

Illinois Anti-Predatory Lending Database Program



Doc# 1627739189 Fee \$92.00
RHSP Fee: \$9.00 RPHF Fee \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 10/03/2016 01:31 PM Pg: 1 of 28

Certificate of Exemption

Mail to:
Lakeland Title Services
1300 Iroquois Ave., Ste 100
Naperville, IL 60563

1005214

4 of 4

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 32-11-114-038-0000

Address:

Street: 851 E. 193RD PLACE

Street line 2:

City: GLENWOOD

State: IL

ZIP Code: 60425

Lender: Cogo Capital LLC

Borrower: Secured Investment High Yield Fund II, LLC

Loan / Mortgage Amount: \$99,450.00

This property is located within the program area and is exempt from the requirements of 705 ILCS 77/70 et seq. because it is not owner-occupied.

Certificate number: 56334DBD-CDF6-4349-82F3-7C258D971BF1

Execution date: 8/1/2016

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MORTGAGE AND ASSIGNMENT OF RENTS

THIS MORTGAGE AND ASSIGNMENT OF RENTS (the "Instrument") is made to be effective this **First day of August, 2016**, by **Michael Howard Capital Series LLC**, a(n) Illinois Limited Liability Company whose address is 1501 S Prairie Ave, Chicago, IL 60605, as mortgagor ("Borrower") to and for the benefit of **Secured Investment High Yield Fund II, LLC**, a(n) Idaho Limited Liability Company whose address is 1121 E Mullan Ave, Coeur d'Alene, ID 83814, as mortgagee ("Lender").

Borrower, in consideration of (i) the loan in the original principal amount of **Ninety Nine Thousand Four Hundred Fifty and No/100 Dollars (U.S. \$99,450.00)** (the "Loan") evidenced by that certain Promissory Note dated as of the date of this Instrument, executed by Borrower and made payable to the order of Lender (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the "Note"), and (ii) that certain Borrower Agreement dated as of the date of this Instrument, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Borrower Agreement"), and to secure to Lender the repayment of the Indebtedness (as defined below), and all renewals, extensions and modifications thereof, and the performance of the covenants and agreements of Borrower contained in the Loan Documents (as defined below), irrevocably and unconditionally mortgages, grants, assigns, remises, releases, warrants and conveys to and for the benefit of Lender the Property (as defined below), including the real property located in the County of Cook, State of Illinois, and described in Exhibit A attached to this Instrument and incorporated by reference (the "Land"), to have and to hold such Property unto Lender and Lender's successors and assigns, forever; Borrower hereby releasing, relinquishing and waiving, to the fullest extent allowed by law, all rights and benefits, if any, under and by virtue of the homestead exemption laws of the Property Jurisdiction (as defined below), if applicable.

If Borrower keeps, observes and performs all of the covenants and conditions of this Instrument on its part to be kept and performed and pays, or causes to be paid, to Lender the Note as to both principal and interest, the last payment of which is due **3/31/2017** (the "Maturity Date") as provided in the Loan Documents, and all extensions and renewals thereof, and all of the other Indebtedness, and repays any loans and advances hereafter made by Lender under the terms hereof, then this Instrument will be void; otherwise it will remain in effect. The intent of the preceding sentence is that if all of the Indebtedness is paid in full, then this Instrument will be void; otherwise the Instrument will remain in effect.

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

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

1. **Definitions.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

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- a. **“Borrower”** means all persons or entities identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.
- b. **“Business Day”** means any day other than a Saturday, a Sunday or any other day on which the national banking associations are not open for business in the Property Jurisdiction.
- c. **“Controlling Interest”** means (i) 51 % or more of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of less than 51 %, if the owner(s) of that interest actually direct(s) the business and affairs of the entity without the requirement of consent of any other party.
- d. **“Enforcement Costs”** means all expenses and costs, including reasonable attorneys’ fees and expenses, fees and out-of-pocket expenses of expert witnesses and costs of investigation, incurred by Lender as a result of any Event of Default under the Loan Documents or in connection with efforts to collect any amount due under the Loan Documents, or to enforce the provisions of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy or insolvency proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding or foreclosure) or judicial or non-judicial foreclosure proceeding, to the extent permitted by law.
- e. **“Event of Default”** means the occurrence of any event listed in Section 18.
- f. **“Governmental Authority”** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Property or the use, operation or improvement of the Property or over the Borrower.
- g. **“Hazardous Materials”** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling and any other material or substance now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.
- h. **“Hazardous Materials Laws”** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., and their state analogs.

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- i. “**Improvements**” means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements, facilities and additions and other construction on the Land.
- j. “**Indebtedness**” means the principal of, interest on, and all other amounts due at any time under the Note, the Borrower Agreement (the “Borrower Agreement”), this Instrument or any other Loan Document (other than any guaranty), including late charges, interest charged at the Default Rate (as defined in the Note), and accrued interest as provided in the Note and this Instrument, advances, costs and expenses to perform the obligations of Borrower or to protect the Property or the security of this Instrument, all other monetary obligations of Borrower under the Loan Documents, including amounts due as a result of any indemnification obligations, and any Enforcement Costs.
- k. “**Initial Owners**” means, with respect to Borrower or any other entity, the persons or entities that (i) on the date of the Note, or (ii) on the date of a Transfer to which Lender has consented, own in the aggregate 100 % of the ownership interests in Borrower or that entity.
- l. “**Land**” means the land described in Exhibit A.
- m. “**Leases**” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Property, or any portion of the Property, and all modifications, extensions or renewals.
- n. “**Lender**” means the entity identified as “Lender” in the first paragraph of this Instrument, or any subsequent holder of the Note.
- o. “**Loan Documents**” means the Note, this Instrument, all guaranties, all borrower agreements, the loan purpose and use affidavit, the compliance agreement, any riders, borrower resolutions and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the Loan evidenced by the Note, as such documents may be amended from time to time.
- p. “**Loan Servicer**” means the entity that from time to time is designated by Lender to collect payments and deposits and receive Notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender.
- q. “**Note**” means that certain Promissory Note from Borrower to Lender in the original principal amount of \$99,450.00 and dated as of even date herewith.
- r. “**Property**” means all of Borrower’s present and future right, title and interest in and to all of the following: (i) the Land; (ii) the Improvements; (iii) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated; (iv) all proceeds paid or to be paid by any insurer of the Land, the Improvements or any other part of the Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirement; (v) all awards, payments and other compensation made or to be made by

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any municipal, state or federal authority with respect to the Land, the Improvements or any other part of the Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements or any other part of the Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof; (vi) all contracts, options and other agreements for the sale of the Land, the Improvements or any other part of the Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations; (vii) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds; (viii) all Rents and Leases; (ix) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Property, and all undisbursed proceeds of the loan secured by this Instrument; and (x) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits.

s. **"Property Jurisdiction"** shall have the meaning as set forth in Section 22.

t. **"Rents"** means all rents, revenues and other income of the Land or the Improvements, whether now due, past due, or to become due and tenant security deposits.

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

v. **"Transfer"** means (i) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (ii) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (iii) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (iv) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (v) the merger, dissolution, liquidation, or consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity. "Transfer" does not include: (i) a conveyance of the Property at a judicial or non-judicial foreclosure sale under this Instrument; (ii) the Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code, or (iii) a lien against the Property for local taxes and/or assessments not then due and payable.

For purposes of defining the term Transfer, the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

2. **Payment of Indebtedness; Performance under Loan Documents.** Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents.

3. **Assignment of Leases and Rents; Appointment of Receiver; Lender in Possession.**

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- a. As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Leases and Rents. It is the intention of Borrower to establish present, absolute and irrevocable transfers and assignments to Lender of all Leases and Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Borrower and Lender intend the assignments of Leases and Rents to be effective immediately and to constitute absolute present assignments, and not assignments for additional security only. Only for purposes of giving effect to these absolute assignments of Leases and Rents, and for no other purpose, the Leases and Rents shall not be deemed to be a part of the Property. However, if these present, absolute and unconditional assignments of Leases and Rents are not enforceable by their terms under the laws of the Property Jurisdiction, then each of the Leases and Rents shall be included as part of the Property, and it is the intention of Borrower, in such circumstance, that this Instrument create and perfect a lien on each of the Leases and Rents in favor of Lender, which liens shall be effective as of the date of this Instrument.
- b. Until an Event of Default has occurred and is continuing, but subject to the limitations set forth in the Loan Documents, Borrower shall have a revocable license to exercise all rights, power and authority granted to Borrower under the Leases (including the right, power and authority to modify the terms of any Lease, extend or terminate any Lease, or enter into new Leases, subject to the limitations set forth in the Loan Documents), and to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender, and to apply all Rents to pay the Monthly Debt Service Payments and the other amounts then due and payable under the other Loan Documents and to pay the current costs and expenses of managing, operating and maintaining the Property, including utilities and Impositions, tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing (and no event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing), the Rents remaining after application pursuant to the preceding sentence may be retained and distributed by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument.
- c. If an Event of Default has occurred and is continuing, without the necessity of Lender entering upon and taking and maintaining control of the Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, the revocable license granted to Borrower pursuant to this Section shall automatically terminate, and Lender shall immediately have all rights, powers and authority granted to Borrower under any Lease (including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease) and, without notice, Lender shall be entitled to all Rents as they become due and payable, including Rents then due and unpaid. During the continuance of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower's receipt of any Rents from any sources, pay the total amount of such receipts to Lender. Although the foregoing rights of Lender are self-effecting, at any time during the continuance of an Event of Default, Lender may make demand for all Rents, and Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Property instructing them to pay all Rents to Lender. No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts that are actually paid to Lender in response to such a

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notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each tenant.

d. If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower, and even in the absence of waste, enter upon, take and maintain full control of the Property, and may exclude Borrower and its agents and employees therefrom, in order to perform all acts that Lender, in its discretion, determines to be necessary or desirable for the operation and maintenance of the Property, including the execution, cancellation or modification of Leases, the collection of all Rents (including through use of a lockbox, at Lender's election), the making of repairs to the Property and the execution or termination of contracts providing for the management, operation or maintenance of the Property, for the purposes of enforcing this assignment of Rents, protecting the Property or the security of this Instrument and the Loan, or for such other purposes as Lender in its discretion may deem necessary or desirable.

e. Notwithstanding any other right provided Lender under this Instrument or any other Loan Document, if an Event of Default has occurred and is continuing, and regardless of the adequacy of Lender's security or Borrower's solvency, and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Property to take any or all of the actions set forth in this Section. If Lender elects to seek the appointment of a receiver for the Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte*, if permitted by applicable law. Borrower consents to shortened time consideration of a motion to appoint a receiver. Lender or the receiver, as applicable, shall be entitled to receive a reasonable fee for managing the Property and such fee shall become an additional part of the Indebtedness. Immediately upon appointment of a receiver or Lender's entry upon and taking possession and control of the Property, possession of the Property and all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property, and all security deposits and prepaid Rents, shall be surrendered to Lender or the receiver, as applicable. If Lender or receiver takes possession and control of the Property, Lender or receiver may exclude Borrower and its representatives from the Property.

f. The acceptance by Lender of the assignments of the Lease and Rents pursuant to this Section shall not at any time or in any event obligate Lender to take any action under any Loan Document or to expend any money or to incur any expense. Lender shall not be liable in any way for any injury or damage to person or property sustained by any Person in, on or about the Property. Prior to Lender's actual entry upon and taking possession and control of the Land and Improvements, Lender shall not be:

- i. obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease);
- ii. obligated to appear in or defend any action or proceeding relating to any Lease or the Property; or
- iii. responsible for the operation, control, care, management or repair of the Property or any portion of the Property.

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The execution of this Instrument shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Borrower, prior to such actual entry and taking possession and control by Lender of the Land and Improvements.

g. Lender shall be liable to account only to Borrower and only for Rents actually received by Lender. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of any act or omission of Lender under this Section, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, provided that Lender shall not be released from liability that occurs as a result of Lender's gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final, non-appealable court order. If the Rents are not sufficient to meet the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Lender for such purposes shall be added to, and become a part of, the principal balance of the Indebtedness, be immediately due and payable, and bear interest at the Default Rate from the date of disbursement until fully paid. Any entering upon and taking control of the Property by Lender or the receiver, and any application of Rents as provided in this Instrument, shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument or any Loan Document.

4. Compliance with Laws and Organizational Documents.

a. Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of Improvements on the Property, fair housing, disability accommodation, zoning and land use and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits.

b. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Property that could endanger tenants or visitors, result in damage to the Property, result in forfeiture of the Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Property. Borrower represents and warrants to Lender that no portion of the Property has been or will be purchased with the proceeds of any illegal activity.

c. If the Borrower is an entity, Borrower shall at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Borrower's formation, continued existence and good standing in the Borrower's state of organization. Borrower shall at all times comply with its organizational documents, including but not limited to its partnership agreement (if Borrower is a partnership), its by-laws (if Borrower is a corporation or housing cooperative corporation or association) or its operating agreement (if Borrower is a limited liability company, joint venture or tenancy-in-common).

5. Use of Property. Borrower represents and warrants that the Property is not used principally for agricultural purposes and this Instrument does not secure an obligation incurred primarily for person, family or household purposes. Borrower does not now occupy or use the Property and has no intention to occupy or use the Property in the future, either as Borrower's principal residence or as a second home.

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Borrower now occupies and uses other property or properties as Borrower's principal residence and/or second home.

6. Protection of Lender's Instrument.

- a. Advances, disbursements and expenditures made by Lender for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Instrument, constitute "Protective Advances":
- i. all advances by Lender in accordance with the terms of this Instrument to: (1) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (2) preserve the lien of this Instrument or the priority thereof; or (3) enforce this Instrument, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as from time to time amended (the "Act");
 - ii. payments by Lender of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (C) other obligations authorized by this Instrument; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Property, as referred to in Section 5/15-1505 of the Act;
 - iii. advances by Lender in settlement or compromise of any claims asserted by claimants under any prior liens;
 - iv. reasonable attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Instrument as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Instrument or arising from the interest of Lender hereunder or under any of the other Loan Documents; or (3) in the preparation for the commencement or defense of any such foreclosure or other action;
 - v. Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;
 - vi. advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Instrument;
 - vii. expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act; and
 - viii. expenses incurred and expenditures made by Lender for any one (1) or more of the following: (A) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable

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amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments required or deemed by Lender to be for the benefit of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (D) pursuant to any lease or other agreement for occupancy of the Property.

b. All Protective Advances shall be so much additional Indebtedness, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate (as defined in the Note).

c. This Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Instrument is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

d. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in the:

- i. determination of the amount of Indebtedness at any time;
- ii. indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- iii. determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- iv. application of income in the hands of any receiver or mortgagee in possession; and
- v. computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

7. **Inspection.** Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Property during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower. Notice to Borrower shall not be required in the case of an emergency, as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

8. **Books and Records.** Borrower shall keep and maintain at all times and upon Lender's request shall make available to Lender complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the rehabilitation or rental of the Property, and copies of all written contracts, Leases, and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection by Lender at any reasonable time. Borrower authorizes Lender to obtain a credit report on Borrower at any time. If

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an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Property.

9. Payment of Taxes, Assessments, Expenses, and Other Charges.

a. Subject to Section 11, Borrower shall pay before a penalty might attach for nonpayment thereof, all taxes and assessments and all other charges whatsoever levied upon or assessed or placed against the Property, except that assessments may be paid in installments so long as no fine or penalty is added to any installment for the nonpayment thereof. Borrower shall likewise pay when due all taxes, assessments and other charges, levied upon or assessed, placed or made against, or measured by, the Agreement. Notwithstanding the foregoing provisions of this Section, if for any reason payment by Borrower of any such taxes, assessments or other charges would be unlawful, or if the payment thereof would render the indebtedness evidenced by a Note usurious, Lender may declare the Note, with interest thereon, to be immediately due and payable. Borrower shall promptly furnish to Lender all notices received by Borrower of amounts due under this Section and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

b. Borrower shall (i) pay the expenses of operating, managing, maintaining and repairing the Property (including utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added, and (ii) pay insurance premiums at least thirty (30) days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

10. Liens. Subject to Section 11 below, Borrower shall not create, incur or suffer to exist any lien, encumbrance or charge on the Property or any part thereof. Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property within fifteen (15) calendar days of the date that Borrower or Lender receives notice of same, whichever occurs first.

11. Permitted Contests. Borrower shall not be required to (i) pay any tax, assessment or other charge referred to in Section 9 hereof or (ii) discharge or remove any lien, encumbrance or charge referred to in Section 10 hereof, so long as Borrower shall (1) contest, in good faith, the existence, amount or the validity thereof, the amount of damages caused thereby or the extent of its liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrance or charge so contested, (B) the sale, forfeiture or loss of the Properties or any part thereof and (C) any interference with the use or occupancy of the Properties or any part thereof and (2) shall give such security to Lender as may be demanded by Lender to ensure compliance with the foregoing provisions of this Section 11. Borrower shall give prompt written notice to Lender of the commencement of any contest referred to in this Section 11.

12. Preservation and Maintenance of Property. Borrower (i) shall keep the Improvements now or hereafter erected on any Property in good repair and condition, ordinary depreciation excepted; (ii) shall, upon damage to or destruction of the Property or any part thereof by fire or other casualty, restore, repair, replace or rebuild the Property that is damaged or destroyed to the condition it was in immediately prior to such damage or destruction, whether or not any insurance proceeds are available or sufficient for such purpose, unless and to the extent that (A) Lender shall have elected to apply insurance proceeds to the reduction of the Indebtedness in accordance with Section 15.f), or (B) insurance proceeds are reasonably

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likely to be available with respect to such damage or destruction but such funds have not been made available to Borrower; (iii) shall consistently maintain the parking and landscaped areas of the Property in a commercially reasonable manner; (iv) shall not commit waste or permit impairment or deterioration of the Property; (v) shall not cause or permit any alteration of the design or structural character of any improvement now or hereafter erected on the Property if such alteration decreases the value of the Property; (vi) shall not remove from the Property any of the fixtures and personal property; and (vii) shall not abandon the Property.

13. **Management of Property.** The management of the Property shall be by either: (a) Borrower or an entity affiliated with Borrower approved by Lender for so long as Borrower or said affiliated entity is managing the Property in a first class manner or (b) a professional property management company approved by Lender.

14. **Environmental Hazards.**

a. Borrower shall not cause or permit any of the following: (i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Property or any other property of Borrower that is adjacent to the Property; (ii) the transportation of any Hazardous Materials to, from, or across the Property; or (iii) any occurrence or condition on the Property or any other property of Borrower that is adjacent to the Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws. The matters described in clauses (i) through (iii) above are referred to collectively in this Section as "**Prohibited Activities or Conditions.**"

b. Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

c. Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing (which written disclosure may be in certain environmental assessments and other written reports accepted by Lender in connection with the funding of the Indebtedness and dated prior to the date of this Instrument): (i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions on the Property; (ii) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed on the Property; (iii) the Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property that has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws; (iv) to the best of Borrower's knowledge after reasonable and diligent inquiry, Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials; (v) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent

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inquiry, threatened that involve the Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and (vi) Borrower has not received any written complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Property or any other property of Borrower that is adjacent to the Property.

d. Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events: (i) Borrower's discovery of any Prohibited Activity or Condition; (ii) Borrower's receipt of or knowledge of any written complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions, or any other environmental, health or safety matters affecting the Property or any other property of Borrower that is adjacent to the Property; or Borrower's breach of any of its obligations under this Section. Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

e. Borrower shall comply with all Hazardous Materials Laws applicable to the Property.

f. Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "Indemnitees") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including Enforcement Costs and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following: (i) any breach of any representation or warranty of Borrower in this Section; (ii) any failure by Borrower to perform any of its obligations under this Section; (iii) the existence or alleged existence of any Prohibited Activity or Condition; (iv) the presence or alleged presence of Hazardous Materials on or under the Property or in any of the Improvements or on or under any property of Borrower that is adjacent to the Property; and (v) the actual or alleged violation of any Hazardous Materials Law.

g. Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. In any circumstances in which the indemnity under this Section applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding. However, unless an Event of Default has occurred and is continuing, or the interests of Borrower and Lender are in conflict, as determined by Lender in its discretion, Lender shall permit Borrower to undertake the actions referenced in this Section in accordance with this Section 17(g) and Section 17(h) so long as Lender approves such action, which approval shall not be unreasonably withheld or delayed. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, consultants' fees and Enforcement Costs.

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h. Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "Claim"), settle or compromise the Claim if the settlement (i) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (ii) may materially and adversely affect Lender, as determined by Lender in its discretion.

i. Borrower's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Borrower or any guarantor to receive notice of or consideration for any of the following: (i) any amendment or modification of any Loan Document; (ii) any extensions of time for performance required by any Loan Document; (iii) any provision in any of the Loan Documents limiting Lender's recourse to property securing the Indebtedness, or limiting the personal liability of Borrower or any other party for payment of all or any part of the Indebtedness; (iv) the accuracy or inaccuracy of any representations and warranties made by Borrower under this Instrument or any other Loan Document; (v) the release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document; (vi) the release or substitution in whole or in part of any security for the Indebtedness; and (vii) Lender's failure to properly perfect any lien or security interest given as security for the Indebtedness.

j. Borrower shall, at its own cost and expense, do all of the following: (i) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section; reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section; and (iii) reimburse Indemnitees for any and all expenses, including Enforcement Costs, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section, or in monitoring and participating in any legal or administrative proceeding.

k. The provisions of this Section shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Lender or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument. Notwithstanding the foregoing, if Lender has never been a mortgagee-in-possession of, or held title to, the Property, Borrower shall have no obligation to indemnify the Indemnitees under this Section after the date of the release of record of the lien of this Instrument by payment in full at the Maturity Date or by voluntary prepayment in full.

15. Insurance.

a. Risks to be Insured. Borrower, at its sole cost and expense, will maintain insurance of the following character:

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- i. **Property Insurance.** Insurance on any Improvements now existing or hereafter erected on any Property and on the fixtures and personal property included in the Property against loss by fire, and other hazards covered by the so-called "all-risk" form of policy without a co-insurance clause in an amount equal to the actual replacement cost thereof without deduction for physical depreciation, which insurance shall in no event be less than the unpaid Indebtedness outstanding at any given time. Borrower will at its sole cost and expense, from time to time and at any time, at the request of Lender, provide Lender with evidence satisfactory to Lender of the replacement cost of the Property. While any improvement is in the course of being constructed or rebuilt on any Property, Borrower shall provide the aforesaid hazard insurance in builder's risk completed value form, including coverage available on the so-called "all-risk" non-reporting form of policy for an amount equal to 100% of the insurable replacement value of the Improvements.
- ii. **Worker's Compensation Insurance.** While any Improvement are in the course of being constructed, renovated or rebuilt on any Property, such workers' compensation insurance as is required by statute in the Property Jurisdiction.
- iii. **Other Insurance.** Such other insurance as may from time to time be reasonably required by Lender in order to protect the interest of Lender.
- b. **Policy Provisions.** All policies of insurance required pursuant to Section 15(a): (1) shall contain a standard noncontributory mortgagee clause naming Lender as the person to which all payments made by such insurance company shall be paid, (2) shall be maintained throughout the term of the Note without cost to Lender, (3) shall be assigned and delivered to Lender, (4) shall contain a provision shall contain such provisions as Lender deems reasonably necessary or desirable to protect the interests of Lender, including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said policies and that Lender shall receive at least thirty (30) day prior written notice of any modification, reduction or cancellation, (5) shall be for a term of not less than one year, (6) shall be issued by an insurer licensed in the country in which the Property are located, (7) shall provide that Lender may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance, and such payments shall be accepted by the insurer to prevent same, (8) shall be satisfactory in form and substance to Lender and shall be approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds, and (9) shall provide that all claims shall be allowable on events as they occur. All insurance policies and renewals thereof maintained by Borrower pursuant to subparagraphs (a)(i) and (a)(iii) above shall contain a standard mortgagee clause in favor of and in form acceptable to Lender. The insurance maintained pursuant to subparagraphs (a)(i) and (a)(ii) and (a)(iii) shall name Lender as an additional insured. Upon demand therefor, Borrower shall reimburse Lender for all of Lender's reasonable costs and expenses incurred in obtaining any or all of said policies or otherwise causing the compliance with the terms and provisions of this Section 15, including (without limitation) replacement of any so-called "forced placed" insurance coverages. All policies required pursuant to Section 15(a) shall be issued by an insurer with a claims paying ability rating of "A-/V" or better by A.M. Best Company's Ratings Services. Borrower shall pay the premiums for such policies as the same become due and payable. If Borrower receives from any insurer any written notification or threat of any actions or proceedings regarding the non-compliance or non-

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conformity of any Property with any insurance requirements, Borrower shall give prompt notice thereof to Lender.

e. **Delivery of Policy.** Borrower will deliver to Lender copies of policies and/or certificates evidencing any required insurance satisfactory to Lender evidencing the insurance which is required under this Section 15, and Borrower shall promptly furnish to Borrower copies of all renewal notices and all receipts of paid premiums received by them. At least thirty (30) days prior to the expiration date of a required policy, Borrower shall deliver to Lender a copy of a renewal policy in form satisfactory to Lender.

d. **Assignment of Policies.** In the event of the entry of judgment of foreclosure, sale of any Property by non-judicial foreclosure sale or delivery of a deed in lieu of foreclosure, Lender hereby is authorized (without the consent of Borrower) to assign any and all policies to the purchaser or transferee thereunder, or to take such other steps as Lender may deem advisable to cause the interest of such transferee or purchaser to be protected by any of the policies without credit or allowance to Borrower for prepaid premiums thereon.

e. **Notice of Damage or Destruction, Adjusting Loss.** If a Property or any part thereof shall be damaged or destroyed by fire or other casualty, Borrower will promptly give written notice thereof to the insurance carrier and Lender, and will not adjust any damage or loss which is reasonably estimated by Lender in good faith to exceed \$15,000.00 unless, Lender shall have joined in such adjustment; but if there has been no adjustment of any such damage or loss within four months from the date of occurrence thereof and if an Event of Default shall exist at the end of such four-month period or at any time thereafter, Lender may alone make proof of loss, adjust and compromise any claim under the policies and appear in and prosecute any action arising from such policies. In connection therewith, Borrower does hereby irrevocably authorize, empower and appoint Lender as attorney-in-fact for Borrower (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Borrower.

f. **Application of Insurance Proceeds.** All sums paid under any policy required by this Section 15 shall be paid directly to Lender. Any such proceeds received by Lender shall, after deduction therefrom of all reasonable costs and expenses actually incurred by Lender, including attorneys' fees, at Lender's reasonable discretion be (1) released to Borrower; (2) applied (upon compliance with such terms and conditions as may be required by Lender) to repair or restoration, either partly or entirely, of the Property so damaged, or (3) applied to the payment of the Indebtedness in such order and manner as Lender, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the Indebtedness shall remain in full force and effect and the payment thereof shall not be excused.

g. **Reimbursement of Lender's Expenses.** Borrower shall promptly reimburse Lender upon demand for all of Lender's expenses incurred in connection with the collection of the insurance proceeds, including but not limited to, reasonable attorneys' fees, and all such costs and expenses, together with interest from the date of disbursement at an annual rate equal to the regular interest rate under the Note (unless collection of interest from Borrower at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law).

16. **Condemnation.**

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a. Borrower hereby irrevocably assigns to Lender any award or payment which becomes payable to Borrower on account of the Property by reason of any taking of the Property, or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings (hereinafter called "Taking"). Forthwith upon receipt by Borrower of notice of the institution of any proceeding or negotiations for a Taking, Borrower shall give notice thereof to Lender. Lender may appear in any such proceedings and participate in any such negotiations and may be represented by counsel. Borrower, notwithstanding that Lender may not be a party to any such proceeding, will promptly give to Lender copies of all notices, pleadings, judgments, determinations and other papers received by Borrower therein. Borrower will not enter into any agreement permitting or consenting to the taking of the Property, or any part thereof, or providing for the conveyance thereof in lieu of condemnation, with anyone authorized to acquire the same in condemnation or by eminent domain unless Lender shall first have consented thereto in writing. All Taking awards shall be adjusted jointly by Borrower and Lender. All awards payable as a result of a Taking shall be paid to Lender, which may, at its sole option and discretion, apply them, after first deducting Lender's expenses incurred in the collection thereof, to the payment of the Indebtedness, whether or not due and in such order of application as Lender may determine, or to the repair or restoration of the Property, in such manner as Lender may determine. Notwithstanding the previous sentence, if Lender determines in its reasonable discretion that, after deducting Lender's expenses incurred in the collection thereof, the condemnation award (together with any additional capital contributions made by the partners of Borrower) is adequate to complete the repair or restoration, Borrower shall have the right to use the condemnation award to complete such repair or restoration as is necessitated by such Taking. Any application of Taking awards shall not extend or postpone the due dates of any regularly scheduled payment or mandatory prepayment payable under the Note or change the amount of any such payment or prepayment.

b. If the Taking involves the taking of any improvement now or hereafter located on any Property, Borrower shall proceed, with reasonable diligence, to demolish and remove any ruins and complete repair or restoration of the Property as nearly as possible to its respective size, type and character immediately prior to the Taking, provided Lender determines in its reasonable discretion that the condemnation award (together with any additional capital contributions made by the partners of Borrower) is adequate to complete the repair or restoration, Borrower shall have the right to use the condemnation award to complete such repair or restoration. Borrower shall promptly reimburse Lender upon demand for all of Lender's reasonable expenses (including reasonable attorney's fees) incurred in the collection of awards and their disbursement in accordance with this Section, and all such expenses, together with interest from the date of disbursement at the regular interest rate under the Note (unless collection of interest from Borrower at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law).

17. Transfer of the Property or Interests in Borrower.

a. The occurrence of any of the following Transfers shall constitute an Event of Default under this Instrument: (i) a Transfer of all or any part of the Property or any interest in the Property; (ii) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than a Controlling Interest of all limited partnership interests in Borrower; (iii) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership

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or joint venture interest in Borrower; (iv) if Borrower is a limited liability company, (A) a Transfer of any membership interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all the membership interests in Borrower, (B) a Transfer of any membership or other interest of a manager in Borrower that results in a change of manager, or (C) a change of a nonmember manager; (v) if Borrower is a corporation, (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than a Controlling Interest of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more Transfers by a single transferor within a 12-month period affecting an aggregate of 10 % or more of that stock; (vi) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all the beneficial interests in Borrower, (B) the termination or revocation of the trust, or (C) the removal, appointment or substitution of a trustee of Borrower; and (vii) if Borrower is a limited liability partnership, (A) a Transfer of any partnership interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all partnership interests in Borrower, or (B) a transfer of any partnership or other interest of a managing partner in Borrower that results in a change of manager.

b. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 17.

18. Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

- a. any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;
- b. any failure by Borrower to maintain the insurance coverage required by Section 15;
- c. any failure by Borrower to comply with the provisions of Section 26;
- d. fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, managers, members or any guarantor in connection with (i) the application for or creation of the Indebtedness, (ii) any financial statement, rent schedule, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;
- e. any failure by Borrower to comply with the provisions of Section 16;
- f. any Event of Default under Section 17;
- g. any specified "Event of Default" under any Loan Documents shall occur
- h. the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Property;

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i. any failure by Borrower to perform any of its obligations as and when required under any Loan Document which continues beyond the applicable cure period, if any, specified in that Loan Document;

j. any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Property of a right to declare all amounts due under that debt instrument immediately due and payable;

k. any voluntary filing by Borrower for bankruptcy protection under the United States Bankruptcy Code or any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights to which Borrower voluntarily becomes subject, or the commencement of any involuntary case against Borrower by any creditor (other than Lender) of Borrower pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights which case is not dismissed or discharged within ninety (90) days after filing; and

l. any representations and warranties by Borrower in this Instrument or any Loan Document which is false or misleading in any material respect.

19. Forbearance Not a Waiver; Rights and Remedies Cumulative. No delay by Lender in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Lender of any particular provision of the Agreement shall be deemed effective unless in writing signed by Lender. All such rights and remedies provided for herein or which Lender or any other holders of the Note may otherwise have, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises. Lender's taking action pursuant to Section 9 or receiving proceeds, awards or damages pursuant to Sections 18 or 19 shall not impair any right or remedy available to Lender. Lender's exercise of any of the rights or remedies under the Loan Documents shall not cure or waive any Event of Default (or notice of default) under the Loan Documents or invalidate any act done pursuant to such notice. Acceleration of maturity of the Note, once claimed hereunder by Lender, may, at the option of Lender, be rescinded by written acknowledgment to that effect by Lender, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity of the Note.

20. Loan Charges. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

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21. Waiver of Statute of Limitations; Waiver of Marshaling. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument. Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided in the Borrower Agreement, any other Loan Document or applicable law. Lender shall have the right to determine the order in which all or any part of the Indebtedness is satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Property and who has actual or constructive notice of the Borrower Agreement waives any and all right to require the marshaling of assets or to require that any of the Property be sold in the inverse order of alienation or that any of the Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in the Borrower Agreement or any other Loan Documents.

22. Further Assurances.

a. Within ten (10) days after request by Lender, Borrower shall, subject to this Section, execute, acknowledge, and deliver, at its cost and expense, all further acts, deeds, conveyances, assignments, financing statements, transfers, documents, agreements, assurances, and such other instruments as Lender may reasonably require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under the Loan Documents.

b. Within ten (10) days after request by Lender, Borrower shall provide, or cause to be provided, to Lender, at Borrower's cost and expense, such further documentation or information reasonably deemed necessary or appropriate by Lender in the exercise of its rights under the related commitment letter between Borrower and Lender or to correct patent mistakes in the Loan Documents, the Title Policy, or the funding of the Loan.

Nothing above in (a) or (b) shall require Borrower to do any further act that has the effect of (i) changing the economic terms of the Loan set forth in the related commitment letter between Borrower and Lender; or imposing on Borrower or Guarantor greater personal liability under the Loan Documents than that set forth in the related commitment letter between Borrower and Lender; or

23. Governing Law; Consent to Jurisdiction and Venue. Lender and Borrower specifically acknowledge and agree that this Instrument and its interpretation and enforcement are governed by the laws of the state of Illinois. Furthermore, each of Lender and Borrower irrevocably (i) submits to the jurisdiction of any court of the state of Illinois located in Cook County (the "Property Jurisdiction") for the purpose of any suit, action or other proceeding arising out of this Note (each, a "Proceeding"), (ii) agrees that all claims in respect of any Proceeding may be heard and determined in any such court, (iii) waives, to the fullest extent permitted by law, any immunity from jurisdiction of any such court or from any legal process therein, (iv) agrees not to commence any Proceeding other than in such courts and (v) waives, to the fullest extent permitted by law, any claim that such Proceeding is brought in an inconvenient forum. However, nothing in this Section 22 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

24. Notices. All notices, demands and other communications under or concerning this Instrument shall be in writing. Each Notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (i) the date when the notice is received

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by the addressee; (ii) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. Any party to this Instrument may change the address to which notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section 24. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with this Section 24, that it will acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of this Section 24 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

25. Sale of Note; Change in Services; Loan Servicing. Borrower shall: (A) comply with the reasonable requirements of Lender or any investor of the Loan or provide, or cause to be provided, to Lender or any investor of the Loan within ten (10) days of the request, at Borrower's cost and expense, such further documentation or information as Lender or investor may reasonably require, in order to enable: (i) Lender to sell the Loan to such Investor; (ii) Lender to obtain a refund of any commitment fee from any such investor; or (iii) any such investor to further sell or securitize the Loan; (B) ratify and affirm in writing the representations and warranties set forth in any Loan Document as of such date specified by Lender modified as necessary to reflect changes that have occurred subsequent to the Effective Date; (C) confirm that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in the Borrower Agreement or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); and (D) execute and deliver to Lender and/or any investor such other documentation, including any amendments, corrections, deletions, or additions to the Borrower Agreement or other Loan Document(s) as is reasonably required by Lender or such investor.

Nothing in the Borrower Agreement shall limit Lender's (including its successors and assigns) right to sell or transfer the Loan or any interest in the Loan. The Loan or a partial interest in the Loan (together with the Borrower Agreement and the other Loan Documents) may be sold one or more times without prior written notice to Borrower. A sale may result in a change of the Loan Servicer.

26. Single Asset Borrower. Until the Indebtedness is paid in full and if the Borrower is an entity and not a natural person, Borrower shall not: (a) own any real or personal property other than the Property and personal property related to the operation and maintenance of the Property; (b) operate any business other than the management and operation of the Property; and (c) maintain its assets in a way difficult to segregate and identify.

27. Successors and Assigns Bound. This Instrument shall bind, and the rights granted by this Instrument shall benefit, the successors and assigns of Lender. This Instrument shall bind, and the obligations granted by this Instrument shall inure to, any permitted successors and assigns of Borrower under the Borrower Agreement. However, a Transfer not permitted by Section 17 shall be an Event of Default.

28. Joint and Several Liability. If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

29. Relationship of the Parties; No Third Party Beneficiary. The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument

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shall create any other relationship between Lender and Borrower. No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a "Servicing Arrangement") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

30. Severability; Amendments. If for any reason any provision of this Instrument is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Instrument will not be affected and such provision will be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

31. Construction. The captions and headings of the Sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

32. Disclosure of Information. Lender may furnish information regarding Borrower or the Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of Loans, as well as governmental regulatory agencies having regulatory authority over Lender. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

33. Subrogation. If, and to the extent that, the proceeds of the loan evidenced by the Note, or subsequent advances hereunder, are used to pay, satisfy or discharge a prior lien, such loan proceeds or advances shall be deemed to have been advanced by Lender at Borrower's request and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the prior lien, whether or not the prior lien is released.

34. Time is of the Essence. Borrower agrees that, with respect to each and every obligation and covenant contained in this Instrument and the other Loan Documents, time is of the essence.

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

35. Acceleration; Remedies.

- a. If an Event of Default has occurred and is continuing, Lender, at its option, may declare the Indebtedness to be immediately due and payable without further demand, and may either with

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or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (1) to enforce payment of the Loan; (2) to foreclose this Instrument judicially or non-judicially; (3) to enforce or exercise any right under any Loan Document; and (4) to pursue any one (1) or more other remedies provided in this Instrument or in any other Loan Document or otherwise afforded by applicable law. Each right and remedy provided in this Instrument or any other Loan Document is distinct from all other rights or remedies under this Instrument or any other Loan Document or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order. Borrower has the right to bring an action to assert the nonexistence of an Event of Default or any other defense of Borrower to acceleration and sale.

b. In connection with any sale made under or by virtue of this Instrument, the whole of the Property may be sold in one (1) parcel as an entirety or in separate lots or parcels at the same or different times, all as Lender may determine in its sole discretion. Lender shall have the right to become the purchaser at any such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Indebtedness, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. If the Property is sold for an amount less than the amount outstanding under the Indebtedness, the deficiency shall be determined by the purchase price at the sale or sales. To the extent not prohibited by applicable law, Borrower waives all rights, claims, and defenses with respect to Lender's ability to obtain a deficiency judgment. Borrower acknowledges that the Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act.

c. Borrower acknowledges and agrees that the proceeds of any sale shall be applied as determined by Lender unless otherwise required by applicable law.

d. In connection with the exercise of Lender's rights and remedies under this Instrument and any other Loan Document, there shall be allowed and included as Indebtedness: (1) all expenditures and expenses authorized by applicable law and all other expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable legal fees, appraisal fees, outlays for documentary and expert evidence, stenographic charges and publication costs; (2) all expenses of any environmental site assessments, environmental audits, environmental remediation costs, appraisals, surveys, engineering studies, wetlands delineations, flood plain studies, and any other similar testing or investigation deemed necessary or advisable by Lender incurred in preparation for, contemplation of or in connection with the exercise of Lender's rights and remedies under the Loan Documents; and (3) costs (which may be reasonably estimated as to items to be expended in connection with the exercise of Lender's rights and remedies under the Loan Documents) of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute any suit or to evidence the true conditions of the title to or the value of the Property to bidders at any sale which may be held in connection with the exercise of Lender's rights and remedies under the Loan Documents. All expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Property and rents and income therefrom and the maintenance of the lien of this Instrument, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Instrument, the Note, the other Loan Documents, or the

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Property, including bankruptcy proceedings, any Foreclosure Event, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid. Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Indebtedness and/or by any judgment of foreclosure.

e. Any action taken by Lender pursuant to the provisions of this Section shall comply with the laws of the Property Jurisdiction including the Act. Such applicable laws shall take precedence over the provisions of this Section, but shall not invalidate or render unenforceable any other provision of any Loan Document that can be construed in a manner consistent with any applicable law. If any provision of this Instrument shall grant to Lender (including Lender acting as a mortgage-in-possession), or a receiver appointed pursuant to the provisions of this Instrument any powers, rights or remedies prior to, upon, during the continuance of or following an Event of Default that are more limited than the powers, rights, or remedies that would otherwise be vested in such party under any applicable law in the absence of said provision, such party shall be vested with the powers, rights, and remedies granted in such applicable law to the full extent permitted by law.

36. Waiver of Redemption; Rights of Tenants.

a. Borrower hereby covenants and agrees that it will not at any time apply for, insist upon, plead, avail itself, or in any manner claim or take any advantage of, any appraisement, stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter enacted or in force in order to prevent or hinder the enforcement or foreclosure of this Instrument. Without limiting the foregoing:

- i. Borrower, for itself and all Persons who may claim by, through or under Borrower, hereby expressly waives any so-called "Moratorium Law" and any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Instrument, it being the intent hereof that any and all such "Moratorium Laws", and all rights of reinstatement and redemption of Borrower and of all other Persons claiming by, through or under Borrower are and shall be deemed to be hereby waived to the fullest extent permitted by the laws of the Property Jurisdiction;
- ii. Borrower shall not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and
- iii. if Borrower is a trust, Borrower represents that the provisions of this Section (including the waiver of reinstatement and redemption rights) were made at the express direction of Borrower's beneficiaries and the persons having the power of direction over Borrower, and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other persons mentioned above.

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b. Lender shall have the right to foreclose subject to the rights of any tenant or tenants of the Property having an interest in the Property prior to that of Lender. The failure to join any such tenant or tenants of the Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

37. **Mortgagee-in-Possession.** Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred in this Instrument shall not be construed to make Lender a mortgagee-in-possession of the Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

38. **Illinois State Specific Provisions.**

a. Pursuant to 735 ILCS 5/15-1601(b), Borrower waives any and all rights of redemption from sale under any order of foreclosure of this Instrument, or other rights of redemption, which may run to Borrower or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. Borrower waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.

b. Notwithstanding any provision to the contrary in this Instrument, the Note or any other Loan Document which permits any additional sums to be advanced on or after the date of this Instrument, whether as additional loans or for any payments authorized by this Instrument, the total amount of the principal component of the Indebtedness shall not at any time exceed three hundred percent (300%) of the original principal amount of the Note set forth on the first page of this Instrument.

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

(Signature page follows)

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

BORROWER:

Michael Howard Capital Series LLC, an Illinois
Limited Liability Company

By: *Michael Kuykendall*
Name: Michael Kuykendall
Title: Sole Member/Manager

STATE OF IL)
County of Cook) : ss

On this 1st day of August, 2016, before me personally appeared Michael Kuykendall, to me known to be the Sole Member/Manager of Michael Howard Capital Series LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said company.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.



(Seal or Stamp)

Alexander Topalov (Signature)
Notary Public Alexander Topalov (Print Name)

My commission expires: 3/25/17

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Prepared by, and after recording return to:
Cogo Capital, LLC
1121 E Mullan Ave
Coeur d'Alene, ID 83814

MORTGAGE AND ASSIGNMENT OF RENTS

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EXHIBIT A:

LOT 506 IN BROOKWOOD POINT UNIT NUMBER 8, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THAT PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND PART OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, ALL IN SECTION 11, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

FOR INFORMATION ONLY: 32-11-114-038-0000
851 E. 193RD PLACE, GLENWOOD IL 60425

Property of Cook County Clerk's Office