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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1635634062

Doc# 1635634062 Fee \$94.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 12/21/2016 01:24 PM PG: 1 OF 29

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 17-16-202-013-0000

Address:

Street: 230 W. Monroe Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60606

Lender: Starwood Property Mortgage, L.L.C.

Borrower: BRI 1864 230 W Monroe LLC

Loan / Mortgage Amount: \$116,000,000.00

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

Certificate number: 29E3DBD6-A63C-4F11-B8E2-5A0F79C78655

Execution date: 12/19/2016

[Handwritten signature]
29

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PREPARED BY AND UPON
RECORDATION RETURN TO:

Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, California 90071
Attention: Scott McPhee

Stewart Title NTS, Chicago
10 S. Riverside Plaza, Suite 1450
Chicago, IL 60606
PH: 312-849-4400
File No: 16000/50553

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Cook County, Illinois

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

BRI 1864 230 W MONROE LLC,
a Delaware limited liability company,
as mortgagor
(Borrower)

To

STARWOOD PROPERTY MORTGAGE, L.L.C.,
a Delaware limited liability company,
as mortgagee
(Lender)

Dated: December 19, 2016

Location: 230 W. Monroe Street,
Chicago, Illinois 60606

APN: 17-16-202-013-0000 17-16-202-014-0000

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "**Security Instrument**") is made as of this 19th day of December, 2016, by BRI 1864 230 W MONROE LLC, a Delaware limited liability company, having its principal place of business at 1140 E. Hallandale Beach Blvd., Hallandale Beach, Florida 33009, as mortgagor ("**Borrower**"), to STARWOOD PROPERTY MORTGAGE, L.L.C., a Delaware limited liability company, having an address at 591 W. Putnam Avenue, Greenwich, Connecticut 06830, as mortgagee (together with its successors and/or assigns, "**Lender**").

WITNESSETH:

WHEREAS, this Security Instrument is given to secure a loan (the "**Loan**") made in the original maximum principal sum of ONE HUNDRED SIXTEEN MILLION AND 00/100 DOLLARS (\$116,000,000.00) or so much thereof as may be advanced pursuant to that certain Loan Agreement dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by one or more Promissory Notes dated the date hereof made by Borrower to Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, collectively, the "**Note**");

WHEREAS, to induce Lender to make the Loan to Borrower, Borrower desires to further secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of Borrower's obligations under the Note, the Loan Agreement and the other Loan Documents (as herein defined);

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents of even date herewith made by Borrower in favor of Lender and delivered in connection with this Security Instrument (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**"), including, without limitation, the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, the Assignment of Leases and all other documents evidencing or securing the Debt or executed or delivered in connection therewith, are hereinafter referred to collectively as the "**Loan Documents**"); and

WHEREAS, Borrower and Lender intend these recitals to be a material part of this Security Instrument.

NOW THEREFORE, in consideration of the making of the Loan by Lender to Borrower and the covenants, agreements, representations and warranties set forth in this Security Instrument, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

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ARTICLE I

GRANTS OF SECURITY

Section 1.1 The Property. Borrower does hereby irrevocably mortgage, pledge, assign, warrant, transfer, grant, bargain, sell, convey, pledge and set over to Lender, and its successors and assigns, WITH THE POWER OF SALE (to the extent permitted by applicable law), the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the **"Property"**):

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

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

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

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

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

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and/or the Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing,

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cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to Leases or fixtures owned by utility companies, except to the extent that Borrower shall have any right or interest therein;

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

(h) Leases and Rents. All leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments and modifications thereto, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") (individually, a "**Lease**", collectively, the "**Leases**") and all income, rents and right, title and interest of Borrower, its successors and assigns in and under the Leases, including, without limitation, any guaranties of the lessees' obligations thereunder, cash or securities deposited under the Leases to secure the performance by the lessees of their obligations under the Leases and all rents, additional rents, early termination fees and payments and other termination fees and payments, revenues, issues and profits (including, without limitation, and all cash or securities deposited to secure the performance by the lessees of their obligations under the Leases), issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt and the performance of all of the other obligations due and owing by Borrower to Lender pursuant to the terms of the Loan Documents subject to the terms of the Loan Agreement;

(i) Condemnation Awards. Subject to the terms of the Loan Agreement, all Awards which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. Subject to the terms of the Loan Agreement, all Insurance Proceeds in respect of the Property under any Policies covering the Property, including, without

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limitation, the right to receive and apply the proceeds of any Policies, judgments, or settlements made in lieu thereof, in connection with a Casualty to the Property;

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

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

(m) Rights. Subject to any limitations set forth in any Loan Document, the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(n) Agreements. To the extent assignable, all agreements, contracts, certificates, instruments, franchises, franchise agreements, permits, licenses, and, to the extent lawfully assignable, all licenses, permits, approvals and consents which are required for the sale and service of alcoholic beverages on the Property heretofore or hereafter obtained from applicable state and local authorities, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Improvements and/or the Land and any part thereof, respecting any business or activity conducted in the Improvements and/or on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower hereunder;

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

(p) Accounts/Intangibles. All accounts, accounts receivable, escrows (including, without limitation, all escrows, deposits, reserves and impounds established pursuant to the Loan Agreement and the Loan Documents), documents, instruments, chattel paper, claims, reserves (including deposits) representations, warranties and general intangibles, as one or more of the foregoing terms may be defined in the Uniform Commercial Code, and all contract rights, franchises, books, records, plans, specifications, permits, licenses (to extent assignable), approvals, actions, choses, claims, suits, proofs of claims in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or any operator or manager of the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance, or arising from the sale of any Property or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with any Property returned by or reclaimed from customers wherever such Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon and all other deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates,

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securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(q) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property

(r) [Intentionally omitted.]

(s) Proceeds. All products and proceeds of any of the foregoing; and

(t) Other Rights. Any and all other rights of Borrower in and to the items set forth in Sections (a) through (s) above.

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

Section 1.2 Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement, the Assignment of Leases and Section 7.2(h) of this Security Instrument, Lender grants to Borrower a revocable license (which shall be automatically revoked during the continuance of an Event of Default) to collect, receive, use and enjoy the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 Security Agreement. This Security Instrument is a real property mortgage, a "security agreement," a "financing statement" and a "fixture filing" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (as hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "**Collateral**"). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand (except as required by applicable law or as specifically provided in the Loan Documents), any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender

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within ten (10) days of Borrower's receipt of Lender's written request, any and all third party, out of pocket costs and expenses, including, without limitation, reasonable, actual attorneys' fees and costs, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the repayment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper. Borrower's (debtor's) principal place of business is as set forth on the first page hereof and the address of Lender (secured party) is as set forth on the first page hereof. Borrower and Lender agree that the foregoing is intended to grant in favor of Lender a first priority continuing lien and security interest in the Property. The Borrower authorizes the Lender and its counsel to file Uniform Commercial Code financing statements in form and substance satisfactory to the Lender describing the Property and the Collateral. Such financing statements may describe as the collateral covered thereby "all assets of the debtor, whether now owned or hereafter acquired" or words to that effect, notwithstanding that such collateral description may be broader in scope than the collateral described in this Security Instrument. The organizational identification number of the debtor is 04801679 in Illinois and 5549054 in Delaware.

Section 1.4 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement (naming Borrower as the Debtor and Lender as the Secured Party) filed as a fixture filing in accordance with the applicable provisions of the Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Pledges of Monies Held. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender, including, without limitation, any sums deposited in the Clearing Account, the Cash Management Account, the Reserve Accounts, the Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument or the Loan Documents.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above mortgaged and described Property unto and to Lender for the use and benefit of Lender and its successors and assigns, forever and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto Lender against every Person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Borrower for the purposes and uses herein set forth;

WITH POWER OF SALE (to the extent permitted by applicable law), to secure the payment to Lender of the Debt secured hereby and performance of the Other Obligations (defined herein) at the time and in the manner provided for in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall perform the Other Obligations then outstanding (hereafter defined) as set forth in this Security Instrument and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void and Lender shall execute appropriate release

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documents in recordable form acceptable to Lender (and at Borrower's costs) upon Borrower's request after such repayment of the Debt; PROVIDED, HOWEVER, THAT BORROWER'S OBLIGATION TO INDEMNIFY AND HOLD HARMLESS LENDER PURSUANT TO THE PROVISIONS HEREOF SHALL SURVIVE ANY SUCH PAYMENT OR RELEASE.

ARTICLE II

DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Security Instrument and the grants, assignments and transfers made in Article I are given for the purpose of securing the Debt, which by its definition (as set forth in the Loan Agreement) includes, but is not limited to, the obligations of Borrower to pay to Lender the principal and interest owing pursuant to the terms and condition of the Note.

Section 2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (collectively, the "Other Obligations"):

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document;
- (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document; and
- (d) all other and any additional debts, obligations and liabilities of every kind and character of Borrower, whether now or hereafter existing, in favor of Lender, pursuant to the Loan Documents, regardless of whether such debts, obligations and liabilities be direct or indirect, primary, secondary, joint, several, joint and several, fixed or contingent, unsecured or secured by additional or different securities, it being contemplated by Borrower and Lender that Borrower may hereafter become indebted to Lender in further sum or sums under the Loan Documents.

Borrower, and each party at any time claiming an interest in or lien or encumbrance against the Property, agrees that all advances made by Lender from time to time under any of the Loan Documents, and all other portions of the Obligations herein referred to, shall be secured by this Security Instrument with priority as if all of the same had been advanced, had arisen or become owing or performable on the date of this Security Instrument. No reduction of the outstanding principal balance under the Note shall extinguish, release or subordinate any rights, titles, interests, liens, security interests, powers or privileges intended, created or arising hereunder or under any other Loan Document, and this Security Instrument shall remain in full force and effect as to any subsequent advances or subsequently arising portions of the Obligations without loss of priority until the Obligations are fully paid, performed and satisfied, all agreements and obligations, if any, of Lender for further advances have been terminated and this Security Instrument has been released of record by Lender.

Section 2.3 Debt and Other Obligations. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations may sometimes be referred to collectively herein as the "Obligations."

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ARTICLE III

BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note, this Security Instrument and the other Loan Documents.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein, including Borrower's Lien contest and bonding rights set forth in Section 5.1.2 of the Loan Agreement.

ARTICLE IV

OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Borrower and Lender. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.2 No Reliance on Lender. The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Lender Obligations. (a) Notwithstanding the provisions of Sections 1.1(h) and (n) or Section 1.2 hereof, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

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

Section 4.4 Reliance. Borrower recognizes and acknowledges that (a) in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; (b) such reliance existed on the part of Lender prior to the date hereof; (c) the warranties and representations are a material inducement to Lender in making the

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Loan; and (d) Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

ARTICLE V

FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, etc. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of to protect and perfect the Lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will, subject to the terms of and solely to the extent provided in the Loan Agreement, pay all Other Taxes and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and, subject to the terms of and solely to the extent provided in the Loan Agreement, Other Taxes arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, etc. Subject to the terms of and solely to the extent provided in the Loan Agreement, Borrower will, at the sole cost and expense of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all appropriate acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements (subject to the limitations described in clauses (A) through (E) of Section 9.2(a) of the Loan Agreement). Borrower, within ten (10) days of request by Lender, will execute and deliver, and in the event Borrower shall fail to so execute and deliver within such ten (10) day period, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) to evidence the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest exercisable only during the continuance of an Event of Default for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section 5.2. To the extent not prohibited by applicable law, Borrower hereby ratifies any such acts Lender has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 5.3 Changes in Laws.

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

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which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay such tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of such tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable (and any failure to repay the Debt by the end of such 120-day period shall be an Event of Default).

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, then Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable (and any failure to repay the Debt by the end of such 120-day period shall be an Event of Default).

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

Section 5.4 Severing of Security Instrument. Subject to and in accordance with the terms of the Loan Agreement, this Security Instrument and the Note may, at any time (whether prior to or after any sale, participation or Securitization of all or any portion of the Loan) until the same shall be fully paid and satisfied, at the sole election of Lender, be severed into two or more notes and two or more security instruments in such denominations as Lender shall determine in accordance with the Loan Agreement, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, to the extent provided in the Loan Agreement, Borrower, upon written request of Lender, shall execute, acknowledge and deliver to Lender and/or its designee or designees, substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses substantially similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender.

Section 5.5 Replacement Documents. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise in the same form as such lost, stolen, destroyed or mutilated document.

ARTICLE VI

DUE ON SALE/ENCUMBRANCE

Section 6.1 Lender Reliance. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the

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value of the Property as security for the payment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the payment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 6.2 No Sale/Encumbrance. Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as expressly permitted pursuant to the terms of the Loan Agreement.

ARTICLE VII

RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Events of Default. The occurrence of an "Event of Default" under the Loan Agreement shall be an "Event of Default" under this Security Instrument.

Section 7.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand but subject to applicable law (except as otherwise expressly provided in the Loan Agreement), as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

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

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

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

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

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

(ii) Lender shall be entitled to elect to proceed against any or all of the Land, the Personal Property, the Equipment and the Fixtures in any manner permitted under applicable law; and if Lender so elects pursuant to applicable law, the power of sale herein granted shall, to the fullest extent permitted by applicable law, be exercisable with respect to all or any of the Land, the Personal Property, the Equipment and the Fixtures covered hereby, as designated by Lender, and Lender is hereby authorized and empowered to conduct any such sale of any Land, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to the Land;

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

(iv) If the Property consists of several lots, parcels, condominium units or items of property, Lender shall, subject to applicable law, (A) designate the order in which such lots, parcels, condominium units or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels, condominium units or items through a single sale, or through two or more successive sales, or in any other manner Lender designates. Any Person, including Borrower or Lender, may purchase at any sale hereunder. Should Lender desire that more than one sale or other disposition of the Property be conducted, Lender shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Lender may designate, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Property not sold until all the Obligations have been satisfied in full (exclusive of any indemnification or other obligations which are expressly stated in any of the Loan Documents to survive repayment of the Debt). In the event Lender elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Borrower agrees to pay the third-party, out of pocket costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made; and

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(v) upon any such foreclosure sale, Lender may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and to the third party, out of pocket costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Lender under the obligations secured by this Security Instrument, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon;

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

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

(g) subject to applicable law, apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard to the solvency of Borrower, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof, it being agreed that Lender shall be entitled to appointment of such receiver, trustee, liquidator or conservator as a matter of right;

(h) subject to applicable law, the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Lender may, unless prohibited by applicable law and subject to the rights of parties in possession thereof, enter into or upon the Property, either personally or by its agents, nominees or attorneys, and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise, and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat, (ii) complete any construction on the Property in such manner and form as Lender deems advisable, (iii) make alterations, additions, renewals, replacements and improvements to or on the Property, (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof, (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower, (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof: Borrower may be evicted by summary proceedings or otherwise, and (vii) apply the receipts from the Property to the payment of the Debt and the performance of the Other Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all third-party, out of pocket costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by Lender in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) subject to applicable law, exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for

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the care, protection and preservation of the Fixtures, the Equipment and/or the Personal Property; and (ii) request Borrower at its sole cost and expense to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower;

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

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) interest on the unpaid principal balance of the Note;
- (iv) amortization of the unpaid principal balance of the Note;
- (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument or the Loan Agreement;
- (k) pursue such other remedies as Lender may have under applicable law; and/or
- (l) [Intentionally Omitted.]

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.3 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property (after deducting all costs, fees and expenses of Lender and of this Security Instrument), and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper, to the extent consistent with law.

Section 7.4 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower (except as expressly required pursuant to applicable law or the Loan Documents) and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including, without limitation, reasonable, third-party actual attorneys' fees and expenses to the extent permitted by law) with interest as provided in this Section 7.4, shall constitute a portion of the Debt and shall be due and payable to Lender ten (10) Business Days after written demand. All such third party, out of pocket costs and expenses

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incurred by Lender in remedying any Event of Default or in appearing in, defending, or bringing any such action or proceeding, as hereinafter provided, shall bear interest at the Default Rate, for the period beginning on the first day after notice from Lender that such cost or expense was incurred and continuing until the date of payment to Lender. All such third party, out of pocket costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and to be secured by this Security Instrument and the other Loan Documents and shall be due and payable ten (10) Business Days after written demand by Lender therefor.

Section 7.5 Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, which Lender, in its sole and absolute discretion, decides should be brought to protect its interest in the Property.

Section 7.6 Recovery of Sums Required To Be Paid. Subject to the terms of the Loan Agreement, Lender shall have the right from time to time to take any action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or Event of Default by Borrower existing at the time such earlier action was commenced.

Section 7.7 Other Rights, etc. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents except as expressly set forth therein.

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

(c) Lender may resort for the payment of the Debt and the performance of the Other Obligations to any other security held by Lender in connection with the Loan in such order and manner as Lender, in its sole discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce the Other Obligations or any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall

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have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.9 Recourse and Choice of Remedies. Notwithstanding any other provision of this Security Instrument or the Loan Agreement (but subject to the exculpation provisions set forth in Article VII of the Loan Agreement, which terms are incorporated herein by reference), Lender and other Indemnified Parties are entitled to enforce the obligations of Borrower, any guarantor and indemnitor contained in any other Loan Document without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower and any guarantor or indemnitor with respect to the Loan to the extent permitted under applicable law. Except as expressly set forth in the Environmental Indemnity and the Guaranty, the liability of Borrower and any guarantor or indemnitor with respect to the Loan pursuant to any other Loan Document is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence.

Section 7.10 Right of Entry. Upon reasonable advance written notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 7.11 Violation of Law. Subject to the Loan Agreement, if the Property is not in full material compliance with Legal Requirements, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

ARTICLE VIII

WAIVERS

Section 8.1 Waiver of Counterclaim. To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations. Notwithstanding the foregoing, Borrower does not waive its right to assert (i) in good faith, a defense that any obligation in question has been performed, (ii) a claim of illegal acts, bad faith, fraud or willful misconduct of Lender and (iii) any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding.

Section 8.2 Marshalling and Other Matters. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

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Section 8.3 Waiver of Notice. To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 8.4 Waiver of Statute of Limitations. To the fullest extent permitted by applicable law, Borrower hereby expressly waives and releases its right to plead any statute of limitations as a defense to payment of the Debt or performance of the Other Obligations.

Section 8.5 Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER (BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT) HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. THE PARTIES HERETO ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

Section 8.6 Survival. The indemnifications made pursuant to this Security Agreement shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: (a) any satisfaction, release or other termination of this Security Instrument or any other Loan Document; (b) any assignment or other transfer of all or any portion of this Security Instrument or any other Loan Document or Lender's interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any such assignee or transferee); (c) any exercise of Lender's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure; (d) any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents; (e) any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time); (f) any amendment to this Security Instrument, the Loan Agreement, the Note or any other Loan Documents, and/or (g) any act or omission that might otherwise be construed as a release or discharge of Borrower from the Obligations or any portion thereof.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1 Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

Section 9.2 Governing Law; Jurisdiction; Service of Process. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS CREATED PURSUANT TO THIS SECURITY INSTRUMENT (INCLUDING, WITHOUT LIMITATION, FORECLOSURE), THIS SECURITY

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INSTRUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF), IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE LOAN DOCUMENTS, THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN §§ 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW)) SHALL GOVERN ALL MATTERS RELATING TO THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF) PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. BORROWER (A) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY BE BROUGHT IN A COURT OF RECORD IN THE COUNTY WHERE THE PROPERTY IS LOCATED OR IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SAID COUNTY, (B) CONSENTS TO THE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING AND (C) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY SERVICE OF COPIES OF SUCH PROCESS TO BORROWER AT ITS ADDRESS PROVIDED HEREIN. NOTHING CONTAINED IN THIS SECURITY INSTRUMENT SHALL PREVENT LENDER FROM BRINGING AN ACTION, ENFORCING ANY AWARD OR JUDGMENT, OR EXERCISING ANY RIGHT OR REMEDY AGAINST BORROWER, OR AGAINST ANY SECURITY OR COLLATERAL FOR THE DEBT, WITHIN ANY OTHER COUNTY, STATE OR ANY OTHER FOREIGN OR DOMESTIC JURISDICTION.

Section 9.3 Usury Laws. Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Lender pursuant to the Loan Documents shall never exceed the Maximum Legal Rate or the maximum lawful amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

Section 9.4 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

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Section 9.5 Definitions. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Notes and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 9.6 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 9.7 Successors and Assigns. This Security Instrument shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and assigns forever. Lender shall have the right to assign or transfer its rights under this Security Instrument in connection with any assignment of the Loan and the Loan Documents pursuant to and in accordance with the terms and conditions of the Loan Agreement. Any assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Security Instrument. Borrower shall not have the right to assign or transfer its rights or obligations under this Security Instrument without the prior written consent of Lender, except as otherwise provided in the Loan Agreement, and any attempted assignment in violation of the Loan Agreement shall be null and void.

Section 9.8 Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 9.9 Headings, etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 9.10 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the payment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

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Section 9.11 Entire Agreement. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 9.12 Limitation on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender as a "mortgagee in possession" unless Lender actually elects in writing to become a "mortgagee in possession."

Section 9.13 After-Acquired Property. All property acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the Lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further amendment, modification, supplement, conveyance or assignment become subject to the Lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further amendments, modifications, supplements, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument.

Section 9.14 Counterparts. This Security Instrument may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Security Instrument may be detached from any counterpart of this instrument without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this instrument identical in form hereto but having attached to it one or more additional signature pages.

Section 9.15 Joint and Several Liability. If Borrower consists of more than one Person or party, the obligations and liabilities of each such person or party shall be joint and several.

ARTICLE X

STATE-SPECIFIC PROVISIONS

Section 10.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article X and the other terms and conditions of this Security Instrument, the terms and conditions of this Article X shall control and be binding.

Section 10.2 Business Purpose. The proceeds of the indebtedness secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Borrower, and the entire principal obligation secured by this Security Instrument constitutes (i) a "business loan" as

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that term is used in, and for all purposes of, 815 ILCS 205/4 (1) (c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

Section 10.3 Maximum Secured. This Security Instrument secures the payment of the entire indebtedness secured hereby; provided, however that the total amount secured by this Security Instrument shall not exceed an amount equal to TWO HUNDRED THIRTY-TWO MILLION AND 00/100 (\$232,000,000.00).

Section 10.4 Maturity; Interest. The Note has an initial maturity date of January 9, 2020, as may be extended pursuant to Section 2.2.8 of the Loan Agreement, and the Note bears interest at variable rates determined in accordance with the terms and conditions of the Loan Agreement.

Section 10.5 Collateral Protection Act. Pursuant to the terms of the Collateral Protection Act (815 ILCS 180/1 et seq.), Borrower is hereby notified that unless Borrower provides Lender with evidence of the insurance coverage required by this Security Instrument, Lender may purchase insurance at Borrower's expense to protect Lender's interests in the Property, which insurance may, but need not, protect the interests of Borrower. The coverage purchased by Lender may not pay any claim made by Borrower or any claim made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained the insurance as required hereunder. If Lender purchases insurance, the Borrower will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total obligation secured hereby. The costs of such insurance may be greater than the cost of insurance Borrower may be able to obtain for itself.

Section 10.6 Illinois Mortgage Foreclosure Law. It is the intention of Borrower and Lender that the enforcement of the terms and provisions of this Security Instrument shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and that the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. If any provision of this Security Instrument shall grant to Lender any rights or remedies which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. With respect to such Act, Borrower agrees and covenants that:

(a) Borrower and Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(b) Wherever provision is made in this Security Instrument or in the Loan Agreement for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Lender shall continue in the Lender as judgment creditor or mortgagee until confirmation of sale;

(c) In addition to any provision of this Security Instrument authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender

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shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property, or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties and provisions set forth in Sections 15-1701 and 15-1703 of the Act;

(d) Borrower acknowledges that the Land does not constitute "agricultural real estate", as said term is defined in Section 15-1201 of the Act or "residential real estate" as defined in Section 15-1219 of the Act;

(e) Borrower hereby voluntarily and knowingly waives its statutory rights to reinstatement and redemption pursuant to 735 ILCS Section 5/15-1601(b) on its own behalf and on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof;

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

(g) All advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of 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, in addition to those otherwise authorized by the Security Instrument, the Loan Agreement, any other Loan Document or by the Act (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act herein below referred to, to the extent permitted by law, but subject in each case to the terms of the Loan Documents:

(i) all advances by Lender in accordance with the terms of the Security Instrument, the Loan Agreement or any other Loan Document to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Land; (ii) preserve the lien of the Security Instrument or the priority thereof; or (iii) enforce the Security Instrument, as referred to in Subsection (b) (5) of Section 5/15-1302 of the Act;

(ii) payments by Lender of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrances; (ii) 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 Property or any part thereof; (iii) other obligations authorized by the Security Instrument; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, 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 senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Security Instrument as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or

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against the Lender for the enforcement of the Security Instrument or arising from the interest of the Lender hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Security Instrument or the Property;

(v) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearings as referred to in Section 5/15-1508 (b) (1) of the Act;

(vi) expenses deductible from proceeds of sale as referred to in Section 5/15-1512 (a) and (b) of the Act; and

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Borrower's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required in reasonable 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 Section 5/15-1704 (c) (1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Lender to be required for the benefit of the Property or required to be made by the owner 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; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (vii) if the loan secured hereby is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Borrower or Lender pursuant to any lease or other agreement for occupancy of the Property; (ix) operating deficits incurred by Lender in possession or reimbursed by Lender to any receiver; (x) all costs and fees incurred to obtain an environmental assessment relating to the Property; and (xi) if the Security Instrument is insured, payment of FHA or private mortgage insurance required to keep such insurance in force;

(h) All Protective Advances shall be additional indebtedness secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Loan Agreement and the Note; and

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

(i) any determination of the amount of indebtedness secured by this Security Instrument at any time;

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(ii) the indebtedness found due and owing to the 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) if right of redemption has not been waived by this Security Instrument, computation of amounts required to redeem, pursuant to Sections 15-1603(d)(2) and 1603(e) of the Act;

(iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(v) application of income in the hands of any receiver or mortgagee in possession; and

(vi) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2), 15-1508(e) and 15-1511 of the Act;

Section 10.7 Future Advances. Lender is obligated under the terms of the Loan Agreement to make advances as provided therein, and Borrower acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be secured by the lien of this Security Instrument, as provided in Section 15-1302(b)(3) of the Act. Borrower covenants and agrees that this Security Instrument shall secure the payment of all Loans and advances which are made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Lender or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Security Instrument and although there may be no advances made at the time of the execution of this Security Instrument and although there may be no other indebtedness outstanding at the time any advances is made. The lien of this Security Instrument shall be valid as to all Secured Obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Property is located. The total amount of the Secured Obligations may increase or decrease from time to time, but the total unpaid principal balance of the Secured Obligations (including disbursements which Lender may make under this Security Instrument or any other Loan Document) at any time outstanding shall not exceed ONE HUNDRED SIXTEEN MILLION AND NO/100 DOLLARS (\$116,000,000.00). This Security Instrument shall be valid and shall have priority over all subsequent liens and encumbrances, including any statutory liens except taxes and assessments levied on the Property or such other liens that shall have priority by operation of law, to the extent of the maximum amount secured hereby.

[NO FURTHER TEXT ON THIS PAGE]

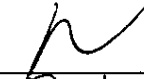
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IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first above written.

BORROWER:

BRI 1864 230 W MONROE LLC,
a Delaware limited liability company

By: Sole Member BRI 1864 230 W Monroe LLC,
a Delaware limited liability company
its Manager

By: 
Name: Ariel Bentata
Title: President

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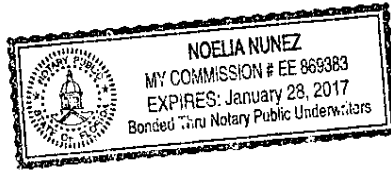
STATE OF Florida
COUNTY OF Broward) ss.:
)

On this 2 day of December, before me, the undersigned, a notary public in and for said state, personally appeared Ariel Bentata, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individuals acted, executed the instrument.


Notary Public

My Commission Expires:

01-28-2017



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EXHIBIT A

Legal Description of the Land

ALL OF LOT 7 AND ALL OF LOT 8 (EXCEPT THE WEST 40 FEET THEREOF TAKEN FOR WIDENING OF FRANKLIN STREET) IN BLOCK 94 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING FROM SAID PREMISES THE NORTH 9 FEET THEREOF TAKEN FOR ALLEY), IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office