

UNOFFICIAL COPY

Doc#: 1721916109 Fee: \$112.00

Karen A. Yarbrough

Cook County Recorder of Deeds

Date: 08/07/2017 12:46 PM Pg: 1 of 33

**THIS DOCUMENT WAS PREPARED BY, AND
AFTER RECORDING, RETURN TO:**

POLSINELLI

150 N. Riverside Plaza, Suite 3000

Chicago, IL 60606

Attention: Douglas L. Noren, Esq.

Cook County:

Address: 150 North East River Road, Des Plaines,
Illinois

PIN: 09-09-402-009-0000 and

09-09-402-012-0000

This space reserved for Recorders use only.

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

by

VANGUARD DES PLAINES APARTMENTS, L.P.,

a Delaware limited partnership,

to and for the benefit of

BMO HARRIS BANK N.A.,

a national banking association,

as Administrative Agent

UNOFFICIAL COPY

THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING (this "**Security Instrument**") is made as of this 4th day of August, 2017 by VANGUARD DES PLAINES APARTMENTS, L.P., a Delaware limited partnership, having its principal place of business at c/o Covington Realty Partners, 135 N. Meramec Avenue, Suite 500, Clayton, Missouri 63105, as mortgagor ("**Borrower**") for the benefit of BMO HARRIS BANK N.A., a national banking association, as grantee, having an address at 115 S. LaSalle Street, 20W, Chicago, Illinois 60603, as Administrative Agent (together with its successors and assigns, "**Administrative Agent**") for itself and such other co-lenders as may exist from time to time (collectively, "**Lenders**").

RECITALS:

A. This Security Instrument is given to secure a loan (the "**Loan**") in the principal sum of THIRTY-SIX MILLION THREE HUNDRED THIRTY-SEVEN THOUSAND FOUR HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$36,337,425.00) or so much thereof as may be advanced pursuant to that certain Construction Loan Agreement dated as of the date hereof among Borrower, Administrative Agent and the Lenders (as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, the "**Loan Agreement**") evidenced by that certain Promissory Note or those certain Promissory Notes each dated as of the date hereof made by Borrower to each Lender (such Promissory Notes, together with all extensions, renewals, replacements, restatements, or modifications thereof being hereinafter referred to collectively as the "**Note**") and due on August 4, 2021, subject to a one (1) year extension under Section 2.3.3 of the Loan Agreement (the "**Maturity Date**"), or such earlier date on which the final payment of principal of the Note becomes due and payable as provided under the Loan Documents (as defined below), whether at such stated Maturity Date, by declaration of acceleration, or otherwise;

B. Borrower desires to secure its obligation to pay the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums due to Administrative Agent and Lenders in respect of the Loan under the Note, the Loan Agreement, this Security Instrument, the Environmental Indemnity, and any other Loan Document (collectively, the "**Debt**") and the performance of all of its other obligations under the Note, the Loan Agreement, and the other Loan Documents; and

C. 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 and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations, and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, that certain Assignment of Leases and Rents dated as of the date hereof made by Borrower in favor of Administrative Agent (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**"), and all other documents evidencing or securing the Debt

UNOFFICIAL COPY

or delivered in connection with the making of the Loan, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, are hereinafter referred to collectively as the “**Loan Documents**”.

NOW THEREFORE, in consideration of the making of the Loan by Lenders and the covenants, agreements, representations and warranties set forth in this Security Instrument:

Article 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, alienate, pledge, assign, warrant, transfer, confirm, hypothecate, and convey to Administrative Agent and its successors and assigns the following property, rights, interests, and estates now owned, or hereafter acquired by Borrower (collectively, the “**Property**”):

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

(b) Additional Land. All additional lands, estates, and development rights hereafter acquired by 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 supplemental mortgage 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 the Improvements and the reversion and reversions, remainder 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;

(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-

UNOFFICIAL COPY

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, 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 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, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment, and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, 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, 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, and appliances, including, but not limited to, disposals, dishwashers, refrigerators and ranges, recreational equipment, 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 (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

UNOFFICIAL COPY

(h) Leases. All leases, subleases, licenses, franchises, concessions, or grants of other possessory interests, tenancies, and any other agreements affecting the use, possession, or occupancy of the Property or any part thereof, whether now or hereafter existing or entered into (including, without limitation, any use or occupancy arrangements created pursuant to Section 365(d) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership, or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Property) and all amendments, modifications, supplements, extensions, or renewals thereof, whether now or hereafter existing (collectively, the “Leases”);

(i) Rents. All rents, including without limitation percentage rent and additional rent (including tenant tax and operating expense reimbursements), monies payable as damages or in lieu of rent, revenues, parking revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, income, receipts, royalties, receivables, termination payments, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower, or its agents or employees, from any and all sources arising from or attributable to the Property (collectively, the “Rents”);

(j) Condemnation Awards. All awards or payments, including interest thereon, 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 the right) or for a change of grade, or for any other injury to or decrease in the value of the Property;

(k) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(l) Tax Certiorari. All refunds, rebates, or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(m) Rights. 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 Administrative Agent in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, applications, entitlements, plans, specifications, drawings, and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or

UNOFFICIAL COPY

pertaining to the use, occupation, construction, management, or operation of the Land, and any part thereof, and any of the Improvements or respecting any business or activity conducted 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 thereunder;

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

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

(q) Rate Management Agreements. All rights, claims, interests, proceeds, or other benefits of Borrower under any agreement, device, or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars, and forwards), including, without limitation, any such agreement between Borrower and Administrative Agent or any Lender, any Affiliate of Administrative Agent or a Lender or any other Person and any schedules, confirmations, and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising and in each case, as amended, modified or supplemented from time to time (collectively, the “**Rate Management Agreements**”);

(r) Proceeds. All proceeds and products of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation, other claims or otherwise; and

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

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Administrative Agent, as Secured Party, a security interest in the portion of the Property which is or may be subject to the

UNOFFICIAL COPY

provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements, and the Fixtures collectively referred to as the “**Real Property**”) appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and subject to this Security Instrument.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Administrative Agent all of Borrower’s right, title, and interest in and to all current and future Leases and Rents, including all prepaid rents and security deposits; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases and the Loan Agreement, Administrative Agent grants to Borrower a revocable license to collect, receive, use and enjoy the Rents (excluding however any Lease termination, cancellation, option, or similar payments, which Borrower agrees shall be held in trust and turned over to Administrative Agent to be applied in accordance with the Loan Documents) so long as no Event of Default exists. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all sums currently due on the Debt, in trust for the benefit of Administrative Agent, for use in the payment of such sums. If any conflict or inconsistency exists between the assignment of the Rents and the Leases in this Security Instrument and the absolute assignment of the Rents and the Leases in the Assignment of Leases, the terms of the Assignment of Leases shall control.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a “security agreement” and “financing statement” within the meaning of the Uniform Commercial Code. For that purpose, Borrower is the “Debtor” and Administrative Agent is the “Secured Party”. 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 Administrative Agent, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property, and 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 “**Personal Property Collateral**”). If an Event of Default shall occur and be continuing, Administrative Agent, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Personal Property Collateral or any part thereof, and to take such other measures as Administrative Agent may deem reasonably necessary for the care, protection, and preservation of the Personal Property Collateral. Upon request or demand of Administrative Agent during the existence of an Event of Default, Borrower shall, at its expense, assemble the Personal Property Collateral and make it available to Administrative Agent at a convenient place (at the Land if

UNOFFICIAL COPY

tangible property) reasonably acceptable to Administrative Agent. Borrower shall pay to Administrative Agent on demand any and all out-of-pocket expenses and fees, including legal expenses and attorneys' fees, incurred or paid by Administrative Agent in protecting its interest in the Personal Property Collateral and in enforcing its rights hereunder with respect to the Personal Property Collateral during the existence of an Event of Default. Any notice of sale, disposition or other intended action by Administrative Agent with respect to the Personal Property Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Personal Property Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Administrative Agent to the payment of the Debt in such priority and proportions as Administrative Agent in its discretion shall deem proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Administrative Agent (Secured Party) is as set forth on page one hereof.

Section 1.4 FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, 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 filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. For purposes of this fixture filing, "Debtor" is Borrower and the "Secured Party" is Administrative Agent. Borrower is the record owner of the Land.

Section 1.5 PLEDGES OF MONIES HELD. Borrower hereby pledges to Administrative Agent any and all monies now or hereafter held by Administrative Agent or on behalf of Administrative Agent in connection with the Loan, including, without limitation, any sums deposited in the Accounts (as defined in the Loan Agreement), any Net Property Proceeds, and any Deficiency Deposits, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

Section 1.6 FUTURE ADVANCES. This Security Instrument secures not only existing indebtedness or advances made contemporaneously with the execution hereof, if any, but also future principal advances (with all interest thereon), to or for the benefit of Borrower, made pursuant to the terms of the Loan Documents (as the same may be amended or supplemented from time to time), the terms of all of which are incorporated herein by reference, whether such advances are obligatory, optional, or both, to the same extent as if such future advances were made contemporaneously with the execution of this Security Instrument, even though no advance may have been made at the time of execution of this Security Instrument and even though no indebtedness may be outstanding at the time any advance is made, and any liens attaching to the Property after the date hereof shall be under, subject and subordinate to all indebtedness, including, without limitation, future advances (regardless of when made), secured

UNOFFICIAL COPY

hereby. This Security Instrument shall also secure, in addition to the principal amount specified herein, interest, service charges, and any disbursements made for the payment of taxes, assessments, maintenance, care, protection, or insurance on the Property, with interest on such disbursements.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property and all parts thereof, together with the rents, issues, profits, and proceeds thereof, unto and to the use and benefit of Administrative Agent and Lenders, and their successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Administrative Agent the Debt at the time and in the manner provided in the Note, the Loan Agreement, and this Security Instrument, shall perform the Other Obligations 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, Administrative Agent, at Borrower's request and expense, shall release the liens and security interests created by this Security Instrument; provided, however, that Borrower's obligation to indemnify, defend and hold harmless Administrative Agent pursuant to the provisions hereof and in the other Loan Documents shall survive any such payment or release.

Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments, and transfers made in Article 1 are given for the purpose of securing the Debt.

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments, and transfers made in Article 1 are also given for the purpose of securing the following (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 to Administrative Agent or any Lender or any Affiliate of Administrative Agent or any Lender, whether absolute, contingent or otherwise and howsoever and whensoever (whether now or hereafter) created, arising, evidenced, or acquired (including renewals, extensions, amendments, modifications, substitutions, and replacements thereof), under or in connection with (i) any and all Rate Management Agreements, and (ii) any and all cancellations, buy-backs, reversals, terminations, or assignments of any Rate Management Agreement; and

UNOFFICIAL COPY

(d) 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.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**".

Article 3 - 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, and this Security Instrument.

Section 3.2 INCORPORATION BY REFERENCE. All recitals set forth above and 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.

Section 3.3 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term, covenant, and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document, and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications, or changes thereto.

Article 4 - OBLIGATIONS AND RELIANCES

Section 4.1 RELATIONSHIP OF BORROWER AND ADMINISTRATIVE AGENT AND LENDERS. The relationship between Borrower, on the one hand, and Administrative Agent and Lenders, on the other, is solely that of debtor and creditor, and neither Administrative Agent nor any Lender has a 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, on the one hand, and Administrative Agent and Lenders, on the other, to be other than that of debtor and creditor.

Section 4.2 NO RELIANCE ON ADMINISTRATIVE AGENT OR LENDERS. The general partners, members, principals, and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower, Administrative Agent, and Lenders are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Administrative Agent's or any Lender's expertise, business acumen or advice in connection with the Property.

UNOFFICIAL COPY

Section 4.3 NO ADMINISTRATIVE AGENT OR LENDER OBLIGATIONS.

(a) Notwithstanding the provisions of subsections 1.1(h) and (n) or Section 1.2, Administrative Agent is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses, applications, entitlements, plans, specifications, drawings, and other documents.

(b) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Administrative Agent or any 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 insurance policy, neither Administrative Agent nor any Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Administrative Agent or any Lender.

Section 4.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument, and the other Loan Documents, Administrative Agent and Lenders are expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article III of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Administrative Agent or any Lender; that such reliance existed on the part of Administrative Agent and Lenders prior to the date hereof, that the warranties and representations are a material inducement to Lenders in making the Loan; and that Lenders would not be willing to make the Loan and Administrative Agent would not accept this Security Instrument in the absence of the warranties and representations as set forth in Article III of the Loan Agreement.

Article 5 - 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 and fully to protect and perfect the lien or security interest hereof upon, and the interest of Administrative Agent in, the Property. Borrower will pay all taxes, filing, registration or recording fees, 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 security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county, and

UNOFFICIAL COPY

municipal taxes, duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any 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. Borrower will, at the cost of Borrower, and without expense to Administrative Agent, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers, and assurances as Administrative Agent shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Administrative Agent the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred, or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Administrative Agent, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering, or recording this Security Instrument, or for complying with all Legal Requirements. Borrower, on demand, will authorize, execute and/or deliver, as applicable, and in the event it shall fail to so authorize, execute and/or deliver, as applicable, hereby authorizes Administrative Agent to execute in the name of Borrower or without the signature of Borrower to the extent Administrative Agent may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) with or without the signature of Borrower as authorized by applicable law, to evidence more effectively the security interest of Administrative Agent in the Property. Borrower authorizes Administrative Agent to use collateral descriptions such as "all personal property" or "all assets", in each case "whether now owned or hereafter acquired" or words of similar import or any other description Administrative Agent, in its sole discretion, so chooses in any such financing statements. Borrower also ratifies its authorization for Administrative Agent to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower grants to Administrative Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Administrative Agent at law and in equity, including, without limitation, such rights and remedies available to Administrative Agent pursuant to this Section 5.2. To the extent not prohibited by applicable law, Borrower hereby ratifies all acts Administrative Agent 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 TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Administrative Agent's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any, subject to

UNOFFICIAL COPY

Borrower's right to contest the same in accordance with the Loan Agreement. If Administrative Agent or any Lender is advised by counsel chosen by it that the payment of such tax by Borrower would be unlawful or taxable to Administrative Agent or such Lender or unenforceable or provide the basis for a defense of usury then Administrative Agent shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(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, Administrative Agent shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(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 impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 5.4 SPLITTING OF MORTGAGE. This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Administrative Agent, be severed, split or divided into two or more notes and two or more security instruments in such denominations as Administrative Agent and Lenders shall determine in their sole discretion, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Administrative Agent, shall execute, acknowledge and deliver, or cause to be executed, acknowledged, and delivered, by the then owner of the Property, to Administrative Agent 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 similar to those contained herein and in the Note, and such other documents and instruments as may be reasonably required by Administrative Agent.

Section 5.5 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of a Lender or Administrative Agent 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 of like tenor.

UNOFFICIAL COPY

Article 6 - DUE ON SALE/ENCUMBRANCE

Section 6.1 ADMINISTRATIVE AGENT AND LENDER RELIANCE. Borrower acknowledges that Administrative Agent and Lenders have 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 value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Administrative Agent and Lenders have a valid interest in maintaining the value of the Property to ensure that, should an Event of Default occur and be continuing, Administrative Agent, on behalf of itself and the Lenders, can recover the Debt by a sale of the Property in accordance with this Security Instrument.

Section 6.2 NO TRANSFER. Borrower shall not permit or suffer any Transfer to occur, other than a Permitted Transfer or Permitted Encumbrance, unless permitted by the Loan Agreement or Administrative Agent shall consent thereto in writing.

Section 6.3 ADMINISTRATIVE AGENT'S RIGHTS. Administrative Agent shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer (other than a Permitted Transfer or Permitted Encumbrance) without Administrative Agent's consent. This provision shall apply to every such Transfer, other than any Permitted Transfer, Permitted Encumbrance, or other Transfer permitted pursuant to the Loan Agreement, regardless of whether voluntary or not, or whether or not Administrative Agent has consented to any previous Transfer.

Article 7 -- DEFAULTS AND RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 EVENTS OF DEFAULT. Each of the following events shall constitute an event of default hereunder (each, an "Event of Default"): the occurrence of an "Event of Default" as defined in the Loan Agreement.

Section 7.2 REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Administrative Agent may take such action, without notice or demand, 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 Administrative Agent may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Administrative Agent:

- (a) declare the entire unpaid Debt to be immediately due and payable;

UNOFFICIAL COPY

(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;

(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 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 as may be required or permitted by law;

(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) be entitled to be appointed as mortgagee in possession and/or to the appointment of a receiver, trustee, liquidator, or conservator of the Property, without notice or any bond and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor, or indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;

(h) the license granted to Borrower under Section 1.2 hereof shall be revoked upon written notice to Borrower and Administrative Agent may thereafter 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 the Property and all books, records, and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records, and accounts to Administrative Agent upon demand, and thereupon Administrative Agent may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Administrative Agent 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

UNOFFICIAL COPY

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 Administrative Agent, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Administrative Agent 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, in such order, priority and proportions as Administrative Agent shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance, and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Administrative Agent, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment, and the Personal Property, or any part thereof, and to take such other measures as Administrative Agent may deem necessary for the care, protection, and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment, and the Personal Property and make it available to Administrative Agent at a convenient place acceptable to Administrative Agent. Any notice of sale, disposition, or other intended action by Administrative Agent with respect to the Fixtures, the Equipment, and/or the Personal Property sent to Borrower in accordance with the provisions hereof, at least five (5) 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 Administrative Agent 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; and
- (iv) Amortization of the unpaid principal balance of the Note; and
- (v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument, and the other Loan Documents, including, without limitation,

UNOFFICIAL COPY

advances made by Administrative Agent pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Administrative Agent may have under the Loan Agreement and/or applicable law; or

(l) apply the undisbursed balance of any Net Property Proceeds deposit and any Deficiency Deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Administrative Agent shall deem to be appropriate in its discretion.

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, and or any part thereof, or any other sums collected by Administrative Agent pursuant to the Note, this Security Instrument, or the other Loan Documents, may be applied by Administrative Agent to the payment of the Debt in such priority and proportions as Administrative Agent in its discretion shall deem proper, except as otherwise required by applicable law.

Section 7.4 RIGHT TO CURE DEFAULTS. During the existence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided and such failure continues beyond any applicable notice and cure period, Administrative Agent may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Administrative Agent may deem necessary to protect the security hereof. Administrative Agent is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees 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 Administrative Agent upon demand. All such costs and expenses incurred by Administrative Agent in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Administrative Agent that such cost or expense was incurred to the date of payment to Administrative Agent. All such costs and expenses incurred by Administrative Agent together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Administrative Agent therefor. In addition to the foregoing award of attorneys' fees and costs, Administrative Agent shall be entitled to its attorneys' fees and out-of-pocket costs incurred in any post-judgment proceedings to collect or enforce any judgment or

UNOFFICIAL COPY

order relating to this Security Instrument, which shall survive the merger of this provision into any judgment.

Section 7.5 ACTIONS AND PROCEEDINGS. Administrative Agent has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Administrative Agent, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.6 RECOVERY OF SUMS REQUIRED TO BE PAID. Administrative Agent shall have the right from time to time to take 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 Administrative Agent thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 7.7 OTHER RIGHTS, ETC.

(a) The failure of Administrative Agent to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Administrative Agent 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 Debt or any portion thereof; or (iii) any agreement or stipulation by Administrative Agent extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Administrative Agent shall have no liability whatsoever for 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 Administrative Agent shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Administrative Agent's possession.

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

UNOFFICIAL COPY

proceed under any one provision herein to the exclusion of any other provision. Administrative Agent shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Administrative Agent may release any portion of the Property for such consideration as Administrative Agent may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Administrative Agent for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Administrative Agent may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.9 INTENTIONALLY OMITTED.

Section 7.10 RIGHT OF ENTRY. Upon reasonable notice to Borrower, Administrative Agent and its agents shall have the right to enter and inspect the Property at all reasonable times subject to the rights of tenants under the Leases and Administrative Agent's commercially reasonable efforts to minimize interference with the operations of tenants.

Article 8 -INDEMNIFICATION

Section 8.1 GENERAL INDEMNIFICATION. The provisions of Section 12.13 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein. The indemnification provisions of Section 12.13 of the Loan Agreement shall not apply to Indemnified Liabilities relating to Hazardous Substances at the Property for which (and only to the extent that) Borrower can prove all of the following, as determined by a final non-appealable judgment of a court of competent jurisdiction: (i) the underlying event, action, or condition giving rise to such Indemnified Liabilities first occurred or first existed after title to and possession of the Property was transferred to Administrative Agent, Lenders and/or other third party unrelated to Borrower; and (ii) Borrower did not knowingly or unknowingly cause or contribute in any way whatsoever, either through action or inaction or with the passage of time, to any event, action, or condition giving rise to any such Indemnified Liabilities.

Section 8.2 MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release, and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Assignment of Leases, any financing statements

UNOFFICIAL COPY

or other Loan Documents, but excluding any income, franchise, or other similar taxes. The liability of Borrower pursuant to this Section 8.2 is not limited to the original principal amount of the Note.

Section 8.3 DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and one or more of the Indemnified Parties and Borrower and any such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Borrower, such Indemnified Party or Indemnified Parties, as applicable, shall collectively have the right to select one separate counsel (unless a conflict exists) to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Parties, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories, and other professionals in connection therewith.

Article 9 WAIVERS

Section 9.1 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 Administrative Agent or any 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.

Section 9.2 MARSHALLING AND OTHER MATTERS. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisement, 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.

Section 9.3 WAIVER OF NOTICE. To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Administrative Agent except with respect to matters for which this Security Instrument, the Loan Agreement or any of the

UNOFFICIAL COPY

other Loan Documents specifically and expressly provides for the giving of notice by Administrative Agent to Borrower and, except with respect to matters for which Administrative Agent is required by applicable law to give notice, Borrower hereby expressly waives the right to receive any notice from Administrative Agent with respect to any matter for which this Security Instrument, the Loan Agreement or any of the other Loan Documents does not specifically and expressly provide for the giving of notice by Administrative Agent to Borrower.

Section 9.4 WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Borrower hereby expressly waives and releases the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 9.5 SURVIVAL. The indemnifications made pursuant to Article 8 herein and the representations and warranties, covenants, and other obligations arising under the Environmental Indemnity, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Administrative Agent's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Administrative Agent's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Administrative Agent following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note, or the other Loan Documents and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

Article 10 - RECOURSE

The provisions of Section 12.22 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

Article 11 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 12.6 of the Loan Agreement.

Article 12 - APPLICABLE LAW

Section 12.1 GOVERNING LAW. This Security Instrument shall be governed by the laws of the State of Illinois.

UNOFFICIAL COPY

Section 12.2 USURY LAWS. Notwithstanding anything to the contrary, (a) the Loan Documents and all other agreements and communications between Borrower and Administrative Agent or any Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Administrative Agent and Lenders shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated, and spread over the full amount and term of all principal indebtedness of Borrower to Administrative Agent or any Lender under the Loan Documents; and (c) if through any contingency or event, Administrative Agent or any Lender receives or is deemed to receive interest in excess of the lawful maximum, 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 Administrative Agent or such Lender and not on account of the interest due under the Loan Documents or, if there is no such indebtedness, shall immediately be returned to Borrower.

Section 12.3 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, 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 12.4 WAIVER OF TRIAL BY JURY. **BORROWER AND ADMINISTRATIVE AGENT (BY ITS ACCEPTANCE HEREOF) HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT, OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS SECURITY INSTRUMENT, THE NOTE, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF ADMINISTRATIVE AGENT, ITS OFFICERS, EMPLOYEES, DIRECTORS, OR AGENTS IN CONNECTION THEREWITH.**

Article 13 - 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

UNOFFICIAL COPY

“**Lender**” shall mean “Lender and any subsequent holder of the Note,” the word “**Administrative Agent**” shall mean “**Administrative Agent**” and any successor Administrative Agent under the Loan Agreement, the word “**Note**” shall mean “the Note 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’, paralegals’ and law clerks’ fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Administrative Agent in protecting its interest in the Property, the Leases, and the Rents and enforcing its rights hereunder.

Article 14 - MISCELLANEOUS PROVISIONS

Section 14.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged, terminated orally, or by any act or failure to act on the part of Borrower or Administrative Agent, 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 14.2 SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Administrative Agent and their respective successors and assigns forever.

Section 14.3 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 14.4 NUMBER AND GENDER. 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 14.5 SUBROGATION. To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Property, then Administrative Agent shall be subrogated to all of the rights, liens, and interests existing against the Property and held by the holder of such indebtedness and such former rights, liens, and interests, if any, are not waived, but are continued in full force and effect in favor of Administrative Agent.

Section 14.6 ENTIRE AGREEMENT. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement among Borrower, Administrative Agent, and Lenders with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements among Borrower, Administrative Agent, and Lenders with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this

UNOFFICIAL COPY

Security Instrument, and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Administrative Agent or any 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. In the event of any conflict between the terms of this Security Instrument and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail. A provision in this Security Instrument shall not be deemed to be inconsistent with the Loan Agreement by reason of the fact that no provision in the Loan Agreement covers such provision in this Security Instrument.

Section 14.7 LIMITATION ON ADMINISTRATIVE AGENT'S AND LENDERS' 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 Administrative Agent or any Lender, nor shall it operate to make Administrative Agent or any 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, injury, or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Administrative Agent or any Lender a "mortgagee in possession."

Article 15 - STATE-SPECIFIC PROVISIONS

Section 15.1 PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Article 15 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 15 shall control and be binding.

Section 15.2 ILLINOIS MORTGAGE FORECLOSURE

(a) It is the express intention of Borrower and Administrative Agent that the rights, remedies, powers and authorities conferred upon the Administrative Agent pursuant to this Security Instrument shall include all rights, remedies, powers, and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5/15-1101 *et seq.*) (herein called the "IMFL") and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Security Instrument shall be inconsistent with any provision in the IMFL, the provisions of the IMFL 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 IMFL.

(b) Without limiting the generality of the foregoing, all expenses incurred by Administrative Agent to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether

UNOFFICIAL COPY

provided for in this Security Instrument, shall be added to the Indebtedness secured by this Security Instrument or by the judgment of foreclosure.

(c) The powers, authorities and duties conferred upon the Administrative Agent, in the event that the Administrative Agent takes possession of the Property and, upon a receiver hereunder, shall also include all such powers, authority, and duties as may be conferred upon an Administrative Agent in possession or receiver under and pursuant to the IMFL. To the extent the IMFL may limit the powers, authorities, and duties purportedly conferred hereby, such power, authorities, and duties shall include those allowed, and be limited as proscribed by the IMFL at the time of their exercise or discharge.

(d) Borrower knowingly and voluntarily waives, on behalf of itself and all persons or entities now or hereafter interested in the Property, to the fullest extent permitted by applicable law including the IMFL, (i) all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, redemption, single action, election of remedies and marshalling statutes, laws, or equities now or hereafter existing; (ii) any and all requirements that at any time any action may be taken against any other person or entity and Borrower agrees that no defense based on any thereof will be asserted in any action enforcing this Security Instrument; and (iii) any and all rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) of the IMFL or to cure any defaults, except such rights of reinstatement and cure as may be expressly provided by the terms of this Security Instrument and the other Loan Documents

(e) BORROWER HEREBY KNOWINGLY AND VOLUNTARILY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS OF REDEMPTION FROM SALE OR OTHERWISE UNDER ANY ORDER OR DECREE OF FORECLOSURE, DISCLAIMS ANY STATUS WHICH IT MAY HAVE AS AN "OWNER OF REDEMPTION" AS THAT TERM MAY BE DEFINED IN SECTION 15-1212 OF THE IMFL, PURSUANT TO RIGHTS HEREIN GRANTED, ON BEHALF OF BORROWER AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE PROPERTY DESCRIBED HEREIN SUBSEQUENT TO THE DATE OF THIS SECURITY INSTRUMENT, AND ON BEHALF OF ALL OTHER PERSONS TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS STATUTES.

Section 15.3 PROTECTIVE ADVANCES.

(a) All advances, disbursements, and expenditures made by Administrative Agent before and during a foreclosure, before and after judgment of foreclosure and at any time prior to the sale, and, where applicable, after the sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Loan Documents or by the IMFL (collectively "Protective Advances"), shall have the benefit of all

UNOFFICIAL COPY

applicable provisions of the IMFL, including those provisions of the IMFL hereinbelow referred to:

(i) all advances by Administrative Agent in accordance with the terms of the Loan Documents to: (A) preserve or maintain, repair, restore, or rebuild the improvements upon the Property; (B) preserve the lien of this Security Instrument or the priority hereof; or (C) enforce this Security Instrument, each as referred to in subsection (b)(5) of Section 5/15-1302 of the IMFL;

(ii) payments by Administrative Agent of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) when due, installments of real estate taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by this Security Instrument; or (D) with court approval, any other amounts in connection with other liens, encumbrances, or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the IMFL;

(iii) advances by Administrative Agent in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens of the Property;

(iv) attorneys' fees and other out-of-pocket costs incurred: (A) in connection with the foreclosure of this Security Instrument as referred to in Sections 1504(d)(2) and 5/15-1510 of the IMFL; (B) in connection with any action, suit, or proceeding brought by or against the Administrative Agent for the enforcement of this Security Instrument or arising from the interest of the Administrative Agent hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action related to this Security Instrument or the Property;

(v) Administrative Agent's out-of-pocket fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the IMFL;

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

(vii) out-of-pocket expenses and fees incurred and expenditures made by Administrative Agent for any one or more of the following: (A) if the Property or any portion thereof constitutes one (1) or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (B) if

UNOFFICIAL COPY

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; (C) premiums for casualty and liability insurance paid by Administrative Agent, whether or not Administrative Agent 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 Administrative Agent takes possession of the Property imposed by subsection (c)(l) of Section 5/15-1704 of the IMFL; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Administrative Agent to be 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; (F) 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; (G) if the Loan is a construction loan, costs incurred by Administrative Agent for demolition, preparation for, and completion of construction, as may be authorized by the applicable commitment, loan agreement, or other agreement; and (H) pursuant to any lease or other agreement for occupancy of the Property for amounts required to be paid by Borrower;

(viii) all Protective Advances shall be so much 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 due and payable after a default under the terms of the Loan Documents;

(ix) 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 IMFL; and

(x) 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 IMFL, apply to and be included in:

- A. determination of the amount of indebtedness secured by this Security Instrument at any time;
- B. the indebtedness found due and owing to the Administrative Agent 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;

UNOFFICIAL COPY

- C. determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the IMFL;
- D. application of income in the hands of any receiver or Administrative Agent in possession; and
- E. computation of any deficiency judgment pursuant to Section 5/15-1511 of the IMFL.

Section 15.4 AGRICULTURAL OR RESIDENTIAL REAL ESTATE. Borrower acknowledges that the transaction of which this Security Instrument is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the IMFL) or residential real estate (as defined in Section 15-1219 of the IMFL).

Section 15.5 USE OF PROCEEDS. Borrower represents and warrants to Administrative Agent that the proceeds of the obligations secured hereby shall be used solely for business purpose, and the entire principal obligations secured by this Security Instrument constitute (i) a "business loan" as that term is defined in, and for all purposes of, the Illinois Interest Act, 815 ILCS 205/0.01, et. seq, including Section 4(1)(c) thereof and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

Section 15.6 MAXIMUM PRINCIPAL AMOUNT. The maximum indebtedness secured by this Security Instrument shall not exceed \$72,074,850.

Section 15.7 Insurance and the Illinois Collateral Protection Act. **BORROWER IS HEREBY NOTIFIED PURSUANT TO THE ILLINOIS COMPILED STATUES, 815 ILCS 180/1 ET. SEQ., AS FOLLOWS:**

UNLESS YOU BORROWER PROVIDE US ADMINISTRATIVE AGENT WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY YOUR AGREEMENT WITH US, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTERESTS IN YOUR COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT YOUR INTERESTS. THE COVERAGE THAT WE PURCHASE MAY NOT PAY ANY CLAIM THAT YOU MAKE OR ANY CLAIM THAT IS MADE AGAINST YOU IN CONNECTION WITH THE COLLATERAL. YOU MAY LATER CANCEL ANY INSURANCE PURCHASED BY US, BUT ONLY AFTER PROVIDING US WITH EVIDENCE THAT YOU HAVE OBTAINED INSURANCE AS REQUIRED BY OUR AGREEMENT. IF WE PURCHASE INSURANCE FOR THE COLLATERAL, YOU WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES WE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE

UNOFFICIAL COPY

INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO YOUR TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE YOU MAY BE ABLE TO OBTAIN ON YOUR OWN.

Section 15.8 CONSTRUCTION MORTGAGE. The Note evidences a debt created by one or more disbursements made by the Lenders to Borrower to finance the cost of the construction of certain improvements upon the Property in accordance with the provisions of the Loan Agreement, and this Security Instrument is a construction mortgage as set forth in 810 ILCS 5/9-334(h).

[NO FURTHER TEXT ON THIS PAGE]

Property of Cook County Clerk's Office

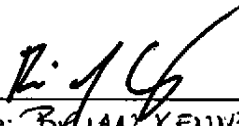
UNOFFICIAL COPY

IN WITNESS WHEREOF, THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING has been executed by Borrower as of the day and year first above written.

VANGUARD DES PLAINES APARTMENTS, L.P.,
a Delaware limited partnership

By: Covington Vanguard Des Plaines, LLC,
a Delaware limited liability company,
its General Partner

By: Covington Developer LLC,
a Delaware limited liability company,
its Manager

By: 
Name: BRIAN KENNEDY
Title: PRESIDENT

Property of Cook County Clerk's Office

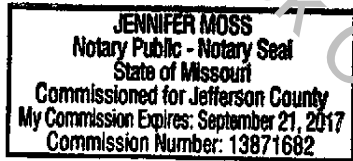
UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF MISSOURI)
) ss.
 COUNTY OF ST. LOUIS)

I, JENNIFER MOSS, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT BRIAN KENNEDY, the PRESIDENT of Covington Developer LLC, a Delaware limited liability company, which is the manager of Covington Vanguard Des Plaines, LLC, a Delaware limited liability company, which is the general partner of VANGUARD DES PLAINES APARTMENTS, L.P., a Delaware limited partnership, personally known to me, or proved to me on the basis of satisfactory evidence, to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free voluntary act and deed and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

Given my hand and notarial seal this ___ day of _____, 2017.



Jennifer Moss
 Notary Public
 My Commission Expires: 9/21/2017

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Des Plaines, County of Cook, State of Illinois, described as follows:

PARCEL 1:

LOT 1 (EXCEPT THE NORTH 2 1/2 ACRES AND EXCEPT THE EAST 40 FEET THEREOF) IN SUPERIOR COURT COMMISSIONER'S PARTITION OF THE LANDS OF THE MINNA CARLE ESTATE IN SECTION 9, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 15, 1939 AS DOCUMENT NUMBER 12272132, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 2 (EXCEPT THAT PART CONVEYED TO ILLINOIS TOLLWAY COMMISSION BY WARRANTY DEED DATED AUGUST 16, 1957 AND RECORDED OCTOBER 14, 1957 AS DOCUMENT NUMBER 17037291) IN SUPERIOR COURT COMMISSIONER'S PARTITION (MADE IN CASE 34S18200) OF LANDS OF MINNA CARLE ESTATE (EXCEPT THAT PART THEREOF TAKEN BY CONDEMNATION IN CASE NO. 95L50192), IN SECTION 9, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 15, 1939 AS DOCUMENT NUMBER 12272132, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

TOGETHER WITH NON-EXCLUSIVE EASEMENTS FOR STORM-WATER, WATER, AND INGRESS AND EGRESS SET FORTH IN THE EASEMENT AND RESTRICTION AGREEMENT DATED AUGUST 2, 2017 AND RECORDED AUGUST 3, 2017 AS DOCUMENT NO. 1721515169 AFFECTING THAT PART OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF SAID SOUTHWEST 1/4 OF SOUTH EAST 1/4 OF SECTION 9, WHICH IS 690.0 FEET SOUTH OF THE NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 9; THENCE SOUTH 302.72 FEET ALONG THE EAST LINE OF SAID SOUTHWEST 1/4; THENCE WEST, 660.89 FEET TO A POINT ON THE EAST LINE OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 WHICH IS 992.07 FEET SOUTH OF SAID NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 9; THENCE NORTH TO A POINT 690.0 FEET SOUTH OF SAID NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4; THENCE EAST TO THE PLACE OF BEGINNING.

OTHERWISE KNOWN AS:

LOT 3 IN THE SUPERIOR COURT COMMISSIONER'S PARTITION OF THE LANDS OF THE MINNA CARLE ESTATE IN SECTION 9, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN,

UNOFFICIAL COPY

ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 15, 1939 AS DOCUMENT NUMBER 12272132, EXCEPT THAT PART THEREOF CONVEYED TO THE ILLINOIS STATE TOLL HIGHWAY COMMISSION BY WARRANTY DEED DATED SEPTEMBER 7, 1957 AND RECORDED AS DOCUMENT NO. 17071229 AND EXCEPT THAT PART THEREOF TAKEN BY CONDEMNATION IN CASE NO. 95L50192, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 150 N. East River Road, Des Plaines, IL

PIN NOS: 09-09-402-009-0000; 0909-402-010-0000; and 09-09-402-012-0000

Property of Cook County Clerk's Office