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Illinois Anti-Predatory Lending Database Program



Doc#: 1530618048 Fee: \$134.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 11/02/2015 11:58 AM Pg: 1 of 49

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 19-11-121-025-0000

Address:

Street: 3640 West 51st Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60632

Lender: Bank of America, N.A.

Borrower: PP Family, LLC

Loan / Mortgage Amount: \$1,275,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

BIT 40017240 (17)

Certificate number: AA0A404F-380D-4850-AB96-EE6F6CDE7688

Execution date: 10/30/2015

CCRD REVIEWER

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MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT

by

PP FAMILY, LLC, an Illinois limited liability company,
as Mortgagor,

to and in favor of

BANK OF AMERICA, N.A.,
a national banking association,
as Mortgagee

617 40017240 (17)

Property of Cook County Clerk's Office

After recording, please return to:
Elvin E. Charity, Esq.
Charity & Associates, P.C.
20 N. Clark Street, Suite 1150
Chicago, Illinois 60602

This instrument was prepared by the above named attorney

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MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

This MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT is made as of the 30th day of October, 2015, by PP FAMILY, LLC, an Illinois limited liability company (herein referred to as "Mortgagor"), whose address is 666 Dundee Road, Suite 1102, Northbrook, Illinois 60062, to BANK OF AMERICA, N.A., a national banking association ("Mortgagee"), whose address is Mail Code: FL1-400-06-10, 101 E. Kennedy Boulevard Tampa, Florida 33602, Attention: Loan Administration.

Recitals

WHEREAS, pursuant to the Senior Loan Agreement, Mortgagor has requested that Mortgagee make the Loan (as hereinafter defined) to Mortgagor. As a condition precedent to making the Loan, Mortgagee has required that Mortgagor execute and deliver this Security Instrument, Assignment of Leases and Rents and Security Agreement to Mortgagee.

Grants and Agreements

Now, therefore, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Mortgagor, and in order to induce Mortgagee to make the Loan to Mortgagor, Mortgagor agrees as follows:

Article I

Definitions.

As used in this Security Instrument, the terms defined in the Preamble hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"Accessories" means all fixtures, fittings, apparatus, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property and replacements thereof, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to, affixed to, placed upon or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"Accounts" means all accounts of Mortgagor within the meaning of the Uniform Commercial Code of the State, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

"Additions" means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.

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“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Affordable Housing Land Use Restriction” means that certain Affordable Housing Land Use Restriction Agreement dated as of the date of this Security Instrument between Mortgagor and Mortgagee, which shall be recorded as an Encumbrance against the Land.

“Casualty” means any act or occurrence of any kind or nature that results in damage, loss or destruction to the Property.

“Claim” means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

“Code” means the Internal Revenue Code of 1986, as amended.

“Condemnation” means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

“Condemnation Awards” means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

“Contract of Sale” means any contract for the sale of all or any part of the Property or any interest therein, whether now in existence or hereafter executed.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” or “Controlled” have meanings correlative thereto.

“Controlled Substances Act” means the Controlled Substances Act (21 U.S.C. Sections 801 et seq.), as amended from time to time, and any successor statute.

“Default” means an event or circumstance which, with the giving of Notice or lapse of time, or both, would constitute an Event of Default under the provisions of this Security Instrument.

“Design and Construction Documents” means, collectively, (a) all contracts for services to be rendered, work to be performed or materials to be supplied in the development of the Land or the construction or repair of Improvements, including all agreements with architects, engineers or contractors for such services, work or materials; (b) all plans, drawings and specifications for the development of the Land or the construction or repair of Improvements; (c) all permits, licenses, variances and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the development of the Land or the construction or repair of Improvements; and (d) all amendments of or supplements to any of the foregoing.

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“Encumbrance” means any Lien, easement, right of way, roadway (public or private), declaration, condition, covenant, or restriction (including any declaration, condition, covenant, or restriction in connection with any condominium development or cooperative housing development), Lease or other matter of any nature that would affect title to the Property.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Event of Default” means an event or circumstance specified in Article VI and the continuance of such event or circumstance beyond the applicable grace and/or cure periods therefor, if any, set forth in Article VI.

“Expenses” means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Mortgagee in making, funding, administering or modifying the Loan, in protecting the security of this Security Instrument, in negotiating or entering into any “workout” of the Loan, or in exercising or enforcing any rights, powers and remedies provided in this Security Instrument or any of the other Loan Documents, including attorneys’ fees, court costs, receiver’s fees, management fees and costs incurred in the completion, repair, maintenance and operation of, or taking possession of, or selling, the Property.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

“Improvements” means all buildings, structures and replacements thereof and other improvements now or hereafter existing, erected or placed on the Land, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures and/or buildings together with any on-site improvements and off-site improvements in any way used or to be used in connection with the use, enjoyment, occupancy or operation of the Land.

“Insurance Proceeds” means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

“Investor Member” means U.S. Bancorp Community Development Corporation, a Minnesota corporation.

“Land” means the real property described in Exhibit A attached hereto and made a part hereof.

“Law(s)” means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

“Lease(s)” means all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is

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to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder.

“Letter of Credit” means any letter of credit issued by Mortgagee for the account of Mortgagor or its nominee in connection with the development of the Land or the construction of the Improvements, together with any and all extensions, renewals or modifications thereof, substitutions therefor or replacements thereof.

“Lien” means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

“Loan” means the loan from Mortgagee to Mortgagor, the repayment obligations in connection with which are evidenced by the Note.

“Loan Documents” means this Security Instrument, the Note, the Affordable Housing Land Use Restriction, any application or reimbursement agreement executed in connection with any Letter of Credit, and any and all other documents which Mortgagor or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Net Proceeds” when used with respect to any Condemnation Awards or Insurance Proceeds, means the gross proceeds from any Condemnation or Casualty remaining after payment of all Expenses, including attorneys’ fees, incurred in the collection of such gross proceeds.

“Note” means the Promissory Note of even date herewith in the original principal amount of One Million Two Hundred Seventy-Five Thousand and No/100 Dollars (\$1,275,000.00) made by Mortgagor to the order of Mortgagee, as the same may from time to time be extended, renewed, amended, restated, supplemented or otherwise modified.

“Notice” means a notice, request, consent, demand or other communication given in accordance with the provisions of this Security Instrument.

“Obligations” means all present and future debts, advances, obligations and liabilities of Mortgagor to Mortgagee arising pursuant to, and/or on account of, the provisions of this Security Instrument, the Note or any of the other Loan Documents, including the obligations (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) to pay all Expenses, indemnification payments, fees and other amounts due at any time under this Security Instrument or any of the other Loan Documents, together with interest thereon as herein or therein provided; (c) to perform, observe and comply with all of the other terms, covenants and conditions, expressed or implied, which Mortgagor is required to perform, observe or comply with pursuant to this Security Instrument or any of the other Loan Documents; and (d) to pay and perform all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties’ agreement that the advance or obligation be secured by this Security Instrument.

“OFAC” means the U.S. Department of Treasury’s Office of Foreign Assets Control.

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“Permanent Lender” means IFF, an Illinois not-for-profit corporation.

“Permitted Encumbrances” means (a) any matters set forth in any policy of title insurance issued to Mortgagee and insuring Mortgagee’s interest in the Property which are acceptable to Mortgagee as of the date hereof, (b) the Liens and interests of this Security Instrument, (c) the Affordable Housing Land Use Restriction Agreement, and (d) a mortgage in favor of the holder of the Senior Loan and the other subordinated mortgage loans described in and permitted by the Senior Loan Agreement, (e) any other Encumbrance that Mortgagee shall expressly approve in writing in its sole and absolute discretion.

“Person” means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any Governmental Authority or any other entity.

“Personalty” means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Mortgagor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Security Instrument, and Mortgagee shall have no responsibility for the performance of Mortgagor’s obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, letter of credit rights, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, deposits or escrows for taxes, insurance or other matters, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all insurance policies held by Mortgagor with respect to the Property or Mortgagor’s operation thereof; and (f) all money, instruments, chattel paper, or mortgages and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Mortgagor with Mortgagee related to the Property, including any such deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Loan; together with all Additions to and Proceeds of all of the foregoing.

“Proceeds” when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

“Property” means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of Mortgagor’s right, title and interest in and to all Design and Construction Documents, and all Contracts of Sale.

“Property Assessments” means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner’s association assessments and charges, maintenance

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charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

“Real Property” means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, royalties, appurtenances, air space, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Mortgagor and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of Mortgagor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

“Rents” means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

“Sanctions” means, collectively, any sanctions administered or enforced by the United States Government, including OFAC, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority.

“Security Instrument” means this mortgage, assignment of leases and rents and security agreement, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Senior Lender” means the holder of a Senior Loan.

“Senior Loan(s)” means (a) the \$14,292,287.00 construction loan (the “Mortgagee Senior Construction Loan”) to be made by the Mortgagee to the Mortgagor pursuant to the Senior Loan Agreement, which is to be secured by a first priority mortgage encumbering the Property; (b) the \$6,689,009 construction/term loan to be made by the City of Chicago, municipal corporation of the State of Illinois, to the Mortgagor, which is to be secured by a second priority mortgage encumbering the Property; and (c) the \$870,716 construction/term loan to be made by to BYNC Lawndale Development, LLC, an Illinois limited liability company, which is to be secured by a third priority mortgage encumbering the Property; and (d) the \$750,000 term loan to be made by the Permanent Lender to the Mortgagor upon completion of the construction of the Improvements and the satisfaction of the conditions (including the full repayment of the Mortgagee Senior Construction Loan) of the Permanent Lender’s loan commitment issued to Mortgagor, which is to be secured (upon the release of the mortgage securing the Mortgagee Senior Construction Loan) by a first priority mortgage encumbering the Property.

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“Senior Loan Agreement” means the Construction Loan Agreement, of even date herewith, between the Mortgagor, as borrower, and Mortgagee, as lender, setting forth the terms and conditions of the Mortgagee Senior Construction Loan.

“State” means the state in which the Land is located.

“Taxes” means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Mortgagor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

“Transfer” means any direct or indirect sale, assignment, conveyance or transfer, including any Contract of Sale and any other contract or agreement to sell, assign, convey or transfer, in whole or in part, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code of the State.

Article II

Granting Clauses; Condition of Grant.

Section 2.1 Conveyances and Security Interests.

In order to secure the prompt payment and performance of the Obligations, Mortgagor does hereby IRREVOCABLY GRANT, GIVE, BARGAIN, SELL, WARRANT, ALIEN, REMISE, RELEASE, CONVEY, MORTGAGE, TRANSFER, ASSIGN, CONFIRM, HYPOTHECATE, DEPOSIT, PLEDGE, CREATE A SECURITY INTEREST IN and SET OVER to Mortgagee, in fee simple, all of Mortgagor’s present and future estate, right, title and interest in and to the following described property, whether such property is now or hereafter in existence: (a) the Property TO HAVE AND TO HOLD the Real Property, with all rights, appurtenances, and privileges thereunto belonging, unto the Mortgagee, Mortgagee’s successors and assigns forever; (b) a security interest in the Personality; (c) a security interest in, all Condemnation Awards and all Insurance Proceeds and to refunds, credits and abatements of real estate taxes; (d) a security interest in, all of Mortgagor’s right, title and interest in, but not any of Mortgagor’s obligations or liabilities under, all Design and Construction Documents and all Contracts of Sale; and (e) all of Mortgagor’s and Agency’s rights under Section 565 of the Bankruptcy Code. All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations.

Section 2.2 Absolute Assignment of Leases and Rents.

In consideration of the making of the Loan by Mortgagee to Mortgagor, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor irrevocably, presently, absolutely, unconditionally and not merely as additional security for the payment and performance of the indebtedness secured hereby, assigns, sells, sets over and delivers the Leases and Rents to Mortgagee. This assignment is, and is intended to be, an unconditional, absolute and present

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assignment from Mortgagor to Mortgagee of all of Mortgagor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist, however, and so long as Mortgagor is not in default in the performance of any obligation, covenant or agreement contained in the Leases, Mortgagor shall have a license (which license shall terminate automatically and without notice upon the occurrence of an Event of Default or a default by Mortgagor under the Leases) to collect, but not prior to accrual, all Rents. Mortgagor agrees to collect and hold all Rents in trust for Mortgagee and to use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the other Obligations before using the Rents for any other purpose.

Section 2.3 Security Agreement, Fixture Filing and Financing Statement.

This Security Instrument creates a security interest in the Personalty, and, to the extent the Personalty is not real property, this Security Instrument constitutes a security agreement from Mortgagor to Mortgagee under the Uniform Commercial Code of the State. In addition to all of its other rights under this Security Instrument and otherwise, Mortgagee shall have all of the rights of a secured party under the Uniform Commercial Code of the State, as in effect from time to time, or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable Law. This Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including such fixtures) is situated. This Security Instrument shall also be effective as a financing statement with respect to any other Property as to which a security interest may be perfected by the filing of a financing statement and may be filed as such in any appropriate filing or recording office. The respective mailing addresses of Mortgagor and Mortgagee are set forth in the opening paragraph of this Security Instrument. A carbon, photographic or other reproduction of this Security Instrument or any other financing statement relating to this Security Instrument shall be sufficient as a financing statement for any of the purposes referred to in this Section. Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable Law, reasonably required by Mortgagee to establish or maintain the validity, perfection and priority of the security interests granted in this Security Instrument. The foregoing authorization includes Mortgagor's irrevocable authorization for Mortgagee at any time and from time to time to file any initial financing statements and amendments thereto that indicate the Personalty (a) as "all assets" of Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Personalty falls within the scope of the Uniform Commercial Code of the State or the jurisdiction where the initial financing statement or amendment is filed, or (b) as being of an equal or lesser scope or with greater detail.

Section 2.4 Release of Mortgage and Termination of Assignments and Financing Statements.

If and when Mortgagor has paid and performed all of the Obligations, Mortgagee will provide a release of the Property from the lien of this Security Instrument and termination statements for filed financing statements, if any, to Mortgagor. Mortgagor shall be responsible for the recordation of such release and the payment of any recording and filing costs. Upon the recording of such release and the filing of such termination statements, the absolute assignments set forth in Section 2.2 shall automatically terminate and become null and void. Notwithstanding

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the payment and performance of the other Obligation in full, and the release of the lien of this Security Instrument by Mortgagee, the Affordable Housing Land Use Restriction shall remain in effect for the entire term described therein.

Article III

Representations and Warranties.

Mortgagor makes the following representations and warranties to Mortgagee:

Section 3.1 Title to Real Property.

Mortgagor (a) owns good and marketable fee simple title to the Real Property, (b) owns all of the beneficial and equitable interest in and to the Real Property, and (c) is lawfully seized and possessed of the Real Property. Mortgagor has the right and authority to mortgage and convey the Real Property and does hereby mortgage and convey the Real Property with general warranty to Mortgagee. The Real Property is subject to no Encumbrances other than the Permitted Encumbrances.

Section 3.2 Title to Other Property.

Mortgagor has good title to the Personalty, and the Personalty is not subject to any Encumbrance other than the Permitted Encumbrances. None of the Leases, Rents, Design and Construction Documents, or Contracts of Sale are subject to any Encumbrance other than the Permitted Encumbrances.

Section 3.3 Property Assessments.

The Real Property is assessed for purposes of Property Assessments as a separate and distinct parcel from any other property, such that the Real Property shall never become subject to the Lien of any Property Assessments levied or assessed against any property other than the Real Property.

Section 3.4 Independence of the Real Property.

No buildings or other improvements on property not covered by this Security Instrument rely on the Real Property or any interest therein to fulfill any requirement of any Governmental Authority for the existence of such property, building or improvements; and none of the Real Property relies, or will rely, on any property not covered by this Security Instrument or any interest therein to fulfill any requirement of any Governmental Authority. The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.

Section 3.5 Existing Improvements.

The existing Improvements, if any, were constructed, and are being used and maintained, in accordance with all applicable Laws, including zoning Laws, and all Encumbrances. There are no violations of Law with respect to the Property.

Section 3.6 Leases and Tenants.

The Leases are valid and are in full force and effect, and Mortgagor is not in default under any of the terms thereof. Mortgagor has not accepted any Rents in advance of the time the same became due under the Leases and has not forgiven, compromised or discounted any of the Rents. Mortgagor has title to and the right to assign the Leases and Rents to Mortgagee, and no

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other assignment of the Leases or Rents has been granted, except in favor of the holder of a Senior Loan. To the best of Mortgagor's knowledge and belief, no tenant or tenants occupying, individually or in the aggregate, more than five percent (5%) of the net rentable area of the Improvements are in default under their Lease(s) or are the subject of any bankruptcy, insolvency or similar proceeding. Mortgagor has delivered to Mortgagee a true and complete copy of the form of lease ("Form Lease") used or to be used for the Property, as well as a true and complete rent roll for the Property, if occupied as of the date of this Security Instrument.

Section 3.7 Organization, Power and Authority of Mortgagor; Loan Documents.

Mortgagor (a) is a limited liability company duly organized, existing and in good standing under the Laws of the state in which it is organized and is duly qualified to do business and in good standing in the State (if different from the state of its formation) and in any other state where the nature of Mortgagor's business or property requires it to be qualified to do business, and (b) has the power, authority and legal right to own its property and carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents. The Loan Documents to which Mortgagor is a party have been duly executed and delivered by Mortgagor, and the execution and delivery of, and the carrying out of the transactions contemplated by, such Loan Documents, and the performance and observance of the terms and conditions thereof, have been duly authorized by all necessary organizational action by and on behalf of Mortgagor. The Loan Documents to which Mortgagor is a party constitute the valid and legally binding obligations of Mortgagor and are fully enforceable against Mortgagor in accordance with their respective terms, except to the extent that such enforceability may be limited by Laws generally affecting the enforcement of creditors' rights.

Section 3.8 Other Documents; Laws.

The execution and performance of the Loan Documents to which Mortgagor is a party and the consummation of the transactions contemplated thereby will not conflict with, result in any breach of, or constitute a default under, the organizational documents of Mortgagor, or any contract, agreement, document or other instrument to which Mortgagor is a party or by which Mortgagor or any of its properties may be bound or affected, and such actions do not and will not violate or contravene any Law to which Mortgagor is subject. Such actions do not and will not violate or contravene any Law to which Mortgagor, the Property, or any tenant under any Lease is subject, including the Controlled Substances Act.

Section 3.9 Taxes.

Mortgagor has filed all federal, state, county and municipal tax returns required to have been filed by Mortgagor and has paid all Taxes which have become due pursuant to such returns or pursuant to any tax assessments received by Mortgagor.

Section 3.10 Legal Actions.

There are no Claims or investigations by or before any court or Governmental Authority, pending, or to the best of Mortgagor's knowledge and belief, threatened against or affecting Mortgagor, Mortgagor's business or the Property. Mortgagor is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority affecting Mortgagor or the Property.

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Section 3.11 Nature of Loan.

Mortgagor is a business or commercial organization. The Loan is being obtained solely for business or investment purposes, and will not be used for personal, family, household or agricultural purposes.

Section 3.12 ERISA and Prohibited Transactions.

As of the date hereof and throughout the term of the Loan: (a) Mortgagor is not and will not be (i) an “employee benefit plan,” as defined in Section 3(3) of ERISA, (ii) a “governmental plan” within the meaning of Section 3(32) of ERISA, or (iii) a “plan” within the meaning of Section 4975(e) of the Code; (b) the assets of Mortgagor do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in Section 2510.3-101 of Title 29 of the Code of Federal Regulations; (c) transactions by or with Mortgagor are not and will not be subject to state statutes applicable to Mortgagor regulating investments of fiduciaries with respect to governmental plans; and (d) Mortgagor will not engage in any transaction that would cause any Obligation or any action taken or to be taken hereunder (or the exercise by Mortgagee of any of its rights under the Mortgage or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code. Mortgagor agrees to deliver to Mortgagee such certifications or other evidence of compliance with the provisions of this Section as Mortgagee may from time to time request.

Section 3.13 OFAC and Other Sanctions.

Neither Mortgagor nor any of its subsidiaries (collectively, the “Company”) or, to the knowledge of the Company, any director, officer, employee, agent, Affiliate or representative of the Company is a Person currently the subject of any Sanctions, nor is the Company located, organized or resident in a country or territory that is the subject of Sanctions.

Section 3.14 Governmental Authorities.

There are no Claims, actions, suits or proceedings pending or to the knowledge of Mortgagor threatened against or affecting it or the Property, the validity or enforceability of the Mortgage or the priority of the lien thereof at Law, in equity or before or by any Governmental Authorities; to Mortgagor’s knowledge, it is not in default with respect to any order, writ, injunction, decree or demand of any court or Governmental Authorities.

Article IV Affirmative Covenants.

Section 4.1 Obligations.

Mortgagor agrees to promptly pay and perform all of the Obligations, time being of the essence in each case.

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Section 4.2 Property Assessments; Documentary Taxes.

(a) Mortgagor (i) will promptly pay in full and discharge all Property Assessments, and (ii) will furnish to Mortgagee, upon demand, the receipted bills for such Property Assessments prior to the day upon which the same shall become delinquent. Property Assessments shall be considered delinquent as of the first day any interest or penalty commences to accrue thereon. Mortgagor will promptly pay all stamp, documentary, recordation, mortgage recording, transfer and intangible taxes and all other taxes that may from time to time be required to be paid with respect to the Loan, the Note, this Security Instrument or any of the other Loan Documents.

(b) The Mortgagee may at any time and, at its option, to be exercised by ten (10) days written notice to Mortgagor, require the deposit by Mortgagor, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to discharge all Property Assessments when they become due. The determination of the amount so payable and of the fractional part thereof to be deposited with the Mortgagee, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by the Mortgagee in its sole discretion. Such amounts shall be held by the Mortgagee without interest and applied to the payment of the obligations in respect to which such amounts were deposited or, at the option of the Mortgagee, to the payment of said obligations in such order or priority as the Mortgagee shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one (1) month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, Mortgagor, within ten (10) days after demand, shall deposit the amount of the deficiency with the Mortgagee. Nothing herein contained shall be deemed to affect any right and/or remedy of the Mortgagee under any provisions of this Security Instrument or of any statute or rule of law to pay any such amount and to add the amount so paid to the Obligations.

Section 4.3 Permitted Contests.

Mortgagor shall not be required to pay any of the Property Assessments, or to comply with any Law, so long as Mortgagor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to prevent the collection of, or other realization upon, such Property Assessments or enforcement of the Law so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) Mortgagee or the Property is not subject to any Claim as a result of such contest, and (d) Mortgagor provides assurances satisfactory to Mortgagee (including the establishment of an appropriate reserve account with Mortgagee) of its ability to pay such Property Assessments or comply with such Law in the event Mortgagor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Mortgagor shall indemnify and save Mortgagee harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Mortgagor shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and Expenses in connection therewith.

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Section 4.4 Compliance with Laws.

Mortgagor will comply with and not violate, and cause to be complied with and not violated, all present and future Laws applicable to Mortgagor and the Property and its use and operation.

Section 4.5 Maintenance and Repair of the Property.

Mortgagor, at Mortgagor's sole expense, will (a) keep and maintain Improvements and Accessories in good condition, working order and repair, (b) make all necessary or appropriate repairs and Additions to Improvements and Accessories, so that each part of the Improvements and all of the Accessories shall at all times be in good condition and fit and proper for the respective purposes for which they were originally intended, erected, or installed, and (c) commit or permit no waste

Section 4.6 Additions to Security.

All right, title and interest of Mortgagor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further mortgage, conveyance, assignment or other act by Mortgagor, become subject to the Lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clauses hereof. Mortgagor agrees, however, to execute and deliver to Mortgagee such further documents as may reasonably be required by Mortgagee in order for Mortgagee to have a Lien thereon.

Section 4.7 Subrogation.

To the extent permitted by Law, Mortgagee shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by Mortgagee whether or not from the proceeds of the Loan. This Section shall not be deemed or construed, however, to obligate Mortgagee to pay or discharge any Lien.

Section 4.8 Leases.

(a) Mortgagor shall (i) observe and perform all of the obligations imposed upon the landlord in the Leases and will not do or permit to be done anything to impair the security thereof, (ii) execute and deliver, at the request of Mortgagee, all such assignments of the Leases and Rents in favor of Mortgagee as Mortgagee may from time to time require, and (iii) use its best efforts to enforce or secure, or cause to be enforced or secured, the performance of each and every obligation and undertaking of the respective tenants under the Leases and will appear in and defend, at Mortgagor's sole cost and expense, any action or proceeding arising under, or in any manner connected with, the Leases.

(b) Mortgagee shall not be obligated to perform or discharge any obligation of Mortgagor under any Lease. The assignment of Leases provided for in this Security Instrument in no manner places on Mortgagee any responsibility for (i) the control, care, management or repair of the Property, (ii) the carrying out of any of the terms and conditions of the Leases, (iii) any waste committed on the Property, or (iv) any dangerous or defective condition on the Property (whether known or unknown).

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(c) No approval of any Lease by Mortgagee shall be for any purpose other than to protect Mortgagee's security and to preserve Mortgagee's rights under the Loan Documents, and no such approval shall result in a waiver of a Default or Event of Default.

(d) To the extent not so provided by applicable Law each of the Leases of the Real Property, or of any part thereof, shall provide that, in the event of the enforcement by the Mortgagee of the remedies provided for by Law or by this Security Instrument, the lessee thereunder will, upon request and at the option of any Person succeeding to the interest of Mortgagor as a result of such enforcement, automatically become the lessee of said successor in interest, without change in the terms or other provisions of such lease, provided, however, that said successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by said lessee of its obligations under said Lease, but only to the extent such successor in interest actually receives such prepayments in the nature of security, or (ii) any amendment or modification of the Lease made without the consent of the Mortgagee or such successor in interest. Each Lease shall also provide that, upon request by said successor in interest, such lessee shall execute and deliver an instrument or instruments confirming such attornment.

Section 4.9 Insurance.

Mortgagor will at all times keep the Property insured in the manner and to the extent required in this Security Instrument. Mortgagor shall maintain the following insurance at its sole cost and expense:

(a) Insurance against Casualty to the Property under a policy or policies covering such risks as are presently included in "special form" (also known as "all risk") coverage, including such risks as are ordinarily insured against by similar businesses, but in any event including fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke, vandalism, malicious mischief and acts of terrorism. Subject to the requirements of a Senior Loan, such insurance shall name Mortgagee as mortgagee and loss payee. Unless otherwise agreed in writing by Mortgagee, such insurance shall be for the full insurable value of the Property, with a deductible amount, if any, satisfactory to Mortgagee. No policy of insurance shall be written such that the proceeds thereof will produce less than the minimum coverage required by this Section by reason of co-insurance provisions or otherwise. The term "full insurable value" means one hundred percent (100%) of the actual replacement cost of the Property (excluding excavation costs and costs of underground flues, pipes, drains and other uninsurable items).

(b) Comprehensive (also known as commercial) general liability insurance on an "occurrence" basis against claims for "personal injury" liability and liability for death, bodily injury and damage to property, products and completed operations, in limits satisfactory to Mortgagee with respect to any one occurrence and the aggregate of all occurrences during any given annual policy period. Such insurance shall name Mortgagee as an additional insured.

(c) Workers' compensation insurance for all employees of Mortgagor in such amount as is required by Law and including employer's liability insurance, if required by Mortgagee.

(d) During any period of construction upon the Property, Mortgagor shall maintain, or cause others to maintain, builder's risk insurance (non-reporting form) of the type customarily

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carried in the case of similar construction for one hundred percent (100%) of the full replacement cost of work in place and materials stored at or upon the Property.

(e) If at any time any portion of any structure on the Property is insurable against Casualty by flood and is located in a Special Flood Hazard Area under the Flood Disaster Protection Act of 1973, as amended, a flood insurance policy on the structure and Mortgagor owned contents in form and amount acceptable to Mortgagee but in no amount less than the amount sufficient to meet the requirements of applicable Law as such requirements may from time to time be in effect. The flood insurance policy on contents shall be required upon completion of the structure or any unit or component thereof, or as soon thereafter as a flood insurance policy on such contents may be obtained.

(f) Loss of rental value insurance or business interruption insurance in an amount acceptable to Mortgagee.

(g) Such other and further insurance as may be required from time to time by Mortgagee in order to comply with regular requirements and practices of Mortgagee in similar transactions including, if required by Mortgagee, boiler and machinery insurance, pollution liability insurance, wind insurance, and earthquake insurance, so long as any such insurance is generally available at commercially reasonable premiums as determined by Mortgagee from time to time.

In addition to the foregoing, during any construction on the Property, Mortgagor shall cause each general contractor and other contractor to provide and maintain comprehensive (commercial) general liability insurance and workers' compensation insurance for all employees of each general contractor and other contractor meeting, respectively, the requirements of Subsections (b) and (c), above.

Each policy of insurance (i) shall be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-IX or better and are qualified or authorized by the Laws of the State to assume the risks covered by such policy, (ii) with respect to the insurance described under the preceding Subsections (a), (d), (e) and (f), shall have attached thereto standard non-contributing, non-reporting mortgagee clauses in favor of and entitling Mortgagee without contribution to collect any and all proceeds payable under such insurance, either as sole payee or as joint payee with Mortgagor, (iii) shall provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to Mortgagee, and (iv) shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Mortgagor which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. Mortgagor shall promptly pay all premiums when due on such insurance and, not less than thirty (30) days prior to the expiration dates of each such policy, Mortgagor will deliver to Mortgagee acceptable evidence of insurance, such as a renewal policy or policies marked "premium paid" or other evidence satisfactory to Mortgagee reflecting that all required insurance is current and in force. Mortgagor will immediately give Notice to Mortgagee of any cancellation of, or change in, any insurance policy. Mortgagee shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (A) the existence, nonexistence, form or legal sufficiency thereof, (B) the solvency of any insurer, or (C) the payment of losses. Mortgagor may satisfy any insurance requirement hereunder by providing one or more "blanket" insurance policies, subject to Mortgagee's

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approval in each instance as to limits, coverages, forms, deductibles, inception and expiration dates, and cancellation provisions.

Section 4.10 Insurance/Condemnation Proceeds.

(a) All Insurance Proceeds and/or Condemnation Awards will be paid to Mortgagee for application to the Obligations in the manner and to the extent provided in this Security Instrument. Mortgagor shall give Mortgagee prompt notice of any action, actual or threatened, in Condemnation or eminent domain and of any Casualty. Mortgagee is authorized, at its sole and absolute option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any Condemnation or Casualty, and to make proof of loss for and to settle or compromise any Claim in connection therewith. In such case, Mortgagee shall have the right to receive all Condemnation Awards and Insurance Proceeds, and may deduct therefrom any and all of its Expenses. However, so long as no Event of Default has occurred and Mortgagor is diligently pursuing its rights and remedies with respect to a Claim, Mortgagee will obtain Mortgagor's written consent (which consent shall not be unreasonably withheld or delayed) before making proof of loss for or settling or compromising such Claim. Mortgagor agrees to diligently assert its rights and remedies with respect to each Claim and to promptly pursue the settlement and compromise of each Claim subject to Mortgagee's approval, which approval shall not be unreasonably withheld or delayed. If, prior to the receipt by Mortgagee of any Condemnation Award or Insurance Proceeds, the Property shall have been sold pursuant to the provisions of the Mortgage, Mortgagee shall have the right to receive such funds (a) to the extent of any deficiency found to be due upon such sale with interest thereon (whether or not a deficiency judgment on the Mortgage shall have been sought or recovered or denied), and (b) to the extent necessary to reimburse Mortgagee for its Expenses. If any Condemnation Awards or Insurance Proceeds are paid to Mortgagor, Mortgagor shall receive the same in trust for Mortgagee. Within ten (10) days after Mortgagor's receipt of any Condemnation Awards or Insurance Proceeds, Mortgagor shall deliver such awards or proceeds to Mortgagee in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Mortgagee. Mortgagor agrees to execute and deliver from time to time, upon the request of Mortgagee, such further instruments or documents as may be requested by Mortgagee to confirm the grant and assignment to Mortgagee of any Condemnation Awards or Insurance Proceeds.

(b) Net Proceeds must be utilized either for payment of the Obligations or for the restoration of the Property. Net Proceeds may be utilized for the restoration of the Property only if no Default shall exist and only if in the reasonable judgment of Mortgagee (i) there has been no material adverse change in the financial viability of the construction or operation of the Improvements, (ii) the Net Proceeds, together with other funds deposited with Mortgagee for that purpose, are sufficient to pay the cost of the restoration pursuant to a budget and plans and specifications approved by Mortgagee, and (iii) the restoration can be completed prior to the final maturity of the Loan and prior to the date required by the holder of any Senior Loan or any Lease. Otherwise, Net Proceeds shall be utilized for payment of the Obligations.

(c) If Net Proceeds are to be utilized for the restoration of the Property, the Net Proceeds, together with any other funds deposited with Mortgagee for that purpose, must be deposited in an interest-bearing account with Mortgagee, which account will be assigned to Mortgagee as additional security for the Loan. If at any time Mortgagee shall determine that Net Proceeds are not or will not be sufficient to pay, in a timely manner, the costs of such restoration,

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then Mortgagor shall deposit with Mortgagee, within ten (10) days from the effective date of a Notice from Mortgagee requesting such deposit, funds in an amount equal to the deficiency. Such funds and Net Proceeds shall be held by Mortgagee in a deposit account, which shall be an interest-bearing account, with all accrued interest to become part of Mortgagor's deposit ("Deposit Account"). Mortgagor agrees that it shall include all interest and earnings on any such deposit as its income (and, if Mortgagor is a partnership or other pass-through entity, the income of its partners, members or beneficiaries, as the case may be), and shall be the owner of all funds on deposit in the Deposit Account for federal and applicable state and local tax purposes. Mortgagee shall have the exclusive right to manage and control all funds in the Deposit Account, but Mortgagee shall have no fiduciary duty with respect to such funds. Advances of funds on deposit from time to time in the Deposit Account will be made from time to time for the payment of costs of restoration, prior to the advance of Net Proceeds for such amounts. Advances of Net Proceeds and amounts on deposit in the Deposit Account will be advanced in a manner satisfactory to Mortgagee and consistent with Mortgagee's advance of construction loans. Any account fees and charges may be deducted from the balance, if any, in the Deposit Account. Mortgagor grants to Mortgagee a security interest in the Deposit Account and all such deposited funds hereafter deposited to such Deposit Account, and any proceeds thereof, as security for the Obligations. Such security interest shall be governed by the Uniform Commercial Code of the State, and Mortgagee shall have available to it all of the rights and remedies available to a secured party thereunder. The Deposit Account may be established and held in such name or names as Mortgagee shall deem appropriate, including in the name of Mortgagee. Mortgagor hereby constitutes and appoints Mortgagee and any officer or agent of Mortgagee its true and lawful attorneys-in-fact with full power of substitution to open the Deposit Account and to do any and every act that Mortgagor might do on its own behalf to fulfill the terms of this Section. To the extent permitted by Law, Mortgagor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. It is understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked.

Section 4.11 Mortgagee's Right to Cause Performance of Covenants.

If Mortgagor fails to maintain any insurance and pay the premiums for insurance as required in this Article, to pay all taxes, penalties, assessments, charges, and claims as required in this Article, or to repair and maintain any of the Property as required in this Article, or if Mortgagor fails to keep or perform any of Mortgagor's other covenants herein, Mortgagee may obtain such insurance, cause such repairs and maintenance to be made, pay such taxes, penalties, assessments, charges, or claims, or cause such other covenants to be performed. Mortgagor will pay to Mortgagee on demand all amounts paid by Mortgagee for the foregoing and the amount of all Expenses incurred by Mortgagee in connection therewith, together with interest thereon from the date when incurred. Such amounts and interest are secured by this Security Instrument, which creates a Lien in the Property prior to any right, title, interest, lien, or claim in or upon the Property subordinate to the Lien of this Security Instrument. Any such payments by Mortgagee will not be deemed a waiver of any Default or Event of Default. Mortgagee is not obligated to exercise Mortgagee's rights under this Section and is not liable to Mortgagor for any failure to do so.

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Section 4.12 Maintain Lien.

Mortgagor shall maintain the lien of this Security Instrument as a first priority on the Property, but subordinate to the mortgages securing the Senior Loans, and subject only to the Permitted Encumbrances, until all of the Obligations have been satisfied in full.

Section 4.13 Responsible Property Transfer Law.

Mortgagor represents and warrants that the Property: (i) contains no facilities that are subject to reporting (by either Mortgagor or any tenant or lessee thereof or other Person in possession or occupancy of any portion thereof) under Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11022); (ii) is not the site of any underground storage tanks for which notification is required under 42 U.S.C. §6991a and other applicable Law, and (iii) is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) (42 U.S.C. §9616). Any part of the Property may be released by Mortgagee from the Lien created by this Security Instrument. Any such partial release is at the sole option of Mortgagee; Mortgagee is not obligated to grant partial releases. Any such partial release will not affect the Lien created by this Security Instrument as to the remainder of the Property.

Section 4.14 Usury.

In no event shall the amount of interest (including any fees, commissions and any other amounts which would constitute interest under State Laws governing the maximum interest permitted to be charged) due or payable hereunder or under the Note exceed the maximum rate of interest allowed by State Law and the interest rate calculated hereunder shall be calculated accordingly so that such maximum lawful rate is not exceeded. In the event any such payment of interest in excess of the maximum lawful rate is inadvertently made by Mortgagor or Mortgagee, then such excess sum shall be credited as a payment of principal, unless Mortgagor shall notify the Mortgagee, in writing, that it elects to have such excess sum returned forthwith. It is the express intent hereof that Mortgagor not pay and the Mortgagee not receive, directly or indirectly in any manner whatsoever, interest in excess of that which may legally be paid by Mortgagor under State Laws.

Section 4.15 No Liens.

Mortgagor agrees that it shall indemnify and hold Mortgagee harmless against any loss or liability, cost or expense, including any judgments, attorneys' fees and costs, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Security Instrument, other than a Senior Loan.

Section 4.16 Financial Reporting.

Mortgagor shall provide to Mortgagee as and when requested by Mortgagee and for the calculation periods requested by Mortgagee, such information as Mortgagee shall reasonably require in order to determine the financial condition of Mortgagor and the Property, including, without limitation, property operating statements, income and expense statements, financial statements of Mortgagor, federal tax returns of Mortgagor and such other financial or Property information as may be reasonably requested by Mortgagee. All of such information and

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statements shall be in form and detail satisfactory to Mortgagee, and Mortgagor shall maintain full and accurate books and records thereof in accordance with sound accounting principals consistently applied.

Section 4.17 Management of Property.

Mortgagor at all times shall provide for the competent and responsible management and operation of the Property. At all times, Mortgagor shall cause the Property to be managed by a manager or managing agent approved in writing by Mortgagee. All management contracts affecting the Property shall be terminable upon thirty (30) days' written notice without penalty or charge (except for unpaid accrued management fees). Any management contract or contracts affecting the Property must be approved in writing by Mortgagee prior to the execution of the same.

Section 4.18 Notification by Mortgagor.

Mortgagor shall, within ten (10) days after the occurrence of any of the following events, notify Mortgagee in writing thereof, specifying in each case the action Mortgagor has taken or will take with respect thereto: (a) any Default or Event of Default hereunder or under any of the other Loan Documents; (b) any violation of Law by Mortgagor, or any claim or assertion by any Governmental Authority that the Property or Improvements fail to comply with any Law; (c) any investigation by any Governmental Authority, or any Claim, litigation, arbitration or other proceeding instituted or threatened against Mortgagor or the Property, and any material development therein; (d) any claim by Mortgagor of a default by any tenant or other party under any Lease; or (e) any material adverse change in the financial condition, results of operations, business or properties of Mortgagor or any other Person liable for the payment or performance of any of the Obligations.

Section 4.19 Indemnification by Mortgagor.

Mortgagor agrees to indemnify Mortgagee and to hold Mortgagee harmless from and against, and to defend Mortgagee by counsel approved by Mortgagee against, any and all Claims directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Property or the Loan, including any Claim arising out of or resulting from (a) any failure by Mortgagor to comply with the requirements of any Laws or to comply with any agreement that applies or pertains to the Property, including any agreement with a broker or "finder" in connection with the Loan or other financing of the Property; (b) any failure by Mortgagor to observe and perform any of the obligations imposed upon the landlord under the Leases; (c) any other Default or Event of Default hereunder or under any of the other Loan Documents; (d) any assertion or allegation that Mortgagee is liable for any act or omission of Mortgagor or any other Person in connection with the ownership, development, financing, leasing, operation or sale of the Property and (e) the Claims of any broker or finder arising by reason of the execution hereof or the making of the Loan; provided, however, that Mortgagor shall not be obligated to indemnify Mortgagee with respect to any Claim arising solely from the gross negligence or willful misconduct of Mortgagee. The agreements and indemnifications contained in this Section shall apply to Claims arising both before and after the repayment of the Loan and shall survive the repayment of the Loan, any foreclosure or deed, assignment or conveyance in lieu thereof and any other action by Mortgagee to enforce the rights and remedies of Mortgagee hereunder or under the other Loan Documents.

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Mortgagor shall employ suitable means to protect from theft or vandalism all portions of the Improvements.

Section 4.20 Fees and Expenses.

Mortgagor shall pay all fees, charges, costs and Expenses required to satisfy the conditions of the Loan Documents. Without limitation of the foregoing, (a) Mortgagor will pay, when due, and if paid by Mortgagee will reimburse Mortgagee on demand for, all fees and expenses of the title insurance company, environmental engineers, appraisers, surveyors and Mortgagee's counsel in connection with the closing, administration, modification or any "workout" of the Loan, or the enforcement of Mortgagee's rights and remedies under any of the Loan Documents; and (b) Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the execution, delivery, acknowledgment and recording or filing, as applicable, of the Mortgage, any mortgage supplemental thereto, any security instrument with respect to the Personalty, and any instrument of further assurance, and any Expenses (including reasonable attorneys' fees and disbursements) and all federal, state, county, and municipal stamp, mortgage or recording taxes and other taxes, duties, impositions, imposes, fees, costs, expenses, assessments and charges arising out of or in connection with the execution and delivery of the Note, the Mortgage or any mortgage supplemental thereto, any security instrument with respect to the Personalty or any instrument of further assurance. Mortgagor acknowledges that Mortgagee may receive a benefit, including a discount, credit or other accommodation, from outside counsel based on the fees such counsel may receive on account of their relationship with Mortgagee including fees paid pursuant hereto.

Mortgagor shall pay on demand all Expenses of Mortgagee in connection with the preparation, administration, default, collection, waiver or amendment of loan terms, or in connection with Mortgagee's exercise, preservation or enforcement of any of its rights, remedies or options hereunder, including, without limitation, fees of outside legal counsel or the allocated costs of in-house legal counsel, accounting, consulting, brokerage or other similar professional fees or expenses, and any fees or expenses associated with travel or other costs relating to any appraisals or examinations conducted in connection with the Loan or any collateral therefor, and the amount of all such expenses shall, until paid, bear interest at the rate applicable to principal hereunder (including any default rate) and be an obligation secured by any collateral.

Article V Negative Covenants.

Section 5.1 Encumbrances.

Mortgagor will not permit any of the Property to become subject to any Encumbrance other than the Permitted Encumbrances. Within thirty (30) days after the filing of any mechanic's lien or other Lien or Encumbrance against the Property, Mortgagor will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Mortgagee's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Mortgagee in its sole and absolute discretion, Mortgagor shall have the right to contest in good faith any Claim, Lien or Encumbrance, provided that Mortgagor does so diligently and without prejudice to Mortgagee or delay in completing construction of the Improvements. Mortgagor shall give Mortgagee Notice of any default under any Lien and

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Notice of any foreclosure or threat of foreclosure with respect to any of the Property. Mortgagor agrees that it shall indemnify and hold Mortgagee harmless against any loss or liability, cost or expense, including any judgments, attorneys' fees and costs, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Security Instrument, other than a Permitted Encumbrance.

Section 5.2 Transfer of the Property.

Mortgagor will not Transfer, or contract to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for certain Transfers of the Accessories expressly permitted in this Security Instrument). Except as otherwise expressly permitted in Sections 7.4 and 7.5 of the Senior Loan Agreement, which Sections are incorporated herein by reference, the Transfer of any of the managing membership interest in Mortgagor, if Mortgagor is a limited liability company, or the Transfer of the investor membership interests in Mortgagor (whether in one or more transactions during the term of the Loan) shall be deemed to be a prohibited Transfer of the Property.

Section 5.3 Removal, Demolition or Alteration of Accessories and Improvements.

Except to the extent permitted by the following sentence, no Improvements or Accessories shall be removed, demolished or materially altered without the prior written consent of Mortgagee. Mortgagor may remove and dispose of, free from the Lien of this Security Instrument, such Accessories as from time to time become worn out or obsolete, provided that, either (a) at the time of, or prior to, such removal, any such Accessories are replaced with other Accessories which are free from Liens other than Permitted Encumbrances and have a value at least equal to that of the replaced Accessories (and by such removal and replacement Mortgagor shall be deemed to have subjected such Accessories to the Lien of this Security Instrument), or (b) so long as a prepayment may be made without the imposition of any premium pursuant to the Note, such Accessories are sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to Mortgagee to be applied to the prepayment of the principal of the Loan, unless the same are required to be paid to the holder of the Senior Loan.

Section 5.4 Additional Improvements.

Mortgagor will not construct any Improvements other than those presently on the Land and those disclosed to Mortgagee in connection with the closing of the Loan without the prior written consent of Mortgagee. Mortgagor will complete and pay for, within a reasonable time, any Improvements which Mortgagor is permitted to construct on the Land. Mortgagor will construct and erect any permitted Improvements (a) strictly in accordance with all applicable Laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction and setback lines applicable to the Land.

Section 5.5 Restrictive Covenants, Zoning, etc.

Without the prior written consent of Mortgagee, Mortgagor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property. Mortgagor (a) will promptly perform and observe, and cause to be performed and observed, all of the terms and conditions of all agreements affecting the Property, and (b) will do or cause to

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be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

Section 5.6 Leases.

(a) Mortgagor shall not (i) without the prior written consent of Mortgagee, modify or restate the Form Lease, (ii) collect any of the Rents in advance of the time when the same become due under the terms of the Leases, (iii) discount any future accruing Rents, (iv) except for the Permitted Encumbrances, without the prior written consent of Mortgagee, execute any assignment of the Leases or the Rents, (v) other than in the ordinary course of business, will not alter, modify or change the terms of the Leases, or surrender, cancel or terminate the same without the prior written consent of Mortgagee, or (vi) and will not suffer or permit a tenant under any Lease to violate any Laws affecting the Property.

(b) Mortgagor shall not enter into any Lease of space in the Improvements unless approved or deemed approved by Mortgagee and any Senior Lender prior to execution. The Form Lease, and any revisions thereto, must have the prior written approval of Mortgagee and any Senior Lender. Mortgagee shall be "deemed" to have approved any Lease that: (i) is on the Form Lease approved by Mortgagee with no deviations except as approved by Mortgagee; (ii) is entered into in the ordinary course of business with a bona fide unrelated third party tenant, and Mortgagor, acting in good faith and exercising due diligence, has determined that the tenant is financially capable of performing his, her or its obligations under the Lease; (iii) reflects an arm's length transaction at then-current market rate for comparable space but complies in all respects with the Affordable Housing Land Use Restriction and any other Permitted Encumbrances; and (iv) contains no right or option to purchase the Property or any present or future interest therein.

(c) From time to time upon Mortgagee's request, Mortgagor shall promptly deliver to Mortgagee (a) complete executed originals of each Lease, including any exhibits thereto and any guaranty(ies) thereof, (b) a complete rent roll of the Property in such detail as Mortgagee may require, together with such operating statements and leasing schedules and reports as Mortgagee may require, and (c) such other information regarding tenants and prospective tenants and other leasing information as Mortgagee may request.

Section 5.7 Controlled Substances.

Mortgagor shall not, and shall not suffer or permit a tenant under any Lease to violate any Laws affecting the Property, including the Controlled Substances Act, or which could otherwise result in the occurrence of an Event of Default under Section 6.24, including the commencement of any proceedings under the Civil Asset Forfeiture Reform Act. Upon learning of any conduct contrary to this Section, Mortgagor shall immediately take all actions reasonably expected under the circumstances to terminate any such use of the Property, including: (a) to give timely notice to an appropriate law enforcement agency of information that led Mortgagor to know such conduct had occurred, and (b) in a timely fashion to revoke or make a good faith attempt to revoke permission for those engaging in such conduct to use the Property or to take reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the Property.

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Section 5.8 Sanctions.

Mortgagor shall not, directly or indirectly, use the proceeds of the Loan, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund the activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction being financed by the Loan, whether as underwriter, advisor, investor or otherwise) of Sanctions.

Article VI Events of Default.

The occurrence or happening, from time to time, of any one or more of the following shall constitute an Event of Default under this Security Instrument:

Section 6.1 Payment Obligations.

Mortgagor fails to pay any of the Obligations when due, whether on the scheduled due date or upon acceleration, maturity or otherwise.

Section 6.2 Transfers.

Mortgagor Transfers, or contracts to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for Transfers of the Accessories expressly permitted under this Security Instrument). Except as otherwise expressly permitted in Section 5.2 hereof, the Transfer of any of the managing membership interest in Mortgagor, if Mortgagor is a limited liability company, or the Transfer of investor membership interests in Mortgagor (whether in one or more transactions during the term of the Loan) shall be deemed to be a prohibited Transfer of the Property constituting an Event of Default.

Section 6.3 Other Obligations.

Mortgagor fails to promptly perform or comply with any of the Obligations set forth in this Security Instrument (other than those expressly described in other Sections of this Article), and such failure continues uncured for a period of thirty (30) days after Notice from Mortgagee to Mortgagor, unless (a) such failure, by its nature, is not capable of being cured within such period, and (b) within such period, Mortgagor commences to cure such failure and thereafter diligently prosecutes the cure thereof, and (c) Mortgagor causes such failure to be cured no later than ninety (90) days after the date of such Notice from Mortgagee.

Section 6.4 Event of Default Under Other Loan Documents.

An Event of Default (as defined therein) occurs under the Note, or Mortgagor fails to promptly pay, perform, observe or comply with any obligation or agreement contained in any of the other Loan Documents (within any applicable grace or cure period).

Section 6.5 Change in Zoning or Public Restriction.

Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Loan

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Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed.

Section 6.6 Default Under Leases.

Mortgagor fails duly to perform its obligations under any Lease, and such failure is not cured within the grace period, if any, provided in the Lease.

Section 6.7 Default Under Other Lien Documents.

A default occurs under any other mortgage, deed of trust or security agreement covering the Property, including any Permitted Encumbrances, including a default under a Senior Loan.

Section 6.8 Execution; Attachment.

Any Lien (other than a Senior Loan), execution or attachment is levied against any of the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Section 6.9 Affordable Housing Land Use Restriction.

A default occurs under the Affordable Housing Land Use Restriction.

Section 6.10 Insurance Obligations.

Mortgagor fails to promptly perform or comply with any of the covenants contained in the Loan Documents with respect to maintaining insurance, including the covenants contained in Section 4.9 of this Security Instrument.

Section 6.11 Accuracy of Information; Representations and Warranties.

Any information contained in any financial statement, schedule, report or any other document delivered by Mortgagor or any other Person to Mortgagee in connection with the Loan proves at any time not to be in all respects true and accurate, or Mortgagor or any other Person shall have failed to state any material fact or any fact necessary to make such information not misleading, or any representation or warranty contained in this Security Instrument or in any other Loan Document or other document, certificate or opinion delivered to Mortgagee in connection with the Loan, proves at any time to be incorrect or misleading in any material respect on the date when made.

Section 6.12 Damage to Improvements.

The Improvements are substantially damaged or destroyed by fire or other casualty and Mortgagee determines that the Improvements cannot be restored and completed in accordance with the terms and provisions of this Security Instrument.

Section 6.13 Bankruptcy.

Mortgagor or any managing member of Mortgagor files a bankruptcy petition or makes a general assignment for the benefit of creditors, or a bankruptcy petition is filed against Mortgagor or any managing member of Mortgagor and such involuntary bankruptcy petition continues undismissed for a period of sixty (60) days after the filing thereof.

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Section 6.14 Appointment of Receiver, Trustee, Liquidator.

Mortgagor or any managing member of Mortgagor applies for or consents in writing to the appointment of a receiver, trustee or liquidator of Mortgagor or any managing member of Mortgagor, the Property, or all or substantially all of the other assets of Mortgagor or any managing member of Mortgagor, or an order, judgment or decree is entered by any court of competent jurisdiction on the application of a creditor appointing a receiver, trustee or liquidator of Mortgagor or any managing member of Mortgagor, the Property, or all or substantially all of the other assets of Mortgagor or any managing member of Mortgagor.

Section 6.15 Inability to Pay Debts.

Mortgagor, any managing member of Mortgagor becomes unable or admits in writing its inability or fails generally to pay its debts as they become due.

Section 6.16 Dissolution; Change in Business Status.

Unless the written consent of Mortgagee is previously obtained, all or substantially all of the business assets of Mortgagor or any managing member of Mortgagor are sold, Mortgagor or any managing member of Mortgagor is dissolved, or there occurs any change in the form of business entity through which Mortgagor or any managing member of Mortgagor presently conducts its business or any merger or consolidation involving Mortgagor or any managing member of Mortgagor].

Section 6.17 Forfeiture.

A judicial or nonjudicial forfeiture or seizure proceeding is commenced by a Governmental Authority and remains pending with respect to the Property or any part thereof, on the grounds that the Property or any part thereof had been used to commit or facilitate the commission of a criminal offense by any Person, including any tenant, pursuant to any Law, including under the Controlled Substances Act or the Civil Asset Forfeiture Reform Act, regardless of whether or not the Property or the Mortgage shall become subject to forfeiture or seizure in connection therewith.

Article VII Rights and Remedies.

Upon the happening of any Event of Default, Mortgagee shall have the right, in addition to any other rights or remedies available to Mortgagee under any of the Loan Documents or applicable Law, to exercise any one or more of the following rights, powers or remedies:

Section 7.1 Acceleration.

Mortgagee may accelerate any or all (as determined by Mortgagee in its sole discretion) of the Obligations, whereupon such Obligations shall become immediately due and payable, all of the foregoing without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby waived by Mortgagor).

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Section 7.2 Foreclosure; Judicial Foreclosure.

- (i) Mortgagee may demand that Mortgagor surrender the actual possession of the Property and upon such demand, Mortgagor shall forthwith surrender same to Mortgagee and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Property and may exclude Mortgagor and its agents and employees wholly therefrom.
- (ii) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or order conferring on Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession to Mortgagee, to the entry of which judgment or decree the Mortgagor hereby specifically consents.
- (iii) Mortgagee may from time to time: (A) continue and complete construction of, hold, store, use, operate, manage and control the Property and conduct the business thereof; (B) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional Personalty; (C) insure or keep the Property insured; (D) exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same; and (E) enter into agreements with others (including new Leases or amendments, extensions, or cancellations to existing Leases) all as Mortgagee from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Mortgagee may deem necessary or proper to implement and perform any and all of the foregoing.
- (iv) Mortgagee may institute one or more actions of foreclosure on this Security Instrument or to institute other proceedings according to Law for foreclosure, and prosecute the same to judgment, execution and sale, for the collection of the Obligations and all costs and expenses of such proceedings, including reasonable attorneys' fees and actual attorneys' expenses.
- (v) To the extent permitted by law, Mortgagee has the option of proceeding as to both the Real Property and the Personalty in accordance with its rights and remedies in respect of the Property, in which event the default provisions of the UCC will not apply. Mortgagee also has the option of exercising, in respect of the Property consisting of Personalty, all of the rights and remedies available to a secured party upon default under the applicable provisions of the UCC in effect in the jurisdiction where the Real Property is located. In the event Mortgagee elects to proceed with respect to the Personalty separately from the Real Property, whenever applicable provisions of the UCC require that notice be reasonable, ten (10) days notice will be deemed reasonable.

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Section 7.3 Possession of Property Not Required.

Upon any sale of any item of the Property made pursuant to judicial proceedings for foreclosure ("Judicial Sale"), it will not be necessary for any public officer acting under execution or order of the court (a "Selling Official") to have any of the Property present or constructively in his possession.

Section 7.4 Mortgages of Conveyance and Transfer.

Upon the completion of every Judicial Sale, the Selling Official will execute and deliver to each purchaser a bill of sale or deed of conveyance, as appropriate, for the items of the Property that are sold. Mortgagor hereby grants every such Selling Official the power as the attorney-in-fact of Mortgagor to execute and deliver in Mortgagor's name all deeds, bills of sale and conveyances necessary to convey and transfer to the purchaser all of Mortgagor's rights, title and interest in the items of Property which are sold. Mortgagor hereby ratifies and confirms all that such attorneys-in-fact lawfully do pursuant to such power. Nevertheless, Mortgagor, if so requested by the Selling Official or by any purchaser, will ratify any such sale by executing and delivering to such Selling Official or to such purchaser, as applicable, such deeds, bills of sale or other Mortgages of conveyance and transfer as may be specified in any such request.

Section 7.5 Recitals.

The recitals contained in any mortgage of conveyance or transfer made by a Selling Official to any purchaser at any Judicial Sale will, to the extent permitted by law, conclusively establish the truth and accuracy of the matters stated therein, including the amount of the Obligations, the occurrence of a Default, and the advertisement and conduct of such Judicial Sale in the manner provided herein or under applicable law, and the qualification of the Selling Official. All prerequisites to such Judicial Sale will be presumed from such recitals to have been satisfied and performed.

Section 7.6 Divestiture of Title; Bar.

To the extent permitted by applicable Law, every Judicial Sale, and every sale made as contemplated by this Security Instrument, will operate to divest all rights, title, and interest of Mortgagor in and to the items of the Property that are sold, and will be a perpetual bar, both at law and in equity, against Mortgagor and Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns, and against everyone else, claiming the item sold either from, through or under Mortgagor or Mortgagor's heirs, executors, administrators, personal representatives, successors or assigns.

Section 7.7 Receipt of Purchase Money Sufficient Discharge.

A receipt from any Person authorized to receive the purchase money paid at any Judicial Sale, or other sale contemplated by this Security Instrument, will be sufficient discharge therefor to the purchaser. After paying such purchase money and receiving such receipt, neither such purchaser nor such purchaser's heirs, executors, administrators, personal representatives, successors or assigns will have any responsibility or liability respecting the application of such purchase money or any loss, misapplication or non-application of any of such purchase money, or to inquire as to the authorization, necessity, expediency or regularity of any such sale.

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Section 7.8 Purchase by Mortgagee.

In any Judicial Sale, or other public sale made as contemplated by this Security Instrument, Mortgagee may bid for and purchase any of the Property being sold, and will be entitled, upon presentment of the relevant Loan Documents and documents evidencing the same, to apply the amount of the Obligations held by it against the purchase price for the items of the Property so purchased.

Section 7.9 Sale of Portion of Mortgaged Property.

This Security Instrument and the Lien created by this Security Instrument, as it pertains to any Property that remains unsold, will not be affected by a Judicial Sale of less than all of the Property.

Section 7.10 Judicial Action.

Mortgagee shall have the right from time to time to sue Mortgagor for any sums (whether interest, damages for failure to pay principal or any installments thereof, taxes, or any other sums required to be paid under the terms of this Security Instrument, as the same become due), without regard to whether or not any of the other Obligations shall be due, and without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor, including an action of foreclosure or an action for specific performance, for a Default or Event of Default existing at the time such earlier action was commenced.

Section 7.11 Collection of Rents.

Upon the occurrence of an Event of Default, the license granted to Mortgagor to collect the Rents shall be automatically and immediately revoked without further notice to or demand upon Mortgagor. Mortgagee may, but shall not be obligated to, perform any or all obligations of the landlord under any or all of the Leases, and Mortgagee may, but shall not be obligated to, exercise and enforce any or all of Mortgagor's rights under the Leases. Without limitation to the generality of the foregoing, Mortgagee may notify the tenants under the Leases that all Rents are to be paid to Mortgagee, and following such notice all Rents shall be paid directly to Mortgagee and not to Mortgagor or any other Person other than as directed by Mortgagee, it being understood that a demand by Mortgagee on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Mortgagee without the necessity of further consent by Mortgagor. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to pay all Rents to Mortgagee instead of to Mortgagor, upon receipt of written notice from Mortgagee, without the necessity of any inquiry of Mortgagor and without the necessity of determining the existence or non-existence of an Event of Default. Mortgagor hereby appoints Mortgagee as Mortgagor's attorney-in-fact with full power of substitution, which appointment shall take effect upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Mortgagor's name or in Mortgagee's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Mortgagee; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Mortgagee may

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deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied first to pay all Expenses and next in reduction of the other Obligations. Mortgagor shall pay, on demand, to Mortgagee, the amount of any deficiency between (i) the Rents received by Mortgagee, and (ii) all Expenses incurred together with interest thereon as provided in the Note with respect to the principal amount of the Loan, including the Default Rate (as defined in the Note) if applicable.

Section 7.12 Taking Possession or Control of the Property.

Mortgagee may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the Laws of the State. To the extent permitted by Law, the right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Property or the solvency or insolvency of Mortgagor. The Expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the default rate under the Note, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Security Instrument to the Mortgagee, and the Mortgagee shall have the right to offset the unpaid Obligations against any such cash or deposits in such order as Mortgagee may elect.

Section 7.13 Construction and Management of the Property.

Upon obtaining possession of the Property or upon the appointment of a receiver as described in Section 7.12, Mortgagee or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and Additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the Property, and (c) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary, either in their or its own name or in the name of Mortgagor (the costs of completing such Improvements shall be Expenses secured by this Security Instrument and shall accrue interest as provided in the Note with respect to the principal amount of the Loan, including the Default Rate (as defined in the Note) if applicable). Mortgagee or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for gross negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default, and the enforcement of such remedies, once commenced, shall continue for so long as Mortgagee shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

Section 7.14 Uniform Commercial Code.

Mortgagee may exercise any or all of its rights and remedies under the Uniform Commercial Code as adopted by the State as in effect from time to time, (or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable Law) or other applicable Law as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee is hereby authorized and empowered to enter the Property or other place where the Personalty may be located without legal process, and

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to take possession of the Personalty without notice or demand, which hereby are waived to the maximum extent permitted by the Laws of the State. Upon demand by Mortgagee, Mortgagor shall make the Personalty available to Mortgagee at a place reasonably convenient to Mortgagee. Mortgagee may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Security Instrument at least ten (10) days before any sale or other disposition of the Personalty. Mortgagee may choose to dispose of some or all of the Property, in any combination consisting of both Personalty and Real Property, in one or more public or private sales to be held in accordance with the Law and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Mortgagor agrees that such a sale of Personalty together with Real Property constitutes a commercially reasonable sale of the Personalty. Mortgagee may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Security Instrument at least ten (10) days before any sale or other disposition of the Personalty.

Section 7.15 Application of Proceeds.

Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article and any other proceeds received by Mortgagee from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Obligations, in such manner and order as Mortgagee may elect.

Section 7.16 Remedies Cumulative and Concurrent.

No right, power or remedy of Mortgagee as provided in the Note, this Security Instrument or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Mortgagee, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Mortgagee now or hereafter existing at Law or in equity and may be pursued separately, successively or together against Mortgagor, any guarantor, or any endorser, co-maker, or surety of the Obligations, or the Property or any part thereof, or any one or more of them, at the sole discretion of Mortgagee. The failure of Mortgagee to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

Section 7.17 Waiver, Delay or Omission.

No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Mortgagee to exercise any right, power or remedy shall be construed to waive any such Event of Default or to constitute acquiescence therein.

Section 7.18 Credit of Mortgagee.

To the maximum extent permitted by the Laws of the State, upon any sale made under or by virtue of this Article, Mortgagee may bid for and acquire the Property, or any part thereof,

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and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Obligations in such order as Mortgagee may elect.

Section 7.19 Sale.

Any sale or sales made under or by virtue of this Article shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of the Mortgagor and all Persons, except tenants pursuant to Leases approved by Mortgagee, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Mortgagee or to others.

Section 7.20 Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Property by any Governmental Authority, or other judicial proceedings affecting the Mortgagor, any guarantor, any endorser, co-maker, or surety of the Obligations, or any of their respective properties, the Mortgagee, to the extent permitted by Law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its Claim allowed in such proceedings for the entire unpaid Obligations at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

Section 7.21 Waiver of Redemption, Notice, Marshaling, Etc.

Mortgagor hereby waives and releases, for itself and anyone claiming through, by, or under it, to the maximum extent permitted by the Laws of the State:

- (i) all benefit that might accrue to Mortgagor by virtue of any present or future Law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment,
- (ii) unless specifically required herein, all notices of default, or Mortgagee's actual exercise of any option or remedy under the Loan Documents, or otherwise, and
- (iii) any right to have the Property marshaled.

Section 7.22 Discontinuance of Proceedings.

If Mortgagee shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between Mortgagor and Mortgagee providing for the discontinuance or abandonment of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

Section 7.23 Mortgagee's Actions.

Mortgagee may, at any time without notice to any Person and without consideration, do or refrain from doing any or all of the following actions, and neither the Mortgagor, any guarantor, endorser, co-maker, or surety of the Obligations, nor any other Person (hereinafter in this Section collectively referred to as the "Obligor") now or hereafter liable for the payment and performance of the Obligations shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) renew, extend or modify the terms of

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the Note, this Security Instrument and the other Loan Documents, or any of them; (b) forbear or extend the time for the payment or performance of any or all of the Obligations; (c) apply payments by any Obligor to the reduction of the unpaid Obligations in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Property or any other collateral or any portion thereof now or hereafter held as security for the Obligations without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Security Instrument upon the Property which is not released or substituted, or the validity and priority of any security interest of the Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Security Instrument or the lien of any other security interest in any other collateral now or hereafter held as security for the Obligations; (g) join in the execution of a plat or replat of the Land (provided, however, notwithstanding the foregoing, Mortgagee will join in such plat or replat of the Land so long as such plat or replat is acceptable to Mortgagee); (h) join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land; (i) consent to the granting of any easement on the Land; and (j) generally deal with any Obligor or any other party as Mortgagee may see fit.

Section 7.24 Other Remedies

Mortgagee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws.

Article VIII
[Reserved].

Article IX
Miscellaneous.

Section 9.1 Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Mortgagee as provided for in this Security Instrument, or in any of the other Loan Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Security Instrument, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Mortgagee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Mortgagee of any or all such other rights, powers or remedies.

Section 9.2 No Waiver by Mortgagee.

No course of dealing or conduct by or among Mortgagee and Mortgagor shall be effective to amend, modify or change any provisions of this Security Instrument or the other Loan Documents. No failure or delay by Mortgagee to insist upon the strict performance of any term, covenant or agreement of this Security Instrument or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Mortgagee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Mortgagee shall not be deemed to waive

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the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or of any other Person to take action to foreclose this Security Instrument or otherwise enforce any of the provisions of this Security Instrument, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Mortgagee, or (c) Mortgagee's extending the time of payment or modifying the terms of this Security Instrument or any of the other Loan Documents without first having obtained the consent of Mortgagor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Mortgagee may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Security Instrument or any of the other Loan Documents without in any way impairing or affecting the Lien of this Security Instrument or the priority of this Security Instrument over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Security Instrument. Mortgagee may resort to the security or collateral described in this Security Instrument or any of the other Loan Documents in such order and manner as Mortgagee may elect in its sole discretion.

Section 9.3 Waivers and Agreements Regarding Remedies.

To the full extent Mortgagor may do so, Mortgagor hereby voluntarily and knowingly:

(a) waives the benefits of all present and future valuation, appraisal, homestead, exemption, stay, extension or redemption, right to notice of election to accelerate the Obligations, and moratorium Laws under any state or federal Law;

(b) waives all rights to a marshaling of the assets of Mortgagor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshaling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Mortgagee under the terms of this Security Instrument to a sale of the Property without any prior or different resort for collection, or the right of Mortgagee to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

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Section 9.4 Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Security Instrument shall run with the Land and shall apply to and bind the successors and assigns of Mortgagor (including any permitted subsequent owner of the Property), and inure to the benefit of Mortgagee, its successors and assigns.

Section 9.5 No Warranty by Mortgagee.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Mortgagor or to be given to Mortgagee pursuant to this Security Instrument or any of the other Loan Documents, Mortgagee shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Mortgagee.

Section 9.6 Amendments.

This Security Instrument may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 9.7 Severability.

In the event any one or more of the provisions of this Security Instrument or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Security Instrument or any of the other Loan Documents, then and in either of those events, at the option of Mortgagee, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 9.8 Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address specified in the Preamble to this Security Instrument (unless changed by similar notice in writing given by the particular party whose address is to be changed), and in the case of Notice to Mortgagee, with a copy sent simultaneously and in the same manner to Holland & Knight LLP, 31 West 52nd Street, New York, New York 10019, Attention: Kathleen M. Furey, Esq. Any Notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, provided that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this

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Security Instrument or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Mortgagee agrees that it shall not complete a foreclosure sale of the Property or record a deed-in-lieu of foreclosure with respect to the Property (each, a "Foreclosure Remedy") unless and until Investor Member has first been given thirty (30) days written notice of the Default(s) or Event(s) of Default, giving rise to Mortgagee's right to complete such Foreclosure Remedy, and Investor Member has failed, within such thirty (30) day period to cure such Default(s) or Event(s) of Default; provided, however, that Mortgagee shall be entitled during such thirty (30) day period to continue to pursue all of its rights and remedies under this Security Instrument and the Affordable Housing Land Use Restriction Agreement, including but not limited to acceleration of the Note and commencement and pursuit of foreclosure (but not completion of the foreclosure sale). In the event Mortgagee has accelerated the Note and the Investor Member cures all Events of Default giving rise to such acceleration within the thirty (30) day cure period described above, such cure shall have the effect of de-accelerating the Note; provided, however, that such de-acceleration shall not waive or limit any of Mortgagee's rights to accelerate the Note or exercise any other remedies under the Loan Documents as to any future or continuing Events of Default. Mortgagor acknowledges and agrees that Mortgagee shall have the right to pursue all rights and remedies except completion of a Foreclosure Remedy without liability to Investor Member for failure to provide notice to Investor Member, and that Mortgagee's liability hereunder shall be expressly limited to actual damages to Investor Member directly caused by Mortgagee's completion of a Foreclosure Remedy without Investor Member receiving the notice and opportunity to cure described above. Mortgagee's failure to give any such notice for any reason shall not act to impair or waive any remedy or right of Mortgagee under this Security Instrument or any other Loan Document. Unless expressly prohibited by applicable law, Investor Member agrees to record a "Request for Notice," or similar appropriate document requesting notice of any foreclosure sale, in the Official Records of the County in which the Property is located, and in the event Mortgagee has failed to sooner provide notice to Investor Member, the receipt of such notice of foreclosure sale shall be deemed to be notice to the Investor Member as contemplated hereunder. Mortgagee shall give Investor Member notice at the address set forth below or such other address as Investor Member may instruct Mortgagee in writing from time to time:

Investor Member:

U.S. Bancorp Community Development
Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
Attn.: Director of LIHTC Asset Management
Phone: (314) 335-2600

With a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Jill H. Goldstein, Esq.
Phone: (402) 346-6000

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Section 9.9 Joint and Several Liability.

If Mortgagor consists of two (2) or more Persons, the term "Mortgagor" shall also refer to all Persons signing this Security Instrument as Mortgagor, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. Mortgagee may release, compromise, modify or settle with any of Mortgagor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the others of Mortgagor hereunder or under the Note. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any Mortgagor.

Section 9.10 Rules of Construction.

The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Security Instrument in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The headings of this Security Instrument are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Security Instrument unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code of the State, as in effect from time to time, which is not defined in this Security Instrument shall have the meaning ascribed to that term in the Uniform Commercial Code of the State. If a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term shall have the meaning specified in Article 9.

Section 9.11 Governing Law.

This Security Instrument shall be construed, governed and enforced in accordance with the Laws in effect from time to time in the State (without regard to its conflict of law principles).

Section 9.12 Entire Agreement.

The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Mortgagee to make the Loan are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 9.13 Lost Note.

Upon receipt of an affidavit of an officer of Mortgagee as to the loss, theft, destruction or mutilation of the Note or any other security document which is not of public record, and, in the case of any such loss, theft, destruction or mutilation, upon cancellation of the Note or such other

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security document, Mortgagor will issue, in lieu thereof, a replacement note or such other security document in the same principal amount thereof and otherwise of like tenor.

Section 9.14 Right of Setoff.

Mortgagor hereby grants to Mortgagee, a continuing lien, security interest and right of setoff as security for all liabilities and obligations to Mortgagee whether now existing or hereafter arising, upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Mortgagee or any entity under the control of Bank of America Corporation and its successors and/or assigns or in transit to any of them. At any time, without demand or notice (any such notice being expressly waived by Mortgagor), Mortgagee may setoff the same or any part thereof and apply the same to any liability or obligation of Mortgagor and any guarantor even though unmatured and regardless of the adequacy of any other collateral security for the Loan. **ANY AND ALL RIGHTS TO REQUIRE MORTGAGEE TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LOAN, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE MORTGAGOR, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.**

Section 9.15 Waiver of Jury Trial

MORTGAGOR AND MORTGAGEE HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING OR ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

EACH PARTY HERETO HEREBY:

(a) **CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER;**

(b) **ACKNOWLEDGES THAT THIS WAIVER AND THE PROVISIONS OF THIS SECTION WERE A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS;**

(c) **CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY, AND VOLUNTARILY MADE;**

(d) **AGREES AND UNDERSTANDS THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH PROCEEDING OR ACTION, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS OR ANY OTHER AGREEMENT, AND FURTHER AGREES THAT SUCH PARTY SHALL NOT SEEK TO CONSOLIDATE ANY SUCH**

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PROCEEDING OR ACTION WITH ANY OTHER PROCEEDING OR ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED;

(e) AGREES THAT MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING OR ACTION AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL; AND

(f) REPRESENTS AND WARRANTS THAT SUCH PARTY HAS BEEN REPRESENTED IN THE SIGNING OF THIS SECURITY INSTRUMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 9.16 Choice of Law.

MORTGAGOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS SECURITY INSTRUMENT OR ANY OF THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN THE COURTS OF THE STATE OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT. MORTGAGOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT FORUM.

Section 9.17 Time of Essence.

It is specifically agreed that time is of the essence as to all matters provided for in this Security Instrument.

Section 9.18 Survival of Warranties and Covenants.

The warranties, representations, covenants and agreements set forth in this Security Instrument shall survive the making of the Loan and the execution and delivery of the Note, and shall continue in full force and effect until all of the Obligations shall have been paid and performed in full.

Section 9.19 Forum.

Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property with respect to the Loan and this Security Instrument to the non-exclusive jurisdiction of any state court or any United States federal court sitting in the State specified in the governing law section of this Security Instrument and to the non-exclusive jurisdiction of any state court or any United States federal court sitting in the state in which any of the Property is located. Mortgagor hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable Law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the State specified in the governing law section of this Security Instrument may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address for Notice set forth in this Security Instrument, or at a subsequent address of which

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Mortgagee received actual Notice from Mortgagor in accordance with the Notice section of this Security Instrument, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by Law or limit the right of Mortgagee to bring proceedings against Mortgagor in any other court or jurisdiction.

Section 9.20 Further Assurances; Authorization to File Documents.

At any time, and from time to time, upon request by Mortgagee, Mortgagor will, at Mortgagor's expense, (a) correct any defect, error or omission which may be discovered in the form or content of any of the Loan Documents, and (b) make, execute, deliver and record, or cause to be made, executed, delivered and recorded, any and all further instruments, certificates and other documents as may, in the opinion of Mortgagee, be necessary or desirable in order to complete, perfect or continue and preserve the Lien of this Security Instrument. Upon any failure by Mortgagor to do so, Mortgagee may make, execute and record any and all such instruments, certificates and other documents for and in the name of Mortgagor, all at the sole expense of Mortgagor, and Mortgagor hereby appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so, this appointment being coupled with an interest and being irrevocable. Without limitation of the foregoing, Mortgagor irrevocably authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements deemed necessary or desirable by Mortgagee to establish or maintain the validity, perfection and priority of the security interests granted in this Security Instrument or hereunder, and Mortgagor ratifies any such filings made by Mortgagee prior to the date hereof. In addition, at any time, and from time to time, upon request by Mortgagee, Mortgagor will, at Mortgagor's expense, provide any and all further instruments, certificates and other documents as may, in the opinion of Mortgagee, be necessary or desirable in order to verify Mortgagor's identity and background in a manner satisfactory to Mortgagee.

Section 9.21 No Partnership.

Nothing contained in the Loan Documents shall be construed in a manner to create any relationship between Mortgagor and Mortgagee other than the relationship of borrower and lender and Mortgagor and Mortgagee shall not be considered partners or co-venturers for any purpose on account of the Loan Documents.

Section 9.22 Permitted Successors and Assigns; Disclosure of Information.

(a) Each and every one of the covenants, terms, provisions and conditions of this Security Instrument and the Loan Documents shall apply to, bind and inure to the benefit of Mortgagor, its successors and those assigns of Mortgagor consented to in writing by Mortgagee, and shall apply to, bind and inure to the benefit of Mortgagee and the endorsees, transferees, successors and assigns of Mortgagee, and all Persons claiming under or through any of them.

(b) Mortgagor agrees not to transfer, assign, pledge or hypothecate any right or interest in Loan, or any of the other benefits of the Loan Documents, without the prior written consent of Mortgagee, which consent may be withheld by Mortgagee in its sole and absolute discretion. Any such transfer, assignment, pledge or hypothecation made or attempted by Mortgagor without the prior written consent of Mortgagee shall be void and of no effect. No consent by Mortgagee to an assignment shall be deemed to be a waiver of the requirement of

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prior written consent by Mortgagee with respect to each and every further assignment and as a condition precedent to the effectiveness of such assignment.

(c) Mortgagee may sell or offer to sell the Loan and Loan Documents or interests therein to one or more assignees or participants. Mortgagor shall execute, acknowledge and deliver any and all instruments reasonably requested by Mortgagee in connection therewith, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the same rights and benefits with respect to the Loan Documents as such Person(s) would have if such Person(s) were Mortgagee hereunder. Mortgagee may disseminate any information it now has or hereafter obtains pertaining to the Loan, including any security for the Loan, any credit or other information on the Property (including environmental reports and assessments), Mortgagor, any of Mortgagor's principals, to any actual or prospective assignee or participant, to Mortgagee's Affiliates, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, to any regulatory body having jurisdiction over Mortgagee, or to any other party as necessary or appropriate in Mortgagee's reasonable judgment, including any party monitoring Mortgagee's compliance with a settlement agreement with the United States Department of Justice, pursuant to which the Loan was made to Mortgagor.

(d) Mortgagee may at any time pledge or assign all or any portion of its rights under the Loan Documents, which evidence and/or secure the Loan, including under the Note, to any of the twelve (12) Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. Section 341. No such pledge or assignment or enforcement thereof shall release Mortgagee from its obligations under any of the Loan Documents, which evidence and/or secure the Loan.

Section 9.23 USA Patriot Act Notice.

Mortgagee hereby notifies Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), Mortgagee is required to obtain, verify and record information that identifies Mortgagor, which information includes the name and address of Mortgagor and other information that will allow Mortgagee to identify Mortgagor in accordance with the Act. Mortgagor shall, promptly following a request by Mortgagee, provide all documentation and other information that Mortgagee requests in order to comply with its ongoing obligation under "know your customer" and anti-money laundering rules and regulations, including the Act.

Section 9.24 Limitation on Liability.

Mortgagor waives any right to assert or make any claim against Mortgagee (or to sue Mortgagee upon any claim for) any special, indirect, incidental, punitive or consequential damages in respect of any breach or wrongful conduct (whether the claim is based on contract, tort or duty imposed by Law) in connection with, arising out of or in any way related to this Security Agreement, the other Loan Documents or the transactions contemplated hereby and/or thereby, or any act, omission or event in connection therewith.

Section 9.25 Non-Recourse.

Notwithstanding anything to the contrary contained in the Loan Documents (other than Section 1(b) of the Note), the liability and obligation of the Mortgagor to perform and observe

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and make good the obligations contained in the Loan Documents and to the liability and obligation of the Mortgagor to pay and perform the Obligations in accordance with the provisions of the Note and this Security Instrument, if any, shall not be enforced by any action or proceeding wherein damages or any money judgment or any deficiency judgment or any judgment establishing any personal obligation or liability shall be sought, collected or otherwise obtained against the Mortgagor or against any past, present or future partner, affiliate, officer, shareholder, director or member of the Mortgagor, and Mortgagee for itself and its successors and assigns irrevocably waives any and all right to sue for, seek or demand any such damages, money judgment, deficiency judgment or personal judgment against the Mortgagor or against any past, present or future partner, affiliate, officer, shareholder, director or member of the Mortgagor under or by reason of or in connection with the Loan Documents and agrees to look solely to the security and collateral held under or in connection with the Loan Documents for the enforcement of such liability and obligation of the Mortgagor. Nothing contained in this section shall be construed (i) as preventing Mortgagee from naming the Mortgagor or any past, present or future partner, member, officer, director or shareholder of the Mortgagor in any action or proceeding brought by Mortgagee to enforce and to realize upon the security and collateral provided under or in connection with the Loan Documents so long as no judgment, order, decree or other relief in the nature of a personal or deficiency judgment or otherwise establishing any personal obligation shall be asked for, taken, entered or enforced against the Mortgagor or against any past, present or future partner, member, officer, director or shareholder of the Mortgagor, in any such action or proceeding, or (ii) as modifying, qualifying or affecting in any manner whatsoever the lien and security interests created by this Security Instrument and the other Loan Documents or the enforcement thereof by Mortgagee, or (iii) as modifying, qualifying or affecting in any manner whatsoever the personal recourse undertakings, obligations and liabilities of any person, party or entity under any guaranty of payment, completion guaranty, other guaranty or indemnification agreement now or hereafter executed and delivered to Mortgagee in connection with the Loan Documents or in connection with the loan secured by this Security Instrument or any other loan, or (iv) as modifying, qualifying or affecting in any manner whatsoever the personal recourse liability of the Mortgagor or any past, present or future partner, member, officer, director or shareholder of the Mortgagor or any other person, party or entity for fraud, willful misrepresentation or wrongful misappropriation or divergence of Insurance Proceeds, Condemnation Awards or the Rents, or (v) as modifying, qualifying or affecting in any manner whatsoever the personal recourse undertakings, liabilities and obligations of the Mortgagor under the Loan Documents, including, without limitation, Section 1 (b) of the Note.

Article X State Specific Provisions.

Section 10.1 Business Loan.

Mortgagor represents and agrees that the proceeds of the Loan Documents will be used for the purposes specified in 815 ILCS 205/4 and that the Obligations constitute a business loan which comes within the purview of said 815 ILCS 205/4..

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Section 10.2 Waiver of Redemption.

Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate as defined in 735 ILCS 5/15-1201 of the Act, or residential real estate (as defined in 735 ILCS 5/15/1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives any rights to reinstatement and redemption as allowed under 735 ILCS 5/15-1601 of the Act, and to the full extent permitted by law, waives the benefits of all present and future valuation, appraisal, homestead, exemption, stay, extension or redemption, right to notice of election to accelerate the Obligations, and moratorium Laws under any state or federal Law.

Section 10.3 Foreclosure/Judicial Foreclosure.

In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq. herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon the occurrence of a Default or Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under 735 ILCS 5/15-1510 and 735 ILCS 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Obligations.

Mortgagee may institute one or more actions of foreclosure on this Mortgage or to institute other proceedings according to Law for foreclosure and prosecute the same to judgment, execution and sale, for the collection of the Obligations and all costs and expenses of such proceedings, including reasonable attorneys' fees and actual attorneys' expenses.

To the extent permitted by applicable Law, Mortgagee has the option of proceeding as to both the Real Property and the Personalty in accordance with its rights and remedies in respect of the Property, in which event the default provisions of the UCC will not apply. Mortgagee also has the option of exercising, in respect of the Property consisting of Personalty, all of the rights and remedies available to a secured party upon default under the applicable provisions of the UCC. In the event Mortgagee elects to proceed with respect to the Personalty separately from the Real Property, whenever applicable provisions of the UCC require that notice be reasonable, ten (10) day notice will be deemed reasonable.

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Section 10.4 Maximum Indebtedness.

Notwithstanding anything contained herein to the contrary, the maximum amount of principal indebtedness secured by this Security Instrument at execution or which under any contingency may become secured hereby at any time is \$1,275,000 plus all amounts extended by Mortgagee, after default by Mortgagor hereunder, to enforce, defend and/or maintain the lien of this Security Instrument or to protect the Property, or the value thereof, including all amounts in respect of insurance premiums, legal fees and all real estate taxes, charges or assessments imposed by law upon the Property, or any other amount, cost or charge to which Mortgagee may become subrogated upon payment as a result of Mortgagor's failure to pay as required by the terms of the Mortgage plus all accrued but unpaid interest on the obligations secured hereby.

[SIGNATURE PAGE FOLLOWS]

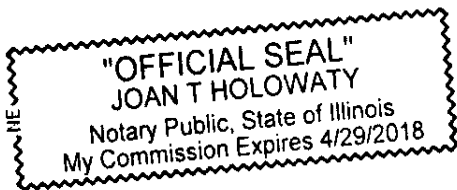
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STATE OF ILLINOIS)
) ss.:
 COUNTY OF COOK)

I, Joan T. Holowaty a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David B. Brint, the President of Brint Development, Inc., an Illinois corporation, which is a member of Brinshore Development, L.L.C., an Illinois limited liability company, which is the sole member of Brinshore Holding, LLC, an Illinois limited liability company, which is the managing member of PP Family Manager, LLC, an Illinois limited liability company, which is the managing member of PP Family, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument in his capacity as the president of such corporation and as his free and voluntary act, and as the free and voluntary act of such corporation and limited liability companies, for the uses and purposes therein set forth.

Given under my hand and official seal, this 27 day of October, 2015.



Joan T. Holowaty
 Notary Public
 Commission Expires: 4-29-2018

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOTS 1, 2, 3 AND 4 IN PARK PLACE RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, S. CENTRAL PARK AVENUE, S. MILLARD AVENUE, W. 50TH STREET, AND THE 16 FOOT ALLEY LYING BETWEEN SAID LOTS 64 AND 65 IN PARK PLACE UNIT 1, BEING A SUBDIVISION IN THE SOUTH HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESSES:

LOT 1: 4951-57 S. LAWDALE, CHICAGO, IL 60632; 3642-3650 WEST 50TH, CHICAGO, IL AND 4958 S. MILLARD, CHICAGO, IL, 60632 TAX NUMBERS: 19-11-124-001, 19-11-124-002 AND 19-11-124-003

LOT 2: 4940 S MILLARD, CHICAGO, IL 60632; 3618-3630 W 49TH PLACE, CHICAGO, IL, 60632

TAX NUMBERS: 19-11-124-003, 19-11-124-004, 19-11-124-005, 19-11-124-006, 19-11-124-007 AND

19-11-124-009 LOT 3: 3617-3629 W 49TH PLACE, CHICAGO, IL 60632 TAX NUMBERS: 19-11-124-009 AND 19-11-124-010 LOT 4: 4957 S MILLARD, CHICAGO, IL 60632; 3616-

3624 W 50TH, CHICAGO, IL 60632

TAX NUMBER: 19-11-124-011

PARCEL 2:

LOTS 25 AND 26 IN PARK PLACE UNIT 1, BEING A SUBDIVISION OF PART OF THE SOUTH 1/2 OF THE EAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 6, 2007 AS DOCUMENT NO. 0734003180, IN COOK COUNTY, ILLINOIS.

Property address: 3640 West 51st Street, Chicago, IL 60632

Tax Numbers: 19-11-121-025 and 19-11-121-026

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PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR THE INSTALLATION, CONSTRUCTION AND MAINTENANCE OF AN UNDERGROUND DRAINAGE PIPES AND TO DRAIN STORM WATER THROUGH SAID PIPES, AS CREATED AND DEFINED IN THE DRAINAGE AND DETENTION EASEMENT AGREEMENT DATED OCTOBER 30, 2015 AND RECORDED OCTOBER 30, 2015 AS DOCUMENT NO. 1530618039, UNDER, OVER, ACROSS, ALONG, UPON AND THROUGH THE DRAINAGE AND DETENTION EASEMENT AREA LEGALLY DESCRIBED IN EXHIBIT C THEREOF, BEING PARTS OF LOT 69 IN PARK PLACE UNIT 1, BEING A SUBDIVISION IN THE SOUTH HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN.

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 FOR REMOVING AND STORING SOIL FOR USE ON SAID PARCELS 1 AND 2, AS CREATED AND DEFINED IN THE ACCESS AND SITE ACTIVITIES EASEMENT DATED AS OF OCTOBER 30, 2015 AND RECORDED OCTOBER 30, 2015 AS DOCUMENT NO. 1530618040, OVER, UPON, BELOW AND WITHIN LOTS 67 AND 68 IN PARK PLACE UNIT 1, BEING A SUBDIVISION IN THE SOUTH HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN.

Property of County Clerk's Office