the Property or at any office regularly maintained by Mortgagor where the books and records are located. Agent and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable advance notice, Agent, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Mortgagor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Mortgagor where the books and records are located. This Section 7.6 shall apply throughout the term of the other Loan Documents and without regard to whether an Event of Default has occurred or is continuing.

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Section 7.7 Other Rights, etc.

(a) The failure of Agent to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Agent to comply with any request of Mortgagor or any guarantor or indemnitor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations, the Guaranteed Obligations or any portion thereof, or (iii) any agreement or stipulation by Agent extending the time of payment or otherwise modifying or supplementing the terms of this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Agent shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the insurance policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Agent shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Agent's possession.

(c) Agent may resort for the payment of the Guaranteed Obligations to any other security held by Agent in such order and manner as Agent, in its discretion, may elect. Agent may take action to recover or to enforce the Guaranteed Obligations or any covenant hereof without prejudice to the right of Agent hereafter to foreclose this Security Instrument. The rights of Agent under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Agent shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Agent 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.

Section 7.8 Right to Release Any Portion of the Property.

Agent may release any portion of the Property for such consideration as Agent may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Guaranteed Obligations shall have been reduced by the actual monetary consideration, if any, received by Agent for such release, and Agent may accept by assignment, pledge or otherwise any other property in place thereof as Agent may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a Lien and security interest in the remaining portion of the Property.

Section 7.9 Violation of Laws.

If the Property is not in full compliance with any Legal Requirement, Agent may impose additional requirements upon Mortgagor in connection herewith including, without limitation, monetary reserves or financial equivalents.

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Section 7.10 Recourse and Choice of Remedies.

Notwithstanding any other provision of this Security Instrument or the other Loan Documents, Agent is entitled to enforce the obligations of Mortgagor herein against Mortgagor without first resorting to or exhausting any security or collateral and without first having recourse to the Property, through foreclosure, exercise of a power of sale or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Agent commences a foreclosure action against the Property or exercises its power of sale pursuant to this Security Instrument, Agent is entitled to pursue a deficiency judgment with respect to such obligations against Mortgagor. The provisions of Section 8.1 hereof are exceptions to any non-recourse or exculpation provisions in this Security Instrument or the other Loan Documents, and Mortgagor is fully and personally liable for the obligations set forth in said Section 8.1 hereof. The liability of Mortgagor pursuant to Section 8.1 hereof is not limited to the amount of the Guaranteed Obligations. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Agent from foreclosing or exercising its power of sale pursuant to this Security Instrument or exercising any other rights and remedies pursuant to this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Mortgagor pursuant to Section 8.1 hereof whether or not an action is brought against any other Person and whether or not any other Person is joined in the action or actions. In addition, Agent shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article 7 or Article 8 herein.

Section 7.11 Right of Entry.

Upon reasonable advance notice to Mortgagor (which may be given verbally), Agent and its agents shall have the right to enter and inspect the Property during reasonable business hours.

Section 7.12 Agent Not Obligated; Cumulative Rights.

Nothing in this instrument shall be construed as obligating Agent to take any action or incur any liability with respect to the Property, and all options given to Agent are for its benefit and shall and may be exercised in such order and in such combination as Agent in its sole discretion may from time to time decide. Each remedy is distinct and cumulative to all other rights and remedies under this Security Instrument and the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently or successively, in any order whatsoever. With respect to the Agent, to the extent there is a conflict between the terms of this Security Instrument and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall govern.

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ARTICLE 8

MORTGAGE TAX INDEMNIFICATION

Section 8.1 Mortgage and/or Intangible Tax.

Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless Agent, Lenders and the Note Purchasers from and against any and all losses imposed upon, incurred or suffered by Agent, Lenders or the Note Purchasers arising out of or in connection with Mortgagor's failure to pay any mortgage recording or intangible tax on the making and/or recording of this Security Instrument or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

ARTICLE 9

WAIVERS

Section 9.1 Waiver of Counterclaim.

To the extent permitted by applicable law, Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Agent arising out of or in any way connected with this Security Instrument or any of the other Loan Documents.

Section 9.2 Marshalling and Other Matters.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR HEREBY WAIVES THE BENEFIT OF ALL APPRAISEMENT, VALUATION, STAY, EXTENSION, REINSTATEMENT, HOMESTEAD AND REDEMPTION LAWS NOW OR HEREAFTER IN FORCE AND ALL RIGHTS OF MARSHALLING IN THE EVENT OF ANY SALE HEREUNDER OF THE PROPERTY OR ANY PART THEREOF OR ANY INTEREST THEREIN. FURTHER, TO THE EXTENT PERMITTED BY APPLICABLE LAW MORTGAGOR HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS SECURITY INSTRUMENT AND NOTICE OF INTENTION TO MATURE OR DECLARE DUE THE WHOLE OF THE GUARANTEED OBLIGATIONS ON BEHALF OF MORTGAGOR, 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.

Section 9.3 Waiver of Notice.

To the extent permitted by applicable law, Mortgagor shall not be entitled to any notices of any nature whatsoever from Agent except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provide for the giving of notice by Agent to Mortgagor and except with respect to matters for which Agent is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to

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receive any notice from Agent with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Agent to Mortgagor.

Section 9.4 Waiver of Statute of Limitations.

To the extent permitted by applicable law, Mortgagor hereby expressly waives and releases its right to plead any statute of limitations as a defense to payment of or performance of the Guaranteed Obligations.

Section 9.5 Waiver of Jury Trial.

MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. AGENT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

ARTICLE 10

INTENTIONALLY DELETED

ARTICLE 11

NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 13.12 of the Loan Agreement and Section 18.1 of the Note Purchase Agreement.

ARTICLE 12

APPLICABLE LAW

Section 12.1 Governing Law; Jurisdiction; Service of Process.

This Security Instrument shall be governed by, and construed in accordance with, the laws of the State in which the Property is located (without regard to conflict of law provisions thereof).

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Section 12.2 Provisions Subject to Applicable Law.

All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE 13

DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Intercreditor Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in the singular or plural form and the word "Mortgagor" shall mean "Mortgagor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Agent" shall mean "Agent and any subsequent collateral agent," the word "Guaranty" shall mean "the Guaranty and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Agent in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine and neuter forms and the singular form of nouns and pronouns shall include the plural and vice versa.

ARTICLE 14

MISCELLANEOUS PROVISIONS

Section 14.1 No Oral Change.

This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Agent, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.2 Successors and Assigns.

This Security Instrument shall be binding upon and shall inure to the benefit of Mortgagor and Agent and their respective successors and permitted assigns, as set forth in the

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other Loan Documents. Agent shall have the right to assign or transfer its rights under this Security Instrument in connection with any assignment of the Loan Documents. Any assignee or transferee of Agent shall be entitled to all the benefits afforded to Agent under this Security Instrument. Mortgagor shall not have the right to assign or transfer its rights or obligations under this Security Instrument without the prior written consent of Agent, as provided in the other Loan Documents and any attempted assignment without such consent shall be null and void.

Section 14.3 Inapplicable Provisions.

If any term, covenant or condition of this Security Instrument or any of the other Loan Documents is held to be invalid, illegal or unenforceable in any respect, this Security Instrument and the applicable Loan Document shall be construed without such provision.

Section 14.4 Headings, etc.

If any term, covenant or condition of this Security Instrument or any of the other Loan Documents is held to be invalid, illegal or unenforceable in any respect, this Security Instrument and the applicable Loan Document shall be construed without such provision.

Section 14.5 Subrogation.

If any or all of the proceeds of the Guaranteed Obligations have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Agent shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Agent and are merged with the lien and security interest created herein as cumulative security for the payment and performance of the Guaranteed Obligations.

Section 14.6 Entire Agreement.

This Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Mortgagor and Agent with respect to the transactions arising in connection with the Guaranteed Obligations and supersede all prior written or oral understandings and agreements between Mortgagor and Agent with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Agent to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of this Security Instrument and the other Loan Documents.

Section 14.7 Limitation on Agent's Responsibility.

No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Agent, nor shall it

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operate to make Agent responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Agent a "mortgagee in possession."

Section 14.8 Principles of Construction.

In the event of any inconsistencies between the terms and conditions of this Security Instrument and the terms and conditions of the other Loan Documents, the terms and conditions of the other Loan Documents shall control and be binding.

Section 14.9 Severability.

In case any one or more of the provisions of this Security Instrument, any of the other Loan Documents, or any other agreement now or hereafter executed in connection with any one or more of the foregoing is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof. Each of the provisions of every such agreement, document or instrument shall be enforceable by Agent to the fullest extent now or hereafter permitted by law.

Section 14.10 No Partnership or Joint Venture.

No provision of this Security Instrument or any of the other Loan Documents shall constitute a partnership, joint venture, tenancy in common or joint tenancy between Mortgagor and Agent, it being intended that the only relationship created by this Security Instrument and the other Loan Documents shall be that of debtor and creditor.

Section 14.11 No Merger.

So long as the Guaranteed Obligations secured hereby remain unpaid and undischarged and unless Agent otherwise consents in writing, the fee, leasehold, subleasehold and sub-subleasehold estates in and to the Property will not merge but will always remain separate and distinct, notwithstanding the union of such estates (without implying Mortgagor's consent to such union) either in Mortgagor, Agent, any tenant or any third party by purchase or otherwise, in the event this Security Instrument is originally placed on a leasehold estate and Mortgagor later obtains fee title to the Property, such fee title will be subject and subordinate to this Security Instrument.

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ARTICLE 15

STATE-SPECIFIC PROVISIONS

Section 15.1 Principles of Construction.

In the event of any inconsistencies between the terms and conditions of this Article 15 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 15 shall control and be binding.

Section 15.2 Illinois Mortgage Foreclosure Law.

(a) The law applicable to any foreclosure of this Security Instrument shall be the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et seq., as from time to time amended (the "Act").

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

(c) If any provision of this Security Instrument shall grant to Agent any rights or remedies upon the occurrence and during the continuation of an Event of Default which are more limited than the rights that would otherwise be vested in Agent under the Act in the absence of said provision, Agent shall be vested with the rights granted in the Act to the full extent permitted by law.

(d) Without limiting the generality of the foregoing, all expenses incurred by Agent upon the occurrence and during the continuation of an Event of Default to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Guaranteed Obligations.

(e) Mortgagor acknowledges that the transaction of which the Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and upon the occurrence and during the continuation of an Event of Default to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

Section 15.3 Mortgagor Waivers.

(a) Except to the extent contrary to law, Mortgagor agrees that upon the occurrence and during the continuation of an Event of Default, Mortgagor will not at any time

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insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Mortgagor, for Mortgagor and all who may claim through or under Mortgagor, so far as Mortgagor or those claiming through or under Mortgagor now or hereafter lawfully may, hereby waives upon the occurrence and during the continuation of an Event of Default the benefit of all such laws. Except to the extent contrary to law, Mortgagor hereby waives upon the occurrence and during the continuation of an Event of Default any and all right to have the Property marshaled upon any foreclosure of this Security Instrument, or sold in inverse order of alienation, and agrees that Agent or any court having jurisdiction to foreclose this Security Instrument may sell the Property as an entirety. If any law now or hereafter in force referred to in this paragraph of which the parties or their successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph, to the extent not prohibited by law.

(b) In the event of the commencement of judicial proceedings to foreclose this Security Instrument, Mortgagor, on behalf of Mortgagor, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Security Instrument: (a) expressly waives any and all rights of appraisement, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Security Instrument; and (b) to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Security Instrument, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

Section 15.4 Maximum Amount Secured.

The maximum indebtedness secured by this Security Instrument shall not exceed \$300,000,000; provided, however, that if and for so long as, and to the extent that, (A) any of the Property consists of any portion of the interest of Mortgagor or Northwind Chicago LLC in the District Cooling System (as defined in that certain District Cooling System Use Agreement, dated October 1, 1994 (as amended, restated, modified, renewed, extended, refunded, supplemented or replaced) by and among the City of Chicago and Mortgagor (the "Chicago Use Agreement"), and (B) the City of Chicago has not, as required by Section 4.1.5 of the Chicago Use Agreement, validly consented in writing to the grant of a security interest in the District Cooling System to secure Guaranteed Obligations in excess of 75% of the fair market value of the District Cooling System, the maximum indebtedness secured by the interests of Mortgagor and Northwind Chicago LLC in the District Cooling System will not exceed 75% of the fair market value of the District Cooling System, and the grant of security in Article 1 of this Security Instrument shall be limited to Guaranteed Obligations equal to 75% of the fair market value of the District Cooling System, provided that, immediately upon the City of Chicago

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validly consenting in writing in accordance with Section 4.1.5 of the Chicago Use Agreement to the grant of a security interest in the District Cooling System to secure obligations in excess of 75% of the fair market value of the District Cooling System, the Property shall include such portion of the remainder of the right, title and interest of Mortgagor and Northwind Chicago LLC in the District Cooling System permitted by such consent without any further action hereunder.

Section 15.5 Business Loan.

Mortgagor covenants and agrees that (i) all of the proceeds of the sums loaned under the Loan Agreement and notes issued and sold under the Note Purchase Agreement will be used by Borrower solely for business purposes and in furtherance of the regular business affairs of Borrower, (ii) the entire Guaranteed Obligations secured hereby constitutes: (A) a "business loan," as that term is used in, and for all purposes of, the Illinois Interest Act, 815 ILCS 205/0.01, et seq., including Section 4(1)(c) thereof; and (B) a "loan secured by a mortgage on real estate" within the purview and operation of Section 205/4(1)(l) thereof, and (iii) the indebtedness secured hereby is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Section 1601m, et seq. and has been entered into solely for business purposes of Borrower and Mortgagor and for Borrower's and Mortgagor's investment or profit, as contemplated by said section.

Section 15.6 Protective Advances.

All advances, disbursements and expenditures made by Agent in accordance with the terms of this Security Instrument and the other Loan Documents, either before and during a foreclosure of this Security Instrument, and before and after judgment of foreclosure therein, and at any time prior to sale of the Property, and, where applicable, after sale of the Property, and during the pendency of any related proceedings, in addition to those otherwise authorized by the Act, shall have the benefit of all applicable provisions of the Act.

Section 15.7 Maturity Date.

The Guaranteed Obligations shall be due and payable in full on or before November 13, 2026, unless such date is extended pursuant to the terms of the Loan Documents.

Section 15.8 Collateral Protection Act.

Unless Mortgagor provides Agent with evidence of the insurance required by this Security Instrument or any other Loan Document, Agent may purchase insurance at Mortgagor's expense to protect Agent's interest in the Property or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Mortgagor's interests. The coverage Agent purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property or any other collateral for the indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Mortgagor has obtained insurance as required under this Security Instrument or any other Loan Document. If Agent purchases insurance for the Property or any other collateral for the indebtedness secured hereby, Mortgagor shall be responsible for the costs

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of that insurance, including the insurance premiums, interest and any other charges that Agent may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

Section 15.9 Fixture Filing.

This Security Instrument also constitutes a "fixture filing" pursuant to Section 9-502 of the Illinois Uniform Commercial Code, 810 ILCS 5/1-101, et. seq. and shall be filed in the real estate records of the applicable county's real estate records office.

- (a) Name of Debtor: Enwave Chicago Inc.
- (b) Debtor's Mailing Address: As set forth in the introductory paragraph of this Security Instrument.
- (c) Debtor's Organizational ID: 5741583
- (d) Address of the Property: As set forth on Exhibit A to this Security Instrument.
- (e) Name of Secured Party: Computershare Trust Company, N.A., as Collateral Agent for the Lenders and the Note Purchasers.
- (f) Address of Secured Party: As set forth in the introductory paragraph of this Security Instrument.
- (g) This financing statement covers the Property and/or the Collateral, and any proceeds or products of such Property and/or Collateral.
- (h) Some of the above goods are or are to become fixtures on the Real Estate described herein. Mortgagor is the record owner of the Real Estate described herein upon which the foregoing fixtures and other items and types of property are located.

Section 15.10 Merger.

So long as any of the Guaranteed Obligations shall remain unpaid, unless Agent shall otherwise in writing consent, the fee title and the leasehold estate in the Property shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee, or in a third party, by purchase or otherwise.

ARTICLE 16

COLLATERAL AGENT

Section 16.1 Notwithstanding anything herein to the contrary, the Agent will not be responsible for the existence, genuineness or value of any of the Property or for the validity,

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perfection, priority, maintenance, continuation or enforceability of the security interest in any of the Property (including no obligation to prepare, record, file, re-record or re-file any financing statement, perfection statement, continuation statement or any other instrument in any public office), for the validity or sufficiency of the Property or any agreement or assignment contained therein, for the validity of the title to the Property, for insuring the Property, for the payment of taxes, charges, assessments or liens upon the Property or otherwise as to the maintenance of the Property or for the preservation of any rights against any third parties with respect to the Property.

Section 16.2 The Agent's role as Mortgagee under this Security Instrument is not in its individual capacity but strictly in its capacity as Collateral Agent under the Intercreditor Agreement and in acting as Mortgagee under this Security Instrument, the Agent shall be entitled to the rights, powers, benefits, protections, immunities and indemnities set forth in the Intercreditor Agreement as if fully set forth herein. The permissive authorizations, entitlements, powers and rights granted to the Agent herein shall not be construed as duties. The Agent shall not be required to exercise any discretionary act or omission to act other than in accordance with the terms of the Intercreditor Agreement.

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

MORTGAGOR:

ENWAVE CHICAGO INC., an Illinois corporation

By: James Pagnusat
Name: James Pagnusat
Title: Chief Financial Officer

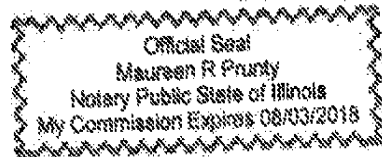
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 10th day of November, 2014, before me personally came James Pagnusat, to me known, who, being by me duly sworn, did depose and state that he is the Chief Financial Officer of ENWAVE CHICAGO INC., the Illinois corporation described in and which executed the above instrument; and James Pagnusat acknowledged that he executed this instrument as the Chief Financial Officer thereof on behalf of said corporation and acknowledged said instrument as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

Maureen R Prunty
Notary Public

My Commission Expires: 8/31/18



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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1-1: (PLANT 2)

THE SOUTH 98.78 FEET OF THE FOLLOWING DESCRIBED PARCELS OF LAND TAKEN AS A TRACT:

THE SOUTHERLY 1/2 OF LOT 48; ALL OF LOTS 49, 50, 53 AND 54; THE STRIP FORMERLY ALLEY BETWEEN LOT 50 AND LOTS 53 AND 54 AND THE WEST 1/2 OF THE STRIP, FORMERLY ALLEY BETWEEN LOT 50 AND LOTS 51 AND 52 ALL IN RUSSELL'S SUBDIVISION OF BLOCK 90 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO, THE EAST 1/2 OF THAT PART OF SAID VACATED ALLEY, LYING NORTH OF THE SOUTH LINE, EXTENDED WESTWARD OF LOT 52 AFORESAID AND SOUTH OF THE NORTH LINE, EXTENDED EASTWARD OF SAID LOT 50 ALL IN SAID RUSSELL'S SUBDIVISION OF BLOCK 90 IN SCHOOL SECTION ADDITION TO CHICAGO; ALSO, THE SOUTHERLY 1/2 OF LOT 47; THE NORTHERLY 1/2 OF LOT 48; ALL OF LOTS 51 AND 52 AND ALL OF LOTS 75 TO 81, BOTH INCLUSIVE ALL IN RUSSELL'S SUBDIVISION OF BLOCK 90 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; ALSO, LOTS 1 TO 10, BOTH INCLUSIVE IN WADSWORTH'S RESUBDIVISION OF LOTS 82, 83, 44, 45, 46 AND THE NORTH 1/2 OF LOT 47 IN RUSSELL'S SUBDIVISION OF BLOCK 90 AFORESAID, ALSO, ALL OF THE VACATED ALLEYS ADJOINING SAID LOTS AND PARTS OF LOTS IN SAID RUSSELL'S SUBDIVISION AND IN SAID WADSWORTH'S RESUBDIVISION, AND LYING NORTH OF THE NORTH LINE AND SAID NORTH LINE EXTENDED EASTWARDLY OF LOT 50 IN RUSSELL'S SUBDIVISION AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 1-2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1-1, AS CREATED BY THE DECLARATION OF EASEMENTS AND COVENANTS DATED MAY 10, 2001 AND RECORDED MAY 14, 2001 AS DOCUMENT 0010403495 FROM FRANKLIN VAN BUREN, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY TO THE CHICAGO TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 26, 1994 AND KNOWN AS TRUST NUMBER 1099363 FOR THE PURPOSE OF ACCESS; CHILLED WATER PIPES AND CABLES; WATER; SEWER AND TELEPHONE; OVERHANG AND CAISSONS, AS SET FORTH THEREIN, OVER THOSE PORTIONS OF THE LAND DESCRIBED IN EXHIBITS C, D, E AND F ATTACHED THERETO.

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Property Address: 400 South Franklin Street, Chicago, Illinois 60607
PIN: 17-09-403-001-0000

Property of Cook County Clerk's Office