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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*1727218111\*

Doc# 1727218111 Fee \$118.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 09/29/2017 03:53 PM PG: 1 OF 41

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

**Address:**

**Street:** 3640 W. 51ST Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60632

**Lender:** IFF

**Borrower:** PP Family, LLC

40034555①

**Loan / Mortgage Amount:** \$750,000.00

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

**Certificate number:** 3F8F5C46-F077-4A7A-9A60-B101ABAB61CC

**Execution date:** 9/28/2017

JA

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Prepared By  
And When Recorded Mail To:

Albert, Whitehead, P.C.  
10 North Dearborn Street  
Suite 600  
Chicago, Illinois 60602  
Attn.: Gregory C. Whitehead

Space Above For Recorder's Use

**MORTGAGE**  
**with Assignment of Rents, Security Agreement**  
**and Fixture Filing**

GRANTOR'S ORGANIZATIONAL IDENTIFICATION NUMBER IS 05002893.

The parties to this Mortgage with Assignment of Rents, Security Agreement, and Fixture Filing (this "Security Instrument"), dated for reference purposes as of September 28, 2017, are **PP FAMILY, LLC**, an Illinois limited liability company, whose mailing address is 666 Dundee Road, Suite 1102, Northbrook, Illinois 60622, as grantor (the "Grantor"), and **IFF**, an Illinois not for profit corporation, whose mailing address is at 333 South Wabash Avenue, Suite 2800, Chicago, Illinois 60604 (the "Grantee").

Capitalized terms shall have the meanings given them in the Uniform Commercial Code, as enacted in the State of Illinois or under the Uniform Commercial Code of any other state to the extent the same may be deemed applicable law (collectively, as in effect from time to time, the "UCC".) (If a term is defined differently in Article 9 of the UCC than in another Article, Article 9 shall control.)

**1. Grant and Secured Obligations.**

**1.1 Grant.** In consideration and for the purpose of securing payment and performance of the Secured Obligations (as defined below), Grantor hereby irrevocably and unconditionally mortgages, warrants, grants, bargains, conveys, sells, transfers, and assigns to Grantee, with mortgage covenants and right of entry and possession, all estate, right, title, and interest which Grantor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

(a) All of Grantor's right, title and interest in a fee simple estate in the real property located in Cook County, Illinois, as more fully described in Exhibit A attached hereto and made a part hereof (the "Land"), including without limitation all easements, rights of way,

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gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Grantor of, in and to the same; together with

(b) All buildings, structures and improvements now located or later constructed on the Land (the "Improvements"); together with

(c) All articles of personal property (including those specified below) and any software embedded therein now owned or hereafter acquired by Grantor and attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise a "fixture" under applicable law (each a "Fixture," collectively "Fixtures"); together with

(d) All existing and future as-extracted collateral produced from or allocated to the Land, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium and any other commercially valuable substances which may be in, under or produced from any part of the Land, and all products processed or obtained therefrom and the proceeds thereof, together with

(e) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, concessions, and other agreements of any kind relating to the use or occupancy of all or any portion of the Property, whether now in effect or entered into in the future (each a "Lease," collectively, the "Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, all amendments, extensions, renewals, or modifications thereof (subject to Grantee's right to approve same pursuant to the terms hereof), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; together with

(f) All rents (and payments in lieu of rents), royalties, issues, profits, income, proceeds, payments, and revenues of or from the Property, and/or at any time payable under any and all Leases, including all rent loss insurance proceeds, prepaid rents and any and all security deposits received or to be received by Grantor pursuant to any and all Leases, and all rights and benefits accrued, or to accrue, to Grantor under any and all Leases (some or all collectively, as the context may require, "Rents"); together with

(g) All rights to the name, signs, trade names, trademarks, trademark applications, service marks, licenses, software, and symbols used in connection with the Land and Improvements; together with

(h) All goods, materials, supplies, chattels, furniture, fixtures, machinery, apparatus, fittings, equipment, and articles of personal property of every kind and nature whatsoever, including consumable goods, now or hereafter located in or upon the Property or any part thereof, or to be attached to or placed in or on, or used or useable in connection with any present or future use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including by way of description but without limiting the generality of the foregoing, all computer systems, telephone and telecommunication systems, televisions and television systems, pumps or pumping plants,

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tanks, motors, conduits, engines, pipes, ditches and flumes, and also all gas and electrical apparatus (including, but not limited to, all electrical transformers, switches, switch boxes, and equipment boxes), cooking, heating, cooling, air conditioning, sprinkler equipment, lighting, power equipment, ventilation, incineration, refrigeration and plumbing apparatus, fixtures and equipment, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ovens, ranges, disposals, dishwashers, carpeting, plants and shrubbery, ground maintenance equipment, ducts and compressors; together with all building materials, goods and personal property on or off the Property intended to be affixed to or incorporated in the Property but not yet affixed to or incorporated in the Property, all which shall be considered to the fullest extent of the law to be real property for purposes of this Security Instrument; together with

(i) Intentionally Omitted.

(j) All rights to the payment of money and all guaranties thereof and judgments therefor, accounts, accounts receivable, reserves, deferred payments, refunds of real property and personal property taxes and other refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Grantor with third parties (including all utility deposits), warranty rights, contract rights, management contracts, service contracts, construction and architectural contracts, contracts for the purchase and sale of the Property or any part thereof, end-loan or other financing commitments, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, promissory notes, drafts, letters of credit (other than letters of credit in favor of Grantee), letter of credit rights (whether or not the letter of credit is evidenced by a writing), supporting obligations, and general intangibles, including payment intangibles (whether any of the foregoing are tangible or electronic), which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally; together with

(k) All insurance policies (and the unearned premiums therefor) and bonds required hereunder and all proceeds thereof, and all proceeds (including all claims to and demands for them) of the voluntary or involuntary conversion of any of the Land, the Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to, or defect in, the Land, the Improvements, or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud, misrepresentation, or concealment of a material fact; together with

(l) All books, records and all recorded data of any kind or nature (regardless of the medium of recording) pertaining to any and all of the property described above, including records relating to tenants under any leases, and the qualification of such tenants, and all certificates, vouchers, and other documents in any way related thereto, and all records relating to the application and allocation of any federal, state, and local tax credits or benefits, including computer-readable memory and any computer hardware or software necessary to access and process such memory (collectively, the "Books and Records"); together with

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(m) To the extent assignable by Grantor, all commercial tort claims Grantor now or hereafter acquires relating to any of the property described above; together with

(n) All software embedded within or used in connection with any of the property described above; together with

(o) All products, accounts, and proceeds (cash or non-cash) of, additions, betterments, extensions, accessions and accretions to, substitutions, renewals and replacements for, and changes in any of the property described above, including all proceeds of any voluntary or involuntary disposition or claim respecting any such property (arising out of any judgment, condemnation or award, or otherwise arising) and all supporting obligations ancillary to or arising in connection therewith, general intangibles (including payment intangibles) arising in connection therewith, and all goods, accounts, instruments, documents, promissory notes, chattel paper, deposit accounts, supporting obligations, and general intangibles (including payment intangibles) (whether any of the foregoing are tangible or electronic), wherever located, acquired with cash proceeds of any of the foregoing or its proceeds.

Grantor shall and will warrant and forever defend the above-bargained Property in the quiet and peaceable possession of Grantee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, subject to the Permitted Title Exceptions. Grantor agrees that any greater title to the Property hereafter acquired by Grantor during the term hereof shall be subject hereto.

## 1.2 Secured Obligations.

(a) Grantor makes the grant, bargain, conveyance, sale, transfer, and assignment set forth above and grants the security interest set forth in **Section 3** below for the purpose of securing the following obligations (the "Secured Obligations") in such order of priority as Grantee may determine:

(i) Payment and performance of all obligations of Grantor under this Security Instrument; and

(ii) Payment and performance of all obligations at any time owing under that certain Promissory Note of even date herewith made by Grantor to the order of Grantee in the original principal amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) (the "Note"); and

(iii) Payment and performance of all future advances and other obligations that Grantor, or any successor in interest to Grantor, and/or any other obligor (if different than Grantor), or any successor in ownership of all or part of the Property, may agree to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Grantee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Security Instrument; and

(iv) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations, including any successor agreements or instruments which restate and supersede any agreements or instruments evidencing the Secured Obligations.

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(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations.

## **2. Assignment of Lessor's Interest in Leases and Assignment of Rents.**

**2.1 Absolute Assignment.** Effective upon the recordation of this Security Instrument, Grantor hereby irrevocably, absolutely, presently, and unconditionally assigns, transfers, and sets over to Grantee:

(a) All of Grantor's right, title, and interest in, to, and under any and all Leases, and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; and

(b) All Rents.

In the event that anyone establishes and exercises any right to develop, bore for, or mine for any water, gas, oil, or mineral on or under the surface of the Property, any sums that may become due and payable to Grantor as bonus or royalty payments, and any damages or other compensation payable to Grantor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Section.

**THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.**

**2.2 Grant of License.** Grantee hereby confers upon Grantor a license (the "License") to collect and retain the Rents as they become due and payable, so long as no Event of Default (as such term is defined below) shall exist. Upon the occurrence of an Event of Default, the License shall terminate (automatically and without notice or demand of any kind and without regard to the adequacy of Grantee's security under this Security Instrument.)

**2.3 Collection and Application of Rents and Enforcement of Leases.** Subject to the License granted to Grantor above and the other provisions of this Section, Grantee has the right, power, and authority to collect any and all Rents and enforce the provisions of any Lease. In connection with the provisions of this Section, Grantor hereby constitutes and irrevocably appoints Grantee its attorney-in-fact, with full power of substitution, to perform any and all of the following acts, if and at the times when Grantee in its sole and absolute discretion may so choose:

(a) Demand, receive, and enforce payment of any and all Rents and endorse all checks and other payment instruments related thereto;

(b) Give receipts, releases, and satisfactions for any and all Rents;

(c) Sue either in the name of Grantor or in the name of Grantee for any and all Rents,

(d) Enforce the provisions of any and all Leases;

(e) Enter into Leases; and/or

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(f) Perform and discharge any and all undertakings of Grantor or otherwise under any Lease.

The appointment granted in this Section shall be deemed to be a power coupled with an interest. Grantee's rights under this Section do not depend on whether or not Grantee takes possession of the Property as permitted under this Security Instrument. In Grantee's sole and absolute discretion, Grantee may choose to collect Rents or enforce any and all Leases either with or without taking possession of the Property and either in person or through a court-appointed receiver. Grantee's rights and powers under this Section are in addition to the other remedies herein provided for upon the occurrence of an Event of Default and may be exercised independently of or concurrently with any other such remedies.

**2.4 Notice.** All lessees under any and all Leases are hereby irrevocably authorized and notified by Grantor to rely upon and to comply with (and will be fully protected in so doing) any notice or demand by Grantee for the payment to Grantee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of lessees' undertakings under the Leases, and lessees have no right or duty to inquire whether any Event of Default has actually occurred or is then existing hereunder or to obtain Grantor's consent.

**2.5 Proceeds.** Grantee has the right to apply all amounts received by it pursuant to this assignment to pay any of the following in the amounts and in the order Grantee deems appropriate: (a) any and all Secured Obligations, together with all costs and attorneys' fees; (b) all expenses of leasing, operating, maintaining, and managing the Property, including, without limitation, the salaries, fees, commissions and wages of a managing agent, and the other employees, agents, or independent contractors; (c) taxes, charges, claims, assessments, any other liens, and premiums for all insurance; and (d) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property. In addition, Grantee may hold the same as security for the payment of the Secured Obligations. Grantee shall have no liability for any funds which it does not actually receive.

**2.6 Grantee Not Responsible.** Under no circumstances shall Grantee have any duty to produce Rents from the Property. Regardless of whether or not Grantee, in person or by agent, takes actual possession of the Land and the Improvements, Grantee is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the Grantor as lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Except to the extent directly attributable to Grantee's gross negligence or willful misconduct, liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

**2.7 Leasing.** Grantor shall not accept any deposit or prepayment of Rents for any rental period exceeding one (1) month without Grantee's express prior written consent. Grantor shall not lease the Property or any part of it except strictly in accordance with all applicable

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restrictions on the Land, including without limitation restrictions imposed pursuant to Grantor's qualification to receive low income housing tax credits pursuant to Section 42 of the Internal Revenue Code ("Tax Credits").

### 3. Grant of Security Interest.

**3.1 Security Agreement.** The parties intend for this Security Instrument to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Grantee. The parties acknowledge that some of the Property and some of the Rents and Leases may be determined under applicable law to be personal property or fixtures. To the extent that any Property, Rents, or Leases may be or be determined to be personal property, Grantor, as debtor, hereby grants to Grantee, as secured party, a security interest in all such Property, Rents, and Leases, to secure payment and performance of the Secured Obligations. This Security instrument constitutes a security agreement under the UCC covering all such Property, Rents, and Leases. To the extent such Property, Rents, or Leases are not real property encumbered by the lien granted above, and are not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property, Rents, and/or Leases shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

**3.2 Financing Statements; Authorization to File; Power of Attorney.** Grantor hereby authorizes Grantee, at any time and from time to time, to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Grantor as authorized by applicable law, as applicable to the Property or any part thereof. Grantor shall pay all fees and costs that Grantor may incur in filing such documents in public offices and in obtaining such record searches as Grantee may reasonably require and all other reasonable fees and costs Grantee incurs in connection with perfection of its security interests. For purposes of such filings, Grantor agrees to promptly furnish any information requested by Grantee. Grantor also ratifies its authorization for Grantee to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior to the date of this Security Instrument. Grantor hereby irrevocably constitutes and appoints Grantee, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor to execute in Grantor's name any such documents and to otherwise carry out the purposes of this Section, to the extent that Grantor's authorization above is not sufficient. Such power is deemed to be coupled with an interest, and is therefore irrevocable. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Security Instrument or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Security Instrument is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real estate encumbered by this Security Instrument regardless of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Grantee or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Grantor's interest as lessor in any present or future lease or rights to income growing out of the use and/or



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occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Grantee as determined by this instrument or impugning the priority of Grantee's lien granted hereby or by any other recorded document. Such mention in the financing statement is declared to be solely for the protection of Grantee in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Grantee's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, shall be filed in the UCC records.

#### **4. Effective as a Financing Statement; Fixture Filing and Construction Mortgage.**

This Security Instrument constitutes a financing statement filed as a fixture filing under the applicable section of the UCC covering any Property which now is or later may become fixtures attached to the Land or Improvements. This Security Instrument shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts, and general intangibles under the UCC, which will be financed at the wellhead or minehead of the wells or mines located on the Land and is to be filed of record in the real estate records of each county where any part of the Land is situated. This Security Instrument shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Grantor is the address of Grantor set forth at the end of this Security Instrument, and the address of the Grantee from which information concerning the security interests hereunder may be obtained is the address of Grantee set forth at the end of this Security Instrument. A carbon, photographic or other reproduction of this Security Instrument or of any financing statement related to this Security Instrument shall be sufficient as a financing statement for any of the purposes referred to in this Section. This Security Instrument is also a "Construction Mortgage," as defined in the UCC to the extent it secures an obligation incurred for the construction of an improvement on the Land (including the acquisition cost of the Land), or the refinancing of an obligation incurred for the construction of an improvement on the Land (including the acquisition cost of the Land).

#### **5. Rights and Duties of the Parties.**

**5.1 Representations and Warranties.** Grantor represents and warrants that, except as previously disclosed to Grantee in writing:

(a) Grantor is indefeasibly seized of and lawfully possesses and holds good and marketable fee simple title to all of the Land and the Improvements, and Grantor and its successors and assigns warrant and shall forever defend title to the Property, subject only to such exceptions and conditions to title as set forth on Exhibit B attached hereto, or as otherwise approved in writing by Grantee in its sole and absolute discretion (the "Permitted Title Exceptions") (and any later such encumbrances approved by Grantee in writing), unto Grantee and Grantee's successors and assigns against the claims and demands of all persons claiming or to claim the same or any part thereof; and

(b) Grantor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; and

(c) This Security Instrument creates a lien on the Property free and clear of all liens, encumbrances, and claims whatsoever, subject only to the Permitted Title Exceptions; and

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(d) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and the Improvements; and

(e) Grantor owns any Property which is personal property free and clear of all liens, encumbrances, and claims whatsoever, as well as any security agreements, reservations of title, or conditional sales contracts, and there is no presently effective financing statement affecting such personal property on file in any public office, except with respect to junior indebtedness, if any, approved and permitted by Grantee as a Permitted Title Exception; nor is any of such personal property subject to a security interest having priority over Grantee's priority to the same and Grantor has the right to convey and encumber such property and will warrant and defend such property against the claims of all persons and parties; and

(f) The Property has frontage on and direct access for ingress and egress to publicly dedicated streets; and

(g) Electricity (and gas, if available), water facilities, sewer facilities and any other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service the Property satisfactorily and any easements necessary to the furnishing of such utilities are or will be granted and duly recorded; and

(h) Grantor's exact legal name and organizational identification number (if any assigned by Grantor's state of incorporation or organization) are correctly set forth in this Security Instrument. Grantor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Security Instrument. If Grantor is an unregistered entity (including a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Security Instrument. Grantor's principal place of business and chief executive office and the place where it keeps its Books and Records has for the preceding four months (or, if less, the entire period of the existence of Grantor) been and will continue to be (unless Grantor notifies Grantee of any change in writing at least thirty (30) days prior to the date of such change) the address of Grantor set forth at the end of this Security Instrument.

## **5.2 Taxes and Assessments.**

(a) Grantor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock (individually and collectively, an "Imposition"), imposed by any public or quasi-public authority or utility company that are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or that, if not paid, may cause any decrease in the value of the Property or any part of it. If any imposition becomes delinquent, Grantee may require Grantor to present evidence that it has been paid in full, on ten (10) days written notice by Grantee to Grantor. Notwithstanding the foregoing provisions of this Section, Grantor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Grantee is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited or lost as a result of such contest, and (ii) Grantor shall have posted a bond or furnished other security as may be reasonably required from time to time by Grantee; and provided further that if at any time payment of any obligation imposed upon Grantor by this Section becomes necessary to prevent a lien foreclosure sale or forfeiture or loss of the Property, or any part thereof, then Grantor,

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upon demand of Grantee, must pay the same in sufficient time to prevent such sale, forfeiture, or loss.

(b) If not already required by another lender with a mortgage lien on the Property, Grantor shall, upon demand of Grantee, pay monthly to Grantee an amount sufficient, as estimated by Grantee, to accumulate the sum required to pay thirty (30) days prior to the due date thereof the annual cost of any real property taxes and any assessments and the estimated next premiums for hazard and other required insurance on the Property. These funds will be held by Grantee (and may be commingled with other funds of Grantee) without interest and will be released to Grantor for payment of Impositions and insurance premiums, or directly applied to such costs by Grantee, as Grantee may elect.

**5.3 Performance of Secured Obligations.** Grantor shall promptly pay and perform each Secured Obligation in accordance with its terms.

**5.4 Liens, Charges, and Encumbrances.** Except for Permitted Title Exceptions, Grantor shall allow no other liens or encumbrance, either superior or inferior to the lien of this Security Instrument, to exist with respect to the Property. Grantor shall immediately discharge any lien on the Property that Grantee has not expressly consented to in writing. Grantor shall pay when due each obligation secured by or reducible to a lien, charge, or encumbrance which now does or later may encumber all or part of the Property or any interest in it, whether the lien, charge, or encumbrance is or would be senior or subordinate to this Security Instrument. Grantor shall pay, perform and observe all obligations under any Permitted Title Exception, and will not modify or permit modification of them without Grantee's prior written consent.

**5.5 Damages and Insurance and Condemnation Proceeds.**

(a) Grantor hereby absolutely and irrevocably assigns to Grantee, and authorizes the payor to pay to Grantee, the following claims, causes of action, awards, payments, and rights to payment (whether awarded or to be awarded or which may be awarded because of judicial action, private action, settlement, or compromise):

(i) All awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and

(ii) All other awards, claims, and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and

(iii) All proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Grantee; and

(iv) All interest which may accrue on any of the foregoing.

(b) Grantor shall immediately notify Grantee in writing if:

(i) Any damage occurs or any injury or loss is sustained to all or any part of the Property, or any action or proceeding relating to any such damage, injury, or loss is commenced; or

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(ii) Any offer is made, or any action or proceeding is threatened or commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

(c) If Grantee chooses to do so, Grantee may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury, or loss to all or part of the Property, and Grantee may make any compromise or settlement of the action or proceeding with respect to its rights and interests. Grantee, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Grantor in adjusting any loss covered by insurance, and in connection therewith, Grantee shall have the right to be represented by counsel of its choice.

(d) All proceeds of these assigned claims and all other property and rights which Grantor may receive or be entitled to shall be paid to Grantee. In each instance, Grantee shall apply such proceeds first toward reimbursement of all of Grantee's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If, in any instance, each and all of the following conditions are satisfied in Grantee's reasonable judgment, Grantee shall permit Grantor to use the balance of such proceeds (the "Net Claims Proceeds") to pay costs of repairing or reconstructing the Property:

- (i) the plans and specifications, project budget, construction contract, construction schedule, contractor and payment and performance bond (or irrevocable standby letter of credit in lieu thereof) for the work of repair or reconstruction must all be reasonably acceptable to Grantee; and
- (ii) Grantee must receive evidence satisfactory to it that after repair or reconstruction, the Property would be at least as valuable as it was immediately before the damage or condemnation occurred and in this regard and notwithstanding any other provisions of the Loan Documents, Grantee may order an appraisal from an appraiser acceptable to Grantee, the cost of which shall be borne by Grantor; and
- (iii) the Net Claims Proceeds (together with the net proceeds of any rental interruption insurance and reasonably projected rental receipts during the repair or reconstruction period) must be sufficient in Grantee's reasonable determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest projected to be payable on amounts owed by Grantor pursuant to the Loan Documents until the repair or reconstruction is complete; or Grantor must deposit, into an account (the "Net Claims Proceeds Account"), Grantor's own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Grantor and found acceptable by Grantee, of the total cost of repair or reconstruction; and
- (iv) Unless otherwise agreed to by Grantee, Grantee shall receive evidence satisfactory to it that, after the repair or reconstruction is complete, (1) all non-residential leases acceptable to Grantee will continue (or a replacement therefore reasonably satisfactory to Grantee immediately commences); and (2) the Property will continue to operate in substantially the same manner, and will, following restoration, generate the same debt service coverage as immediately before the damage or condemnation occurred; and

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- (v) no Event of Default shall remain uncured and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default, and Grantee shall have received a certificate to that effect from Grantor.

If Grantee finds that such conditions have been satisfied, Grantee shall hold the Net Claims Proceeds, and any funds which Grantor is required to provide, in the Net Claims Proceeds Account and shall disburse them to Grantor to pay costs of repair or reconstruction upon presentation of evidence reasonably satisfactory to Grantee that repair or reconstruction has been completed satisfactorily and lien-free, including partial progress payments of Net Claims Proceeds from time to time, in accordance with a cost breakdown approved by Grantee and subject to such disbursement procedures as Grantee normally utilizes with construction loans. However, if Grantee finds that one or more of such conditions have not been satisfied, Grantee may apply the Net Claims Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Grantee may determine, all without affecting the lien and security interest created by this Security Instrument.

(e) Notwithstanding the preceding, in the event any governmental agency or authority shall require or commence any proceedings for the demolition of any buildings or structures comprising a substantial part of the Property, or shall commence any proceedings to condemn or otherwise take pursuant to the powers of eminent domain a material portion of the Property, Grantee may, at its option, declare the Secured Obligations to be immediately due and payable and apply any condemnation awards or proceeds to the Secured Obligations.

(f) Grantor hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under any applicable law which provides for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import.

## **5.6 Surety Bond Proceeds.**

(a) Grantor hereby absolutely and irrevocably assigns to Grantee, and authorizes the payor to pay to Grantee, all payments, rights to payment, and all other compensation payable, directly or indirectly, under any payment, performance, or other bond (each a "Surety Bond") related to, or issued in connection with, the construction of any Improvements or the performance of any acts, related to the Property or any interest in it, whether or not such Surety Bonds are required by Grantee.

(b) Grantor shall immediately notify Grantee in writing of:

(i) Any threatened or actual default or breach of any obligation under any Surety Bond; or

(ii) Any action or inaction, including a breach by any contractor under their contract (if applicable), which would give rise to the obligation of the payor/surety to pay any sums or perform any acts pursuant to the terms of any Surety Bond.

(c) If Grantee chooses to do so, Grantee may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on any claim under a Surety Bond, and Grantee may make any compromise or settlement of any such action or proceeding.

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(d) All proceeds of these assigned payments, rights to payment, and compensation payable, directly or indirectly, under any Surety Bond which Grantor may receive or be entitled to, shall be paid to Grantee. In each instance, Grantee shall apply such proceeds first toward reimbursement of all of Grantee's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If Grantor desires to use the balance of such proceeds (the "Net Bond Proceeds") to pay the costs of completing all or a part of the construction of certain of the Improvements, and each and all of the following conditions are satisfied in Grantee's reasonable judgment, Grantee shall permit Grantor to pay such costs of construction, in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract (including any replacement contract), construction schedule (including all revisions thereto), contractor (including any replacement contractor), and, if required by Grantee, any replacement payment and performance bond for the construction work, shall all be acceptable to Grantee; and

(ii) To the extent allowed pursuant to the terms of the Surety Bond, Grantee shall have approved any replacement contractor(s); and

(iii) Grantee shall receive evidence satisfactory to it that after the construction is complete, the Property would be at least as valuable as it would have been if completed pursuant to the original construction contract, and in this regard and notwithstanding any other provisions of the Note, this Security Instrument and any other documents evidencing the Obligations (the "Loan Documents"), Grantee may order an appraisal from an appraiser acceptable to Grantee the cost of which shall be borne by Grantor; and

(iv) The Net Bond Proceeds shall be sufficient in Grantee's determination to pay for the total cost of the applicable construction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the applicable construction is complete; or Grantor shall provide its own funds in an amount equal to the difference between the Net Bond Proceeds and a reasonable estimate, made by Grantor and found acceptable by Grantee, of the total cost of such construction; and

(v) Grantee shall be satisfied that the repair or reconstruction can be completed prior to the Final Maturity Date; and

(vi) No default or Event of Default shall have occurred under this Security Instrument or any other Loan Document.

If Grantee finds that such conditions have been satisfied, Grantee shall hold the Net Bond Proceeds, and any funds which Grantor is required to provide, in a non-interest-bearing account and shall disburse them to Grantor to pay costs of construction upon presentation of evidence reasonably satisfactory to Grantee that the construction has been completed satisfactorily and lien-free, including partial progress payments of Net Bond Proceeds from time to time, in accordance with a cost breakdown approved by Grantee and the same procedures and subject to the same conditions, as are normally imposed by Grantor for construction loan disbursements. However, if Grantee finds that one or more of such conditions have not been satisfied, Grantee may apply the Net Bond Proceeds to pay or prepay some or all of the

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Secured Obligations in such order and proportions as Grantee may choose, all without affecting the lien and security interest created by this Security Instrument.

(e) Notwithstanding anything herein to the contrary, to the extent that any of the terms of this Section conflict with the terms of any Surety Bond which has been approved in writing by Grantee, the terms of such Surety Bond shall control.

## **5.7 Maintenance and Preservation of Property.**

(a) Grantor shall insure the Property as required herein and keep the Property in good condition and repair.

(b) Grantor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted or required by the Loan Documents or with Grantee's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Grantor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices and Grantee shall allow use of any net proceeds of insurance received in connection with such event as set forth in Section 5.19(e).

(d) Grantor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property, including without limitation the requirements of any applicable authority with respect to Tax Credits. Grantor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Grantor on the Property or any part of it under the Loan Documents.

(e) Grantor shall not commit or allow waste of the Property, including acts or omissions in connection with Hazardous Substances (as such term is defined in the Environmental Indemnity (hereinafter defined)).

(f) Grantor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

(g) If any part of Grantor's interest in the Property is a leasehold interest, Grantor shall observe and perform all obligations of Grantor under any such lease or leases and shall refrain from taking any actions prohibited by any lease or leases, and Grantor shall preserve and protect such leasehold estate and its value.

(h) If any easement or right of way appurtenant to, or recorded agreement which benefits, the Property exists or is hereafter entered into, Grantor shall perform its obligations and duties under such easement, right of way, or agreement, and shall take all such actions as may be necessary to prevent such easement, right of way, or agreement from being terminated for Grantor's non-performance. Grantor irrevocably appoints Grantee its attorney-in-fact, with full power of substitution, for the purpose of performing any act to be performed by Grantor under any such easement, right of way, or agreement.

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**5.8 Maintenance of Accounts and Reserves.** Grantor shall establish and maintain the following accounts and reserves:

(i) An operating reserve ("Operating Reserve") in an amount of not less than \$293,459 with U.S. Bank National Association or a financial institution acceptable to Grantee ("Acceptable Bank"). Funds in the Operating Reserve are intended to cover any operating deficit (i.e. insufficient cash flow from the Project to cover normal operating expenses and maintenance, which normal operating expenses and maintenance shall not include any items which are to be paid from any other reserves or accounts maintained pursuant to the terms of the Loan Documents) and to pay to Grantee the monthly payments of principal and interest due under the Note to the extent that cash flow from the Project or funds from the Lease-Up Reserve (as to payments of principal and interest) are insufficient to pay such sums;

(ii) A replacement reserve ("Replacement Reserve") with an Acceptable Bank in an amount not less than \$27,300 to which Grantor shall make annual deposits of \$300 per unit, prorated on a monthly basis. Funds in the Replacement Reserve are intended to provide available funds for maintenance and withdrawal of such funds must be approved by Grantee;

(iii) A lease-up reserve ("Lease-Up Reserve") with an Acceptable Bank in an amount not less than \$60,000. Funds in the Lease-Up Reserve are intended to pay to Grantee payments of principal and interest and other sums due under the Note or this Security Instrument to the extent that cash flow from the Property is insufficient to pay such sums;

(iv) An operating account with an Acceptable Bank for the purpose of collecting all income and paying expenses resulting from the operations of Grantor. Such account shall be subject to Grantee's standard form of automatic loan payment authorization;

(v) An Insurance Escrow in the amount of \$90,000 and a Real Estate Tax Escrow in the amount of \$30,000, which funds shall be disbursed upon Grantee's written approval, not to be unreasonably withheld, and are intended to pay for insurance and real estate taxes. Such reserves shall be replenished with monthly payments based on 105% of the most recent annual costs for real estate taxes and insurance for the Property.

**5.9 Releases, Extensions, Modifications, and Additional Security.** From time to time, Grantee may perform any of the following acts without incurring any liability or giving notice to any person:

(i) Release any person liable for payment of any Secured Obligation;  
or

(ii) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; or

(iii) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or



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- (iv) Alter, substitute or release any property securing the Secured Obligations; or
- (v) Consent to the making of any plat or map of the Property or any part of it; or
- (vi) Join in granting any easement or creating any restriction affecting the Property; or
- (vii) Join in any subordination or other agreement affecting this Security Instrument or the lien of it; or
- (viii) Reconvey Grantee's interest in the Property or any part of it without any warranty.

**5.10 Release.** When all of the Secured Obligations have been paid and performed in full, and no further commitment to extend credit continues under the Secured Obligations, then (except to the extent expressly provided herein with respect to the survival of any indemnifications, representations, warranties, and other rights which are to continue following the release or cancellation hereof) Grantee shall release or cancel the Property from the liens, security interests, conveyances and assignments herein in accordance with applicable law. Grantor shall pay any costs of such release or cancellation, to the extent not prohibited by applicable law.

## **5.11 Compensation, Exculpation, Indemnification.**

(a) Grantor agrees to pay such reasonable fees as may be charged by Grantee for any services that Grantee may render in connection with this Security Instrument, including Grantee's providing a statement of the Secured Obligations or rendering of services in connection with a release or cancellation (full or partial). Grantor shall also pay or reimburse all of Grantee's costs and expenses which may be incurred in rendering any such services. Grantor further agrees to pay or reimburse Grantee for all costs, expenses, and other advances which may be incurred or made by Grantee in any efforts to enforce any terms of this Security Instrument, including the exercise of any rights or remedies afforded to Grantee under the remedies section below, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Security Instrument, including reasonable attorneys' fees and other legal costs (which shall include reimbursement for the allocated costs of in-house counsel used by Grantee to the extent not prohibited by law), costs of any judicial foreclosure of this Security Instrument, and any cost of evidence of title. If Grantee chooses to dispose of Property through more than one judicial foreclosure, Grantor shall pay all costs, expenses, or other advances that may be incurred or made by Grantee in each of such judicial foreclosure.

(b) Grantee shall not be directly or indirectly liable to Grantor or any other person as a consequence of any of the following:

- (i) Grantee's exercise of or failure to exercise any rights, remedies or powers granted to Grantee in this Security Instrument; or
- (ii) Grantee's good faith failure or refusal to perform or discharge any obligation or liability of Grantor under any agreement related to the Property or under this Security Instrument; or

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(iii) any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property, unless such waste or condition is the result of Grantee's gross negligence or willful misconduct; or

(iv) any loss sustained by Grantor or any third party resulting from Grantee's failure to lease the Property, or from any other act or omission of Grantee in operating or managing the Property, after an Event of Default, unless the loss is caused by the gross negligence or willful misconduct of Grantee.

Grantor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Grantee.

(c) Grantor agrees to indemnify, defend, and hold Grantee harmless for, from and against and reimburse it for all losses, damages, liabilities, claims, causes of action, judgments, penalties, court costs, reasonable attorneys' fees and other legal expenses and expenses of professional consultants and experts, cost of evidence of title, cost of evidence of value, and other costs and expenses, including the settlement of any such matter, excepting those arising out of, or resulting, from Grantee's gross negligence or willful misconduct, , or as otherwise excluded in the Environmental Indemnity, which either may suffer or incur:

(i) In performing any act required or permitted by this Security Instrument or any of the other Loan Documents or by law; or

(ii) Because of any failure of Grantor to perform any of Grantor's obligations; or

(iii) Because of any alleged obligation of or undertaking by Grantee to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Grantor to indemnify Grantee shall survive payoff, termination, or the release and cancellation of any or all of the Secured Obligations, and the full or partial release and/or cancellation of this Security Instrument.

(d) Grantor shall pay all obligations to pay money arising under this Section immediately upon written demand by Grantee. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Interest Rate (as such term is defined in the Note).

**5.12 Defense and Notice of Claims and Actions.** At Grantor's sole expense, Grantor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Security Instrument and the rights and powers of Grantee created under it, against all adverse claims. Grantor shall give Grantee prompt notice in writing if any claim is asserted which does or could affect any of such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

**5.13 Subrogation.** Grantee shall be subrogated to the liens of all encumbrances affecting the Property, whether released or not, which are discharged in whole or in part by Grantee in accordance with this Security Instrument or with the proceeds of any loan secured by this Security Instrument.

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**5.14 Site Visits, Observation and Testing.** Grantee and its agents and representatives and the other Indemnitees (as such term is defined in the Environmental Indemnity), and their agents and representatives, shall have the right at any reasonable time upon reasonable notice to enter and visit the Property, accompanied by a representative of Grantor to the extent such representative is available, for the purposes of observing the Property and performing appraisals, taking and removing soil or groundwater samples and conducting tests on any part of the Property. The Indemnitees have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation, or testing by any Indemnitee shall impose any liability on any Indemnitees. In no event shall any site visit, observation or testing by any Indemnitee be a representation that Hazardous Substances (as such term is defined in the Environmental Indemnity of even date herewith from Grantor to Grantee (the "Environmental Indemnity") are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation, or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Grantor nor any other party is entitled to rely on any site visit, observation, or testing by any Indemnitee. The Indemnitees owe no duty of care to protect Grantor or any other party against, or to inform Grantor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. The Indemnitees may in their discretion disclose to Grantor or any other party any report or findings made as a result of, or in connection with, any site visit, observation or testing by the Indemnitees. Grantor understands and agrees that the Indemnitees make no representation or warranty to Grantor or any other party regarding the truth, accuracy, or completeness of any such report or findings that may be disclosed. Grantor also understands that, depending on the results of any site visit, observation or testing by any Indemnitee which are disclosed to Grantor, Grantor may have a legal obligation to notify one or more environmental agencies of the results. Any Indemnitee shall give Grantor reasonable notice before entering the Property. Such Indemnitee shall make reasonable efforts to avoid interfering with Grantor's use of the Property in exercising any rights provided in this Section. In connection with any such site visit, observation or testing, Grantor shall have rights with respect to the release and/or disclosure of environmental reports as set forth in the Environmental Indemnity.

**5.15 Notice of Change.** Grantor will not cause or permit any change to be made in (a) its name, identity or corporate, partnership, limited liability company, or other entity structure, (b) its jurisdiction of organization (c) its organizational identification number, (d) its place of business or, if more than one, its chief executive office, (e) its mailing address, or (f) any change in the location of any Property, unless Grantor shall have notified Grantee in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Grantee for the purpose of further perfecting or protecting the lien and security interest of Grantee in the Property. Unless otherwise approved by Grantee in writing, all Property that consists of personal property (other than Books and Records) will be located on the Land and all Books and Records will be located at Grantor's place of business or chief executive office if Grantor has more than one place of business.

**5.16 Reports.** As long as any portion of the Secured Obligation is outstanding or any amounts under the Note remain unpaid, Grantor covenants and agrees that, unless Grantee otherwise consents in writing, Grantor shall furnish or cause to be furnished to Grantee, the following financial information and other reports:

(a) Within ninety (90) days after the end of each fiscal year of Grantor and Grantor's managing member ("Managing Member"), annual financial statements, prepared by an independent certified public accountant acceptable to Grantee.

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(b) Within thirty (30) days following the end of each fiscal quarter of Grantor, Grantor shall furnish or cause to be furnished to Grantee an operating statement for the most recent quarter together with a current rent roll.

(c) Such additional information, reports, statements, copies of leases and rent rolls and certificates with respect to the Secured Obligations or the Property, or the operations or financial condition of Grantor, as Grantee may from time to time reasonably request.

**5.17 Notices to Grantee.** Grantor shall promptly notify Grantee of any of the following:

(a) The commencement of any action, suit or proceeding before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which seeks recovery from Grantor in an amount equal to or greater than \$25,000;

(b) The occurrence of any material adverse change in the condition, financial or otherwise, of Grantor from the date of the most recent financial statements of Grantor delivered to Grantee pursuant to Section 5.16 which would materially adversely affect Grantor's ability to perform its obligations under the Loan Documents;

(c) The occurrence of any Event of Default; and

(d) Any notice, claim, or demand given by Grantor or received by Grantor related to the Property, or any event affecting the Property, if such notice, claim, demand, or event is material to the performance of Grantor under the Loan Documents or under the terms of any agreements or instruments relating to the Property.

**5.18 Further Assurances.** Grantor shall, promptly on request of Grantee, (a) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgement of this Security Instrument or any other Loan Document; (b) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further mortgages, security agreements, financing statements, financing statement amendments, continuation statements and assignments of rents or leases) and do such further acts as may be necessary, desirable, or proper (i) to carry out more effectively the purposes of this Security Instrument and the other Loan Documents, (ii) to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property), or (iii) as deemed advisable by Grantee to protect the lien or security interest hereunder against the rights or interests of third persons; and (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper to enable Grantee to comply with the requirements or requests of any agency having jurisdiction over Grantee or any examiners of such agencies with respect to the Secured Obligations, Grantor or the Property. Grantor shall pay all costs connected with any of the foregoing within five (5) days after the written demand by Grantee. If not paid when due, such costs shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date of such written demand at the Default Interest Rate.

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## 5.19 Insurance.

(a) Grantor shall at all times provide, maintain and keep in force insurance as set forth on Exhibit C. Also at all times, Grantor must provide, maintain and keep in force any and all additional insurance Grantee in its reasonable judgment may from time to time require, against commonly insured hazards for similarly situated properties. Such additional insurance may include flood insurance as required by federal law and earthquake insurance as required by Grantee. At Grantee's request, Grantor must supply Grantee with an original or copy of any policy.

(b) All policies of insurance required under this Agreement or any of the other Loan Documents must be issued by companies approved by Grantee having an A.M. Best's rating no less favorable than A-IX, with limits, coverage, forms, deductibles, inception and expiration dates and cancellation provisions acceptable to Grantee. In addition, each required property insurance policy must contain a Lender's Loss Payable Form (Form 438BFU or equivalent) in favor of Grantee and provide that all proceeds be payable to Grantee to the extent of its interest. An approval by Grantee is not, and shall not be deemed to be, a representation of the solvency of any insurer or the sufficiency of any amount of insurance. For all required liability coverage Grantee must be listed as an additional insured and for all property coverage Grantee must be listed as lender's loss payee and mortgagee.

(c) Each policy of insurance required under the Loan Documents must provide that it may not be modified or canceled without at least thirty (30) days prior written notice to Grantee. When any required insurance policy expires, Grantor must furnish Grantee with proof acceptable to Grantee that the policy has been reinstated or a new policy issued, continuing in force the insurance covered by the expired policy. Grantor must also furnish evidence satisfactory to Grantee that all premiums for such policy have been paid within thirty (30) days of renewal or issuance. If Grantee fails to receive such proof and evidence, Grantee has the right, but not the obligation, to obtain current coverage and advance funds to pay the premiums for it. Grantor must repay Grantee immediately on demand for any advance for such premiums, which will be an additional loan to Grantor bearing interest at the Default Interest Rate and secured hereby and any other collateral held by Grantee in connection with the Loan Documents.

(d) Grantor shall give Grantee immediate notice of any casualty to any portion of the Property, whether or not covered by insurance, and of the institution or threatened institution of any proceeding for the condemnation or other taking for public or quasi-public use of any portion of the Property, and shall provide Grantee with copies of all documents which pertain to any such casualty or proceeding. Grantor shall take all action reasonably required by Grantee in connection therewith to protect the interests of Grantor and/or Grantee, and Grantee shall be entitled, but shall not be obligated (without regard to the adequacy of its security) to participate in any action, claim, adjustment or proceeding and to be represented therein by counsel of its own choice. Grantor shall not settle, adjust or compromise any such claim without the prior written approval of Grantee to such settlement, adjustment or compromise, which approval shall not be unreasonably withheld.

(e) Provided that Grantor satisfies the requirements and conditions of Section 5.5 and all requirements of the Loan Documents in connection with such disbursement, Grantee shall consent to the disbursement of proceeds of any property insurance policies from time to time maintained by Grantor and proceeds of condemnation awards received by Grantor as provided in the Loan Documents and Section 5.5 for repair and restoration of the Property.

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(f) Nothing in this Section 5.19 shall be construed to excuse Grantor from repairing and restoring all damage to the Property in accordance with the Loan Documents, regardless of whether insurance proceeds are sufficient.

(g) In the event of foreclosure of this Security Instrument or other assignment of the Property in extinguishment, in whole or in part, of obligations to Grantee secured thereby, all right, title and interest of Grantor in and to all policies of insurance required hereunder and any related unearned premiums shall, without further action, be assigned to and inure to the benefit of the successor-in-interest to Grantor or the purchaser or grantee of the Property, and Grantor hereby appoints Grantee its true and lawful attorney-in-fact to execute an assignment thereof and any other documents necessary to effect any such transfer, such power deemed to be coupled with an interest and therefore irrevocable.

## 6. Accelerating Transfers, Default and Remedies.

### 6.1 Accelerating Transfers.

(a) "Accelerating Transfer" means (i) any sale, contract to sell, conveyance, encumbrance, pledge, mortgage or lease of the Property, except for Permitted Title Exceptions and residential leases which comply with low income restrictions applicable to the Property, or as otherwise expressly permitted under this Security Instrument, or (ii) any other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law or otherwise. If Grantor is a limited liability company, "Accelerating Transfer" also means withdrawal or removal of any managing member, dissolution of the company under Illinois law, or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the membership interests. Notwithstanding the foregoing, the following shall not be deemed an Accelerating Transfer: (a) the removal and replacement of the managing member by the Investor Member in accordance with the Restated and Amended Operating Agreement of Grantor in effect on the date hereof (the "Operating Agreement") provided such replacement managing member is selected with reasonable promptness and is an Affiliate (as defined in the Operating Agreement of Investor Member or another entity reasonably acceptable to Grantee, (b) the transfer by the Investor Member of its interest in Grantor in accordance with the Operating Agreement, (c) any transfer by any Affiliate of Grantor of any membership interest in Grantor, or (d) grant of easements that have no material adverse impact upon the Property or the Project or the value of Grantee's mortgage interest.

(b) Grantor acknowledges that Grantee made the Loan in reliance on the expertise, skill, and experience of Grantor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Grantee's reliance, Grantor agrees that Grantor shall not make any Accelerating Transfer. If any Accelerating Transfer occurs, an Event of Default will occur and Grantee may implement available rights and remedies under this Security Instrument and the other Loan Documents including declaration of all of the Secured Obligations to be immediately due and payable. Grantor acknowledges the materiality of the provisions of this Section as a covenant of Grantor, given individual weight and consideration by Grantee in entering into the Secured Obligations, and that any Accelerating Transfer in violation of the prohibited transfer provisions herein set forth shall result in a material impairment of Grantee's interest in the Property and be deemed a breach of the foregoing covenant.

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**6.2 Events of Default.** Grantor will be in default under this Security Instrument upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default;" any one singly, an "Event of Default"):

(a) Grantor fails to pay when due any sum payable under the Note, subject to any applicable grace period.

(b) Grantor fails to perform any obligation to pay money which arises under this Security Instrument, and does not cure that failure within ten (10) days after written notice from Grantee; or

(c) Grantor fails to perform any obligation arising under this Security Instrument other than one to pay money, and does not cure that failure either within thirty (30) days (the "Initial Cure Period") after written notice from Grantee, or within ninety (90) days after such written notice, so long as Grantor begins within the Initial Cure Period and diligently continues to cure the failure, and Grantee, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the Initial Cure Period; or

(d) A Default or Event of Default (as such term is defined in the applicable document, subject to any applicable notice and cure periods) is declared under any other Loan Document; or

(e) Any default by Grantor, subject to any applicable notice and cure periods, occurs under any other mortgage, deed of trust, security deed, or other security instrument on all or any part of the Property, or under any obligation secured by such security instrument, whether such security instrument is prior to or subordinate to this Security Instrument; or

(f) Grantor or Managing Member becomes insolvent, or fails or ceases to pay its debts as they mature or makes an assignment for the benefit of creditors or files a petition in bankruptcy or is adjudicated insolvent or bankrupt, or petitions or applies to any tribunal for the appointment of any receiver or any trustee, or commences any proceeding under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or any such proceeding is commenced against Grantor or Managing Member that is not dismissed within a period of ninety (90) days, or Grantor or Managing Member, by any act indicates its consent, approval of, or acquiescence in any such proceeding or the appointment of any receiver or any trustee for it or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of sixty (60) days; or

(g) One or more judgments or decrees are entered against Grantor or Managing Member involving in the aggregate a liability of Grantor or Managing Member (not paid or fully covered by insurance) of \$100,000 or more and all such judgments or decrees are not vacated, discharged, stayed or bonded pending appeal within sixty (60) days after the entry thereof.

**6.3 Investor Member Right to Cure.** Grantor's Investor Member (as defined in the Operating Agreement) shall have the same right to cure an Event of Default as provided to Grantor herein and under the Loan Documents.

**6.4 Remedies.** Except as otherwise expressly set forth in any other Loan Document, at any time after an Event of Default, Grantee shall be entitled to invoke any and all

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of the rights and remedies described below or permitted by applicable law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Grantee may declare any or all of the Secured Obligations to be due and payable immediately and may terminate any Loan Document in accordance with its terms.

(b) Receiver. Grantee may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property. Grantor hereby consents to such appointment.

(c) Entry. Grantee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Grantor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Grantee may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Security Instrument. Such other things may include: taking and possessing all of Grantor's or the then owner's Books and Records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Grantee may consider proper; obtaining and evicting tenants; fixing or modifying Rents (but not in excess of any applicable maximum low income rents for residential tenants); collecting and receiving any payment of money owing to Grantor; completing any unfinished construction; contracting for and making repairs and alterations; and/or performing such acts of cultivation or irrigation as necessary to conserve the value of the Property. If Grantee so requests, Grantor shall assemble all of the Property that has been removed from the Land and make all of it available to Grantee at the site of the Land. Grantor hereby irrevocably constitutes and appoints Grantee as Grantor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Grantee in its sole and absolute discretion may consider to be appropriate in connection with taking these measures, including endorsement of Grantor's name on any instruments. The appointment granted in this Section shall be deemed to be a power coupled with an interest. Regardless of any provision of this Security Instrument, or any other Loan Document, Grantee shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Grantor to Grantee, unless Grantee has given express written notice of Grantee's election of that remedy in accordance with the UCC or other applicable law. Grantor agrees to deliver to Grantee all Books and Records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Grantee in order to enable Grantee to exercise its rights under this Section.

(d) Cure; Protection of Security. Grantee may cure any breach or default of Grantor, and if it chooses to do so in connection with any such cure, Grantee may also enter the Property and/or do any and all other things which it may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Security Instrument. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Grantee under, this Security Instrument; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Grantee's sole judgment is or may be senior in priority to this Security Instrument; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Grantee.



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Grantee may take any of the actions permitted under this Section either with or without giving notice to any person.

(e) UCC Remedies. Grantee may exercise any or all of the remedies granted to a secured party under the UCC.

(f) Judicial Action. Grantee may bring an action in any court of competent jurisdiction to foreclose this Security Instrument in the manner provided by law for the foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Security Instrument. If Grantee brings such an action, Grantor agrees to pay Grantee's reasonable attorneys' fees (including the allocated reasonable costs of in-house counsel to the extent not prohibited by applicable law) and court costs as determined by the court.

(g) Sale. Grantee shall have the discretionary right to cause some or all of the Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) Sales of Personal Property.

(A) To the extent not prohibited by applicable law, Grantee may elect to treat as personal property any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Grantee may dispose of any personal property separately from the sale of real property, in any manner permitted by the UCC, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

(B) In connection with any sale or other disposition of such personal property disposed of separately from the sale of the real property, Grantor agrees that the following procedures constitute a commercially reasonable sale. Grantee shall mail written notice of the sale to Grantor not later than ten (10) days prior to the date of public sale of the Property or prior to the date after which a private sale of the Property will be made, and such notice shall constitute reasonable notice; provided that, if Grantee fails to comply with this subsection in any respect, its liability for such failure shall be limited to the liability, if any, imposed on it as a matter of law under the UCC. Upon receipt of any written request, Grantee will make the personal property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Grantee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equal the fair value of the personal property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(ii) Sales of Real Property or Mixed Collateral.

(A) Grantee may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its sole and absolute discretion and to the extent not prohibited by applicable law, Grantee may also or alternatively choose to dispose of some

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or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as may be permitted by the UCC. Grantor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. For purposes of this Security Instrument, either a sale of real property alone, or a sale of both real and personal property together in accordance with the UCC, will sometimes be referred to as a "Foreclosure Sale."

(B) Before any Foreclosure Sale, Grantee shall give such statement of breach or nonperformance, notice of sale, and/or notice of default as may then be required by applicable law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Grantee shall sell the property being sold in a manner in compliance with applicable law. From time to time in accordance with then applicable law, Grantee may postpone any Foreclosure Sale.

(C) At any Foreclosure Sale, Grantee shall sell to the highest bidder at public auction for cash payable at the time of sale in lawful money of the United States. Grantee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Foreclosure Sale, shall be conclusive proof of their truthfulness, absent manifest error. Absent manifest error, any such deed shall be (1) conclusive against all persons as to the facts recited in it; and (2) conclusive evidence in favor of purchasers and encumbrances for value and without actual notice, that all requirements of this Security Instrument and all requirements of law were met relating to the exercise of the Foreclosure Sale of the Property conveyed by such deed.

(h) Attorney-in-Fact. Grantor hereby irrevocably constitutes and appoints Grantee as Grantor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Grantee in its sole and absolute discretion may consider to be appropriate (1) to effect the purpose of this Security Instrument; and (2) in connection with taking the measures described in this Section, including endorsement of Grantor's name on any instruments. The appointment granted in this Section shall be deemed to be a power coupled with an interest.

(i) Single or Multiple Foreclosure Sales. Unless prohibited by applicable law, Grantee may elect to dispose of the Property, or any portion thereof, including but not limited to lots, parcels, and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted above, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Grantee may deem to be in its best interests. If the Property consists of more than one lot, parcel or item of property, Grantee may designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition. If Grantee chooses to have more than one Foreclosure Sale, Grantee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Grantee may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the lien of this Security

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Instrument on any part of the Property which has not been sold, until all of the Secured Obligations have been paid and performed in full.

**6.5 Personal Property.** It shall not be necessary that Grantee take possession of all or any part of the Property that is personal property or fixture property prior to the time that any sale pursuant to the provisions of this Section is conducted, and it shall not be necessary that such Property or any part thereof be present at the location of such sale. With respect to application of proceeds from disposition of such Property, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses (including, without limitation, the allocated reasonable costs for in-house counsel to the extent not prohibited by applicable law) incurred by Grantee. Any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Obligations or as to the occurrence of any default or Event of Default, or as to Grantee having declared all of such indebtedness to be due and payable, or as to notice of time, place, and terms of sale, and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Grantee, shall be taken as prima facie evidence of the truth of the facts so stated and recited (absent manifest error). Grantee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Grantee, including the sending of notices and the conduct of the sale, but in the name and on behalf of the Grantee. Grantee may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Property or any part hereof, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of such Property. Grantee may sell all or any portion of the Property without giving any warranties as to such Property, and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose, or the like, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of such Property. Grantor acknowledges that a private sale of all or any part of the Property may result in less proceeds than a public sale, and Grantor acknowledges that the Property may be sold at a loss to Grantor, and that, in such event, Grantee shall have no liability or responsibility to Grantor for such loss. In addition to the rights granted elsewhere in this Security Instrument, after the occurrence of any default or Event of Default, Grantee may at any time notify the account debtors or obligors of any accounts, chattel paper (whether tangible or electronic), general intangibles (including payment intangibles), negotiable instruments, promissory notes, or other evidences of indebtedness included in the Property to pay Grantee directly.

**6.6 Credit Bids.** At any Foreclosure Sale or any sale of personal property collateral pursuant to **Section 6.5**, any person, including Grantor or Grantee, may bid for and acquire the Property being sold or any part of it to the extent not expressly prohibited by then applicable law. Instead of paying cash for such property, Grantee shall have the benefit of any applicable law permitting credit bids.

**6.7 Application of Foreclosure Sale Proceeds.** Except as may be otherwise required by law, Grantee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, including, but not limited to reasonable attorneys' fees, the costs of any action and any other sums for which Grantor is obligated to reimburse Grantee under **Section 5.11** above; and

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(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Grantee under the terms of this Security Instrument which then remain unpaid; and

(c) Third, to pay all other Secured Obligations, to the extent not expressly prohibited by applicable law, in any order and proportions as Grantee in its sole and absolute discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the Grantor or as otherwise required by applicable law.

If the Secured Obligations include more than one loan or line of credit, by cross-collateralization or otherwise, it is specifically agreed that the proceeds of any Foreclosure Sale or other foreclosure action shall not be applied pro-rata unless such application is directed by Grantee, but instead shall be applied to all such Secured Obligations in any order, proportions and manner as Grantee in its sole and absolute discretion may choose.

**6.8 Application of Rents and Other Sums.** Grantee shall apply any and all Rents collected by it in such order as set forth in **Section 2.5** and any and all other sums, other than proceeds of a Foreclosure Sale or a judicial foreclosure sale under this Security Instrument, which Grantee may receive or collect under this Section, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Grantee, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; and

(b) Second, to pay all other Secured Obligations in any order and proportions as Grantee in its sole and absolute discretion may choose; and

(c) Third, to remit the remainder, if any, to the Grantor or as otherwise required by applicable law.

Grantee shall have no liability for any funds which it does not actually receive.

## 7. Miscellaneous Provisions.

**7.1 Additional Provisions.** The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Security Instrument. The Loan Documents also grant further rights to Grantee and certain of them contain further agreements and affirmative and negative covenants by Grantor which apply to this Security Instrument and to the Property.

### 7.2 No Waiver or Cure.

(a) Each waiver by Grantee shall be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Grantee to take action on account of any default of Grantor. Consent by Grantee to any act or omission by Grantor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Grantee's consent to be obtained in any future or other

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instance. Reinstatement after an Event of Default shall not constitute a waiver of any Event of Default then existing or subsequently occurring, nor impair the right of Grantee to declare other Events of Default, nor otherwise affect this Security Instrument or any of the Loan Documents, or any of the rights, obligations, or remedies of Grantee under this Security Instrument or any of the Loan Documents.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default, or notice of default under this Security Instrument or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Security Instrument; or prejudice Grantee or any receiver in the exercise of any right or remedy afforded any of them under this Security Instrument; or be construed as an affirmation by Grantee of any tenancy, lease or option, or a subordination of the lien of this Security Instrument.

(i) Grantee, its agent, or a receiver takes possession of all or any part of the Property in the manner provided this Security Instrument; or

(ii) Grantee collects and applies Rents and enforces any Lease provision as permitted under this Security Instrument, either with or without taking possession of all or any part of the Property; or

(iii) Grantee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, surety bond proceeds, or other claims, property or rights assigned to Grantee under this Security Instrument; or

(iv) Grantee makes a site visit, observes the Property, and/or conducts tests as permitted under this Security Instrument; or

(v) Grantee receives any sums under this Security Instrument or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations; or

(vi) Grantee, its agent, or any receiver performs any act which it is empowered or authorized to perform, or invokes any right or remedy provided under this Security Instrument.

### **7.3 Powers of Grantee.**

(a) Grantee shall have no obligation to perform any act which it is empowered to perform under this Security Instrument unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(b) If Grantee performs any act which it is empowered or authorized to perform under this Security Instrument, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding or the lien of this Security Instrument on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Grantor shall not be released or changed if Grantee grants any successor in interest to Grantor

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any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Grantee shall not be required to comply with any demand by the original Grantor that Grantee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(c) Grantee may take any of the actions permitted under this Security Instrument, including without limitation appointment of a receiver, regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Security Instrument.

(d) From time to time, Grantee may apply to any court of competent jurisdiction for aid and direction in enforcing the rights and remedies created under this Security Instrument. Grantee may from time to time obtain orders or decrees directing, confirming or approving acts in enforcing such rights and remedies.

**7.4 Merger.** No merger shall occur as a result of Grantee's acquiring any other estate in or any other lien on the Property unless Grantee consents to a merger in writing.

**7.5 Joint and Several Liability.** If more than one Person has executed this Security Instrument as Grantor, each shall be jointly and severally liable for the faithful performance of all of Grantor's obligations under this Security Instrument.

**7.6 Governing Law; Waiver of Jury Trial.** This Security Instrument shall be governed by and construed in accordance with the laws of the state where the Property is located, without regard to the choice of law rules of that state and by applicable Federal law. **TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, GRANTOR WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH GRANTOR AND BANK MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS SECURITY INSTRUMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GRANTOR, AND GRANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GRANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN SIGNING THIS SECURITY INSTRUMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

**7.7 Successors in Interest.** The terms, covenants and conditions of this Security Instrument shall be binding upon and inure to the benefit of the heirs and permitted successors and assigns of the parties. However, this Section does not waive or modify the provisions of **Section 6.1** above.

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**7.8 Statute of Limitations.** To the extent not expressly prohibited by law, Grantor hereby waives the right to plead the statute of limitations as a defense to any and all obligations secured by this Security Instrument.

**7.9 Patriot Act.**

(a) Grantor acknowledges receipt of the following notification pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. If the borrower is an individual, such information includes the borrower's name, taxpayer identification number, residential address, date of birth, and other information that will allow the lender to identify the borrower. If the borrower is not an individual, such information includes the borrower's name, taxpayer identification number, business address, and other information that will allow the lender to identify the borrower. If the borrower is an individual, the lender may request a copy of the borrower's driver's license or other identifying documents, and, if the Borrower is not an individual, the lender may request copies of the borrower's legal organizational documents or other identifying documents.

(b) Grantor shall not (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control) that prohibits or limits Grantee from making any advance or extension of credit to the Grantor or from otherwise conducting business with the Grantor; or (b) fail to provide documentary and other evidence of the Grantor's identity as may be requested by Grantee at any time to enable Grantee to verify the Grantor's identity or to comply with any applicable law or regulation, including, without limitation, § 326 of the USA Patriot Act of 2001, 31 U.S.C. §5318

**7.10 Time of Essence.** Time is of the essence of this Security Instrument.

**7.11 Interpretation.**

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Security Instrument are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed, and contingent obligations. It further includes all principal, interest, prepayment fees, late charges, loan fees, and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items, or matters in any way limits the scope or generality of any language of this Security Instrument. The Exhibits to this Security Instrument are hereby incorporated by reference in this Security Instrument.

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(d) No course of prior dealing, usage of trade, or parol or extrinsic evidence of any nature shall be used to supplement, modify, or vary any of the terms hereof.

**7.12 In-House Counsel Fees.** Whenever Grantor is obligated to pay or reimburse Grantee for any attorneys' fees, those fees shall include the allocated reasonable costs for services of in-house counsel to the extent not prohibited by applicable law.

**7.13 Waiver of Marshaling.** Grantor waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which any of the Property will be sold in the event of any sale under this Security Instrument. Each successor and assign of Grantor, including any holder of a lien subordinate to this Security Instrument, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

**7.14 Severability.** If any provision of this Security Instrument should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Security Instrument, except that if such provision relates to the payment of any monetary sum, then Grantee may, at its option, declare all Secured Obligations immediately due and payable.

**7.15 Notices.** Grantor hereby requests that a copy of any notice of default or notice of sale, or such other notices prescribed by applicable law, be mailed to it at the address set forth below. If any Grantor fails to insert an address, that failure will constitute a designation of Grantor's last known address as the address of such notice. That address is also the mailing address of Grantor as debtor under the UCC. Grantee's address given below is the address for Grantee as secured party under the UCC.

**7.16 Extended Low-Income Housing Commitment.** Grantee agrees that the lien of this Security Instrument shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "Extended Use Agreement") recorded against the Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Instrument or upon a transfer of the Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.

**7.17 Maximum Amount Secured.** The maximum amount secured by this Security Instrument shall be \$937,500, plus any advances made by Grantee as allowed by 735 ILCS 5/15-1512, but nothing contained herein shall obligate Grantee to advance funds in excess of the face amount of the Note.

**7.18 Nonrecourse.** Any loan secured by this Security Instrument is a non-recourse obligation of Grantor, and except as set forth in the Note neither Grantor nor any of its members, nor any other person or entity, shall have any personal liability for repayment of such loans. The sole recourse of Grantee under the Loan Documents for repayment of such loans shall be the exercise of rights against the Property, except as set forth in the Note.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]*



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IN WITNESS WHEREOF, Grantor has executed this Security Instrument under seal the date first above written.

**"GRANTOR"**


**PP Family, LLC,**  
an Illinois limited liability company

By: PP Family Manager, LLC,  
an Illinois limited liability company,  
its Managing Member

By: Brinshore Holding, LLC,  
an Illinois limited liability company,  
its managing member

By: Brinshore Development, L.L.C.,  
an Illinois limited liability company,  
its sole member

By: Brint Development, Inc.,  
an Illinois corporation, a member

By:   
Name: David B. Brint  
Title: President

Address of Grantor's chief executive office for notices to Grantor:

Address:

PP Family, LLC  
c/o Brinshore Development, L.L.C.  
666 Dundee Road, Suite 1102  
Northbrook, Illinois 60622  
Attention: David B. Brint

Applegate & Thorne-Thomsen, P.C.  
440 South LaSalle Street  
Suite 400  
Chicago, Illinois 60605  
Attention: Bennett P. Applegate

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And to:

BYNC Lawndale Development, LLC  
c/o Back of the Yards Neighborhood Council  
1751 West 47<sup>th</sup> Street #2  
Chicago, Illinois 60609  
Fax No.: (773) 254-3525  
Attention: Craig Chico  
E-Mail: cchico@bync.org

Address for notices to Grantee:

IFF  
333 South Wabash Avenue, Suite 2800  
Chicago, Illinois 60604  
Attention: Stephanie Socal  
Facsimile: (312) 629-0061

With a copy to:

Albert, Whitehead, P.C.  
10 North Dearborn Street  
Suite 600  
Chicago, Illinois 60602  
Attention: Gregory C. Whitehead  
Facsimile: (312) 357-6320

Address for Investor Member:

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

With a copy to:

Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102-2186  
Attention: Jill H. Goldstein, Esq.

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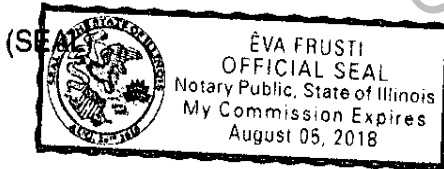
STATE OF ILLINOIS    )  
   ) ss  
 COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that David B. Brint, personally known to me to be the President of Brint Development, Inc., a member of Brinshore Development, L.L.C., the sole member of Brinshore Holding, LLC, the managing member of PP Family Manager, LLC, which is the managing member of PP Family, LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officer, signed and delivered the said instrument, pursuant to authority given by the board of directors on behalf of the managing member, as the free and voluntary act of such person, and as the free and voluntary act and deed of the managing member and the company, for the uses and purposes therein set forth.

Given under my hand and official seal this 27 day of September, 2017.

*Eva Frusti*

\_\_\_\_\_  
 Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

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

#### PARCEL 2:

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

#### PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR THE INSTALLATION, CONSTRUCTION AND MAINTENANCE OF AN UNDERGROUND DRAINAGE PIPES AND TO DRAIN STORM WATER THROUGH SAID PIPES, AS CREATED AND DEFINED IN THE DRAINAGE AND DETENTION EASEMENT AGREEMENT DATED OCTOBER 30, 2015 AND RECORDED NOVEMBER 2, 2015 AS DOCUMENT NO. 1530618039, UNDER, OVER, ACROSS, ALONG, UPON AND THROUGH THE DRAINAGE AND DETENTION EASEMENT AREA LEGALLY DESCRIBED IN EXHIBIT C THEREOF, BEING PARTS OF LOT 69 IN PARK PLACE UNIT 1, BEING A SUBDIVISION IN THE SOUTH HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN.

#### PARCEL 4:

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

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19-11-124-012	4951 S. Lawndale Ave, 4957 S. Lawndale Ave & 3650 S. 50th St & 4958 S. Millard Ave & 3642 W. 50th St. Chicago
19-11-124-013	4940 S, Millard Avenue, 3618, 3622, 3626 & 3630 W. 49th Place, Chicago, IL
19-11-127-001	3617, 3621, 3625 & 3629 W. 49th Place, Chicago, IL
19-11-127-002	4957 S. Millard Avenue & 3624 W. 50th Street & 3616 W. 50th Street, Chicago, IL
19-11-121-025 and 025	3640 W. 51st Street , Chicago, IL

**COOK COUNTY  
RECORDER OF DEEDS**

**COOK COUNTY  
RECORDER OF DEEDS**

Property of Cook County Clerks Office

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## EXHIBIT B

### (PERMITTED TITLE EXCEPTIONS)

1. General Real Estate taxes not yet due and payable.
2. Electrical Easement dated March 1, 1970 and recorded May 19, 1970 as Document No. 21162436.
3. Water and Sewer Lines Agreement recorded as Document No. 062617100.
4. No Further Remediation Letter dated January 4, 2007 and recorded January 18, 2007 as Document No. 0701818005.
5. Utility Easement recorded as Document No. 0827601042.
6. Low Income Housing Tax Credits Regulatory Agreement dated as of October 30, 2015 and recorded November 2, 2015, as Document No. 1530618041 by and among the City of Chicago, by and through its Department of Planning and Development, and PP Family, LLC, an Illinois limited liability company.
7. HOME Program Regulatory Agreement dated as of October 30, 2015 and recorded November 2, 2015, as Document No. 1530618043 by and between the City of Chicago, by and through its Department of Planning and Development and PP Family, LLC, an Illinois limited liability company.
8. Affordable Housing Land Use Restriction Agreement dated as of October 30, 2015 and recorded November 2, 2015, as Document No. 1530618044, by and between Bank of America, N.A., a national banking association and PP Family, LLC, an Illinois limited liability company.
9. Donations Tax Credit Regulatory Agreement dated as of October 30, 2015 and recorded November 2, 2015, as Document No. 1530618042 by and among the City of Chicago by and through its Department of Planning and Development and PP Family, LLC, an Illinois limited liability company.
10. Junior Mortgage, Security Agreement and Financing Statement dated as of October 30, 2015 and recorded November 2, 2015, as Document No. 1503618046, made by PP Family, LLC, an Illinois limited liability company to the City of Chicago, to secure an indebtedness of \$6,689,009.00.
11. Assignment of Rents and Leases dated as of October 30, 2015 and recorded November 2, 2015, as Document No. 1530618047, made by PP Family, LLC, an Illinois limited liability company, to the City of Chicago.
12. Mortgage, Assignment of Leases and Rents and Security Agreement dated as of October 30, 2015 and recorded November 2, 2015, as Document No. 1530618048, made by PP Family, LLC, an Illinois limited liability company, to Bank of America, N.A., a national banking association, to secure an indebtedness of \$1,275,000.00.

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13. Mortgage, Assignment of Leases and Rents and Security Agreement (Sponsor Loan) dated October 30, 2015 and recorded November 2, 2015, as Document No. 1530618049, made by PP Family, LLC, an Illinois limited liability company, to BYNC Lawndale Development, LLC, an Illinois limited liability company, to secure an indebtedness of \$870,716.00.
14. Subordination Agreement (DTC Proceeds Loan) dated as of October 30, 2015 and recorded November 2, 2015, as Document No. 1530618050, by and among BYNC Lawndale Development, LLC, an Illinois limited liability company, and Bank of America, N.A., a national banking association, and acknowledged and agreed to by PP Family, LLC, an Illinois limited liability company.
15. Subordination Agreement dated as of September 28, 2017 by and among IFF, PP Family, LLC and Bank of America N.A.
16. Subordination Agreement dated as of September 28, 2017 by and among IFF, PP Family, LLC and BYNC Lawndale Development, LLC.
17. Capital Magnet Fund Restrictive Covenant Agreement dated September 28, 2017 by and between PP Family, LLC and IFF.

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## EXHIBIT C

### INSURANCE

A. Grantor shall maintain or cause to be maintained during the term of the Loan:

(i) Fire and extended coverage insurance (including, without limitation, windstorm, explosion, and such other risks usually insured against by owners of like properties) on the Property in an amount equal to one hundred percent (100%) of the full replacement cost of the Property;

(ii) Comprehensive public liability insurance against claims for personal injury, including, without limitation, bodily injury, death, or property damage occurring on, in, or about the Property in an amount of not less than \$1,000,000.00 with respect to personal injury or death to one or more persons; and \$500,000.00 with respect to damage to property, and with "umbrella" liability coverage of not less than \$1,000,000.00, or such greater amounts as may from time to time be required by Grantee;

(iii) If the Property is located in a Zone A or Zone B flood hazard zone, flood plain insurance in an amount satisfactory to Grantee, but in no event less than one hundred percent (100%) of the full insurable value of the Property and the personal property contained therein; and

(iv) For so long as any construction is being performed on the Property: (A) "All Risk, Builders' Risk Completed Value Non-Reporting Form" insurance in an amount equal to one hundred percent (100%) of the completed insurable value of the Property, with extended coverage; (B) for the general contractor (and/or, if appropriate, subcontractors) workmen's compensation, employees' liability and comprehensive liability insurance (including contractual liability) with limits of \$1,000,000.00 with respect to personal injury or death for one or more persons; and (C) for the architect, professional liability insurance in form and amounts satisfactory to Grantee.

All insurance shall be written by companies and on forms with endorsements satisfactory to Grantee, all with suitable loss payable and standard noncontribution, mortgagee clauses in favor of Grantee (or, in case of a foreclosure sale, in favor of the owner of the certificate of sale) attached, and originals or certified copies of certificates of insurance evidencing such policies shall be kept constantly deposited with Grantee. At such times as Grantee shall reasonably request, Grantor shall cause Grantor's insurer to provide an opinion letter to Grantee stating that Grantor's insurance policies are in compliance and fulfill all of the requirements of this section. All policies shall provide for, and the certificates of insurance delivered to Grantee shall reflect, the insurer's agreement to provide, among other things, written notice to Grantee of the expiration or any anticipated cancellation of any insurance policies at least thirty (30) days prior to such event occurring. Not less than thirty (30) days prior to the expiration of any policy, a certified copy of a certificate of insurance evidencing the renewal policy shall be deposited with Grantee.

B. In case of loss or casualty to any portion of the Property, Grantee is authorized to collect all insurance proceeds and apply them, at its option, to the reduction of the Secured Obligations, whether due or not then due, or, at Grantee's sole and absolute option, Grantee may allow Grantor to use such money, or any part thereof, in repairing the damage or restoring the Property. If such proceeds are released for the purpose of restoring the Premises, then such disbursement shall be subject to the conditions and procedures as Grantee may in its sole discretion impose.



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C. Grantor shall notify Grantee, in writing, of any casualty or loss to the Property and Grantor hereby directs each insurance company to make payment for the loss directly and solely to Grantee; and Grantor agrees that any payment which is delivered, for any reason, to Grantor shall be held in trust for Grantee and promptly delivered in the form received (except for any necessary endorsements) to Grantee.

D. In addition to other remedies available under this Security Instrument, if after Grantee's reasonable request, Grantor fails to provide Grantee with evidence of the foregoing insurance coverage required to be carried by Grantor under this Security Instrument, Grantee may purchase such insurance at Grantor's expense for the purpose of protecting Grantee's interest in the Property. Any insurance purchased by Grantee may, but need not, protect the interest of Grantor in the Property. The insurance coverage purchased by Grantee may or may not pay any claim that Grantor makes or any claim that is made against Grantor in connection with the Property. Provided that Grantee has not commenced foreclosure proceedings, elected to accelerate the amounts due and owing under the Note, and Grantor is not otherwise in default under this Security Instrument, Grantor may later cancel any insurance purchased by Grantee, but only after providing Grantee with evidence that Grantor has obtained insurance as required by this Security Instrument. If Grantee purchases insurance for the Property, Grantor shall be liable and shall reimburse Grantee for the costs of that insurance, including, but not limited to the interest, labor charges, and other charges that Grantee reasonably imposes in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of insurance purchased by Grantee may be added to the total outstanding balance or obligation secured by this Security Instrument and evidenced by the Note. The costs of the insurance purchased by Grantee may exceed the cost of insurance Grantor would otherwise be able to obtain