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Illinois Anti-Predatory Lending Database Program

Doc#: 1733817001 Fee: \$106.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/04/2017 09:19 AM Pg: 1 of 30

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 15-16-417-054-0000**

Address:

Street: 9902-20 West Roosevelt Road

Street line 2:

City: Westchester

State: IL

ZIP Code: 60154

Lender: Western Alliance Bank

Borrower: Indigo Realty, LLC

Loan / Mortgage Amount: \$15,000,000.00

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

Certificate number: 129C415F-34AC-4EA8-B3D3-0E520A01C283

Execution date: 10/30/2017

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THIS DOCUMENT WAS PREPARED
BY AND AFTER RECORDING,
MAIL TO:

Steven N. Bloom
Frandzel Robins Bloom and Csato, L.C.
1000 Wilshire Boulevard, 19th Floor
Los Angeles, CA 90017

870216

15-16417-054-000

MORTGAGE

(9902-20 West Roosevelt Road)

THIS MORTGAGE is executed by INDIGO REALTY, LLC, a Delaware limited liability company ("**Mortgagor**"), to and in favor of WESTERN ALLIANCE BANK, an Arizona corporation ("**Mortgagee**"), and having offices located at 3033 W. Ray Road, Chandler, Arizona 85226, as of this 30th day of October, 2017.

RECITALS:

WHEREAS, there is a parcel of land located in city of Westchester, Cook County, Illinois, which is legally described on "Exhibit A" attached hereto and made a part hereof ("**Land**").

WHEREAS, good and marketable fee simple title in and to the Land together with all improvements located on the Land is vested in the Mortgagor.

WHEREAS, INDIGO OPPORTUNITIES FUND US, LP, a Delaware limited liability partnership ("**Indigo**"), and IOFUS-FCC HOLDINGS I, LLC, a Delaware limited liability company ("**IOFUS**" and together with Indigo, individually and collectively "**Borrower**") are indebted to Mortgagee pursuant to that certain Promissory Note dated October 30, 2017 executed by Borrower in favor of Mortgagee in the original

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principal sum of \$15,000,000.00 in lawful money of the United States of America (together with all extensions, renewals, modifications, substitutions and amendments thereof, the “**Note**”), with interest from the date thereof at the rates set forth in the Note, and with principal and interest to be payable in accordance with the terms and conditions provided in the Note, and, additionally, in connection with the Note, Borrower and Mortgagee have entered into that certain Business Loan Agreement (Non-Revolving Line of Credit) dated October 30, 2017 (as amended, restated, supplemented or otherwise modified heretofore or hereinafter from time to time, the “**Loan Agreement**”). Mortgagee is unwilling to enter into the Loan Agreement and make available to Borrower the credit facilities provided therein unless Mortgagor, among other things, executes and delivers to Mortgagee this Mortgage (“**Mortgage**”).

WHEREAS, in order to induce Mortgagee to extend the requested facilities to Borrower, which Mortgagor acknowledges is of benefit to it, Mortgagee requires, among other matters, that Mortgagor pledge its interest in the Property (as herein defined) as security for the Indebtedness (as herein defined).

WHEREAS, Mortgagor is receiving a good and valuable benefit, the sufficiency and receipt of which is hereby acknowledged, from Mortgagee entering into the Loan Agreement with Mortgagor.

ARTICLE 1 **DEFINITIONS**

Section 1.1 Definitions. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Loan Agreement. As used herein, the following terms shall have the following meanings:

(a) “**Event of Default**”: shall have the meaning ascribed to such term in Article 4 hereof.

(b) “**Indebtedness**”: All obligations of Borrower to Mortgagee, including, without limitation, (1) the repayment of all amounts outstanding from time to time under the Loan Agreement and any other document evidencing or securing such indebtedness, obligations, and liabilities or otherwise setting forth the terms and conditions of the Loan Documents, and all guaranties and security documents therefor, (collectively, “**Loan Documents**”), with such indebtedness maturing on the Maturity Date (as defined in the Loan Agreement), including principal, interest (including all interest that, but for the provisions of the Bankruptcy Code, would have accrued), and other amounts which may now or hereafter be advanced as Advances, (2) fees, costs, expenses, charges and indemnification obligations accrued, incurred or arising in connection with any Loan Documents, (3) any and all future advances made pursuant to the terms of the Loan Agreement, and (4) all other agreements, covenants, conditions, warranties, representations, and other obligations of Borrower under the Loan Documents.

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(c) **“Property”**: All of Mortgagor’s interest in (1) the Land, (2) all improvements now owned or hereafter acquired by Mortgagor, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**; the Land and Improvements are collectively referred to herein as the **“Premises”**), (3) all materials, supplies, equipment, apparatus and other items of now owned or hereafter acquired by Mortgagor and now or hereafter attached to or installed in any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **“Fixtures”**), (4) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts maintained by Mortgagor with respect to the Premises (the **“Deposit Accounts”**), (5) all existing and future leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use or occupy, all or any part of the Property, whether made before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code, together with any extension, renewal or replacement of the same and together with all related security and other deposits (the **“Leases”**), (6) all of the rents, additional rents, revenues, royalties, income, proceeds, profits, early termination fees or payments, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Property or any part thereof, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (the **“Rents”**), (7) all other agreements, such as utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses certificates and entitlements in any way relating to the use, occupancy, operation, maintenance, enjoyment or ownership of the Property (the **“Property Agreements”**), (8) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, (9) all property tax refunds, utility refunds and rebates, earned or received at any time (the **“Tax Refunds”**), (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the **“Proceeds”**), (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the **“Insurance”**), (12) all of Mortgagor’s right, title and interest in and to any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land or Improvements or Fixtures (the **“Condemnation Awards”**), (13) all of Mortgagor’s rights to appear and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property and (14) all rights, powers, privileges, options and other benefits of Mortgagor as lessor under the Leases, including, without limitation, the immediate and continuing right to claim for, receive, collect and receive all Rents payable or receivable under the Leases or pursuant thereto (and to apply the same to the payment of the Indebtedness and the Obligations), and to do all other things which Mortgagor or any lessor is or may become entitled to do under the Leases. As used in this Mortgage, the term **“Property”** shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

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(d) **“Obligations”**: All of the agreements, covenants, conditions, warranties, representations and other obligations of Mortgagor hereunder.

(e) **“Permitted Liens”**: shall have the meaning ascribed to such term in the Loan Agreement.

(f) **“UCC”**: The Uniform Commercial Code of the state in which the Land is located or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the state in which the Land is located, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE 2 GRANT

Section 2.1 Grant. FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower and Mortgagor herein set forth, to secure the full and timely payment of the Indebtedness with a maximum principal amount of FIFTEEN MILLION and No/100 Dollars (\$15,000,000.00), with a maturity date of October 30, 2019, and the full and timely performance of the Obligations, Mortgagor GRANTS, BARGAINS, ASSIGNS, SELLS, MORTGAGES, WARRANTS and CONVEYS, to Mortgagee and the successors, successors-in-title and assigns of Mortgagee the Property, WITH POWER OF SALE, TO HAVE AND TO HOLD the Property and all parts, rights and appurtenances thereof, to the use, benefit and behoof of Mortgagee and the successors and assigns of Mortgagee, IN FEE SIMPLE forever, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Property unto Mortgagee. (All rights and interests created to and in favor of Mortgagee pursuant to the terms of this Mortgage shall be referred to herein as **“Rights”**.)

ARTICLE 3 WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.1 Title to Property and Security Title of this Instrument. Mortgagor (i) has good and indefeasible title to the Property, in fee simple, (to the extent that the Property constitutes real property), free and clear of any liens, claims or interests, except the Permitted Liens, and (ii) has full power and lawful authority to encumber the Property in the manner and form set forth in this Mortgage. This Mortgage, among other things, creates a valid, enforceable first priority lien and security interest against the Property.

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Section 3.2 First Security Title Status. Mortgagor shall preserve and protect the Rights together with all other rights, titles and interest created to and in favor of Mortgagee pursuant to the terms of the other Loan Documents. If any lien or security interest other than the Permitted Liens is asserted against the Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released, insured against or contest the same in compliance with the requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Mortgagee).

Section 3.3 Payment and Performance. Borrower shall pay and perform the indebtedness when due under the Loan Documents and Mortgagor shall perform the Obligations in full when they are required to be performed.

Section 3.4 Replacement of Fixtures. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the security title, liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be permitted under the Loan Agreement, this Mortgage or first approved in writing by Mortgagee.

Section 3.5 Inspection. Mortgagor shall permit Mortgagee and its agents, representatives and employees to inspect the Property and all books and records of Mortgagor located thereon, and to conduct such environmental and engineering studies as Mortgagee may require subject to the that certain Environmental Indemnity Agreement of even date herewith, executed by Mortgagor, among others, in favor of Mortgagee with respect to the Property. Provided that no Event of Default exists, all such testing and investigation shall be conducted at reasonable times and upon reasonable prior notice to Mortgagor. Mortgagee shall restore the Property to the condition it was in immediately prior to such testing and investigation.

Section 3.6 Other Covenants. All of the covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall, to the extent applicable, be covenants running with the land.

Section 3.7 Condemnation Awards and Insurance Proceeds.

(a) **Condemnation Awards.** Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify Mortgagee of the pendency of such proceedings. Except as set forth in the Loan Agreement or this Mortgage, Mortgagee may participate in any such proceedings and Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor assigns all awards and compensation to which it is entitled for any condemnation or other taking,

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or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement and this Mortgage. Mortgagor hereby waives all rights to such awards and compensation described in the foregoing sentence. Mortgagor, upon request by Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever.

(b) Insurance Proceeds. Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Property. Except as set forth in the Loan Agreement or this Mortgage, Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee. In the event that the issuer of such insurance policy fails to disburse directly or solely to the Mortgagee but disburses instead either solely to Mortgagor or to Mortgagor and Mortgagee, jointly, Mortgagor shall immediately endorse and transfer such proceeds to Mortgagee. Upon Mortgagor's failure to do so, Mortgagee may execute such endorsements or transfers from and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact so to do.

Section 3.8 Costs of Defending and Upholding the Security Title. If any action or proceeding is commenced to which action or proceeding Mortgagee is made a party or in which it becomes necessary for Mortgagee to defend or uphold the security title of this Mortgage, including any extensions, renewals, amendments or modifications thereof, Mortgagor shall, on demand, reimburse Mortgagee for all expenses (including, without limitation, reasonable attorneys' fees and reasonable appellate attorneys' fees for similar transactions) incurred by Mortgagee in any such action or proceeding and all such expenses shall be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage or to recover or collect the Indebtedness, the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 3.9 TRANSFER OF THE SECURED PROPERTY. MORTGAGOR SHALL NOT SELL, TRANSFER, PLEDGE, ENCUMBER, CREATE A SECURITY INTEREST IN, OR OTHERWISE HYPOTHECATE, ALL OR ANY PORTION OF THE PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF MORTGAGEE. THE CONSENT BY MORTGAGEE TO ANY SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, OR OTHER HYPOTHECATION OF, ANY PORTION OF THE PROPERTY SHALL NOT BE DEEMED TO CONSTITUTE A NOVATION OR A CONSENT TO ANY FURTHER SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, OR OTHER HYPOTHECATION OF ANY PORTION OF THE PROPERTY OR TO WAIVE THE RIGHT OF MORTGAGEE, AT ITS OPTION, TO DECLARE THE INDEBTEDNESS AND OBLIGATIONS SECURED HEREBY

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IMMEDIATELY DUE AND PAYABLE, WITHOUT NOTICE TO MORTGAGOR OR ANY OTHER PERSON OR ENTITY, UPON ANY SUCH SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST, OR OTHER HYPOTHECATION TO WHICH MORTGAGEE SHALL NOT HAVE CONSENTED.

Section 3.10 Security Deposits. To the extent required by law, or after an Event of Default has occurred and during its continuance, if required by Mortgagee, all security deposits of tenants of the Property shall be treated as trust funds not to be commingled with any other funds of Mortgagor. Within twenty (20) days after request by Mortgagee, Mortgagor shall furnish satisfactory evidence of compliance with this Section 3.10, as necessary, together with a statement of all security deposits deposited by the tenants and copies of all Leases not theretofore delivered to Mortgagee, as requested thereby, certified by Mortgagor.

Section 3.11 Mortgagor has the full power, right and authority to own, operate and maintain the Property in full compliance with laws of the State of Illinois, Cook County and the city of Westchester, an Illinois municipal corporation. Mortgagor is authorized to transact and conduct business in the State of Illinois.

ARTICLE 4 **DEFAULT**

Section 4.1 Events of Default. The occurrence of any of the following events shall constitute an event of default under this Mortgage (each an “Event of Default”):

- (a) an “Event of Default” (as such term is defined in the Loan Agreement) shall have occurred;
- (b) Mortgagor’s breach of any of the covenants set forth in this Mortgage; or
- (c) if any misstatement or misrepresentation exists now or hereafter in any warranty or representation set forth in Article 3 hereof; or
- (d) if any default occurs under any other Loan Documents; or
- (e) if any action or proceeding is commenced for the partition of all or any portion of the Property.

ARTICLE 5 **DEFAULT AND FORECLOSURE**

Section 5.1 Remedies. If an Event of Default exists, Mortgagee may, at Mortgagee’s election, exercise any or all of the following rights, remedies and recourses:

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(a) To the extent permitted under the Loan Agreement or this Mortgage, declare the Indebtedness and Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Notify all tenants of the Property and all others obligated on leases of any part of the Property that all rents and other sums owing on leases have been assigned to Mortgagee and are to be paid directly to Mortgagee, and to enforce payment of all obligations owing on leases, by suit, ejectment, cancellation, releasing, reletting or otherwise, whether or not Mortgagee has taken possession of the Property, and to exercise whatever rights and remedies Mortgagee may have under any assignment of rents and leases.

(c) As and to the extent permitted by law, enter the Property, either personally or by its agents, nominees or attorneys, and take exclusive possession thereof and thereupon, Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct business thereat; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable in the reasonable exercise of its judgment; (iii) exercise all rights and power of Mortgagor with respect to the Property, whether in the name of Mortgagor, or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Property and every part thereof, which rights shall not be in limitation of Mortgagee's rights under any assignment of rents and leases securing the Indebtedness; and (iv) apply the receipts from the Property to the payment of the Indebtedness and Obligations, after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees.

(d) Hold, lease, develop, manage, operate or otherwise use the Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 5.7 hereof.

(e) Require Mortgagor to assemble any collateral under the UCC and make it available to Mortgagee, at Mortgagor's sole right and expense, at a place or places to be designated by Mortgagee, in its sole discretion.

(f) Mortgagee, at its option, may sell the Property or any part of the Property at one or more public sale or sales before the door of the courthouse of the

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county in which the Land or any part of the Land is situated, to the highest bidder for cash, in order to pay the Indebtedness and Obligations, and all expenses of sale and of all proceedings in connection therewith, including reasonable attorneys' fees, after advertising the time, place and terms of sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which Sheriff's sales are advertised in said county. At any such public sale, Mortgagee may execute and deliver to the purchaser a conveyance of the Property or any part of the Property in fee simple, with full warranties of title and to this end, Mortgagor hereby constitutes and appoints Mortgagee the agent and attorney-in-fact of Mortgagor to make such sale and conveyance, and thereby to divest Mortgagor of all right, title and equity that Mortgagor may have in and to the Property and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon Mortgagor. The aforesaid power of sale and agency are granted as cumulative of the other remedies provided hereby of by law for collection of the Indebtedness and shall not be exhausted by one exercise thereof but may be exercised until full payment of all of the Indebtedness. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Premises may be sold as an entirety or in separate parcels and in such manner or order as Mortgagee in its sole discretion may elect, and if Mortgagee so elects, Mortgagee may sell the collateral covered by this Mortgage at one or more separate sales in any manner permitted by the Uniform Commercial Code as enacted in the State of Illinois, and or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Property are sold or the Indebtedness and Obligations are paid in full. With respect to any notices required or permitted under the UCC as enacted in the State of Illinois, Mortgagor agrees that five (5) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may bid for and purchase the Property at any foreclosure sale and shall be entitled to apply all or any part of the Indebtedness and Obligations as a credit to the purchase price in lieu of paying cash. In the event this Mortgage is foreclosed by judicial action, appraisal and valuation of the Property is waived. In the event of any sale made under or by virtue of this Article 5 (whether made by virtue of judicial proceedings, power of sale or of a judgment or decree of foreclosure and sale) the entire Indebtedness and Obligations, if not previously due and payable, immediately thereupon shall become due and payable. The failure to make any such tenants of the Property party to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby.

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(g) With or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness and Obligations then due and payable (if Mortgagee shall have elected not to declare the foregoing to be immediately due and owing), subject to the continuing lien of this Mortgage for the balance of the Indebtedness and Obligations not then due; or (1) as and to the extent permitted by law, sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on the remaining portion of the Property; or (2) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any Loan Documents; or (3) to the extent permitted by applicable law, recover judgment on the Loan Agreement either before, during or after any proceedings for the enforcement of this Mortgage.

(h) Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Property for the repayment of the Indebtedness and Obligations, the appointment of a receiver of the Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including, without limitation, the full power to market and sell all or any part of the Property, rent, maintain and otherwise operate the Property upon such terms as may be approved by the court and shall apply such Rents in accordance with the provisions of Section 5.7 hereof.

(i) Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity.

Section 5.2 Separate Sales. The Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 5.3 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and this Mortgage and available at law or equity (including the UCC), which rights (a) shall be cumulated and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Loan Documents, or against the Property, or against any one or more of them, at the sole discretion of Mortgagee, as the case may be, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or

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recourses under the Loan Documents or this Mortgage or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 5.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first and prior lien and security interest in and to the Property. For payment of the Indebtedness and Obligations, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 5.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Mortgagee to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, or hereunder, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 5.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents or hereunder and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgage, the Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee, shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee, thereafter to exercise any right, remedy or recourse under the Loan Documents or hereunder for such Event of Default.

Section 5.7 Application of Proceeds. The proceeds of any sale made under or by virtue of this Article 5, together with any Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) trustee's and receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) attorneys' and accountants' fees and expenses, and (4) costs of advertisement;

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(b) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as set forth in the Loan Agreement; and

(c) the balance, if any, to the payment of the Persons legally entitled thereto.

Section 5.8 Occupancy After Foreclosure. Except as otherwise required by applicable law, any sale of the Property or any part thereof in accordance with Section 5.1 hereof will divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law to the maximum extent permitted under Illinois law.

Section 5.9 Additional Advances and Disbursements; Costs of Enforcement.

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 5.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Indebtedness, and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses and all costs and expenses related to legal work, research and litigation) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

Section 5.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to Mortgagee under the Loan Documents, this Mortgage, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Mortgagee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

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Section 5.11 WAIVER OF MORTGAGOR'S RIGHTS. BY EXECUTION OF THIS MORTGAGE, MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF MORTGAGEE TO ACCELERATE THE INDEBTEDNESS AND OBLIGATIONS EVIDENCED BY THE LOAN AGREEMENT OR OTHER LOAN DOCUMENTS, OR THIS MORTGAGE, UPON THE OCCURRENCE OF AN EVENT OF DEFAULT; (B) TO THE EXTENT ALLOWED BY APPLICABLE LAW, WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY MORTGAGEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO MORTGAGEE; (C) ACKNOWLEDGES THAT MORTGAGOR HAS READ THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO MORTGAGOR AND MORTGAGOR HAS CONSULTED WITH LEGAL COUNSEL OF MORTGAGOR'S CHOICE PRIOR TO EXECUTING THIS MORTGAGE; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR LOAN TRANSACTION.

ARTICLE 6 ASSIGNMENT OF RENTS AND LEASES

Section 6.1 Assignment. In furtherance of and in addition to the assignment made by Mortgagor in Section 2.1 of this Mortgage, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Mortgagee all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing and to the extent not prohibited by the Loan Agreement or this Mortgage, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Indebtedness and Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice by Mortgagee (any such notice being hereby expressly waived by Mortgagor).

Section 6.2 Perfection Upon Recordation. Mortgagor acknowledges that Mortgagee has taken all actions necessary to obtain, and that upon recordation of this Mortgage, Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases

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and all security for such Leases. Mortgagor acknowledges and agrees that upon recordation of this Mortgage, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "**Bankruptcy Code**"), without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

Section 6.3 Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

ARTICLE 7 **SECURITY AGREEMENT**

Section 7.1 Security Interest. This Mortgage constitutes a "security agreement" within the meaning of the UCC and other applicable law and with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Mortgagor at least five (5) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 7.2 Financing Statements. Mortgagor hereby authorizes Mortgagee to prepare and file, in form and substance satisfactory to Mortgagee, such financing statements, continuation statements, other uniform commercial code forms and shall pay all expenses and fees in connection with the filing and recording thereof, and such further assurances as Mortgagee may from time to time, reasonably consider necessary to create, perfect, and preserve Mortgagee's security interest herein granted. If applicable, Mortgagor shall also execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor's state of organization is the State of Delaware. Mortgagor shall promptly

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advise Mortgagee of the accrual of any commercial tort claims involving the Property. In the event of any change in name, identity, structure, or jurisdiction or form of organization of any Mortgagor, such Mortgagor shall notify Mortgagee thereof and Mortgagee shall be authorized to prepare and file such UCC forms as Mortgagee may deem necessary to maintain the priority of Mortgagee's security interest hereunder, and Mortgagor shall pay all expenses and fees in connection with such filing.

Section 7.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the address of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

ARTICLE 8 MISCELLANEOUS

Section 8.1 Notices.

(a) All notices, requests, demands, directions, and other communications provided for hereunder (a "Notice"), must be in writing and must be mailed, personally delivered or sent by facsimile to the appropriate party at its respective address set forth below or, as to any party, at any other address as may be designated by it in a written notice sent to the other parties in accordance with this Section.

(b) Any notice given by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered to the appropriate party at its respective address. If any notice is given by mail, it will be effective three (3) calendar days after being deposited in the mails with first-class or air mail postage prepaid; if given by facsimile when sent; or if given by personal delivery, when delivered.

(c) Such notices will be given to the following:

To Mortgagee: WESTERN ALLIANCE BANK
3033 W. Ray Road
Chandler, Arizona 85226
Attention: Seth N. Davis, Senior Vice President
Facsimile: (602) 797-0373

To Mortgagor: INDIGO REALTY, LLC
5318 E 2nd Street Ste 502
Long Beach, CA 90803

To Borrower: INDIGO OPPORTUNITIES FUND US, LP
IOFUS-FCC HOLDINGS, LLC
5838 East Naples Plaza
Long Beach, CA 90803

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Section 8.2 Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Property. All Persons who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 8.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a Mortgage pursuant to the foreclosure of this Mortgage or the delivery of a Mortgage in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the Mortgagee of any such Mortgage and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Property, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder, however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the rate or rates at which interest is then computed on the Indebtedness; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section 8.3. Notwithstanding the foregoing, Mortgagee shall be liable for its gross negligence, willful misconduct, and bad faith in connection with exercising its rights hereunder.

Section 8.4 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 8.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of this Mortgage shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all such terms, provisions and conditions.

Section 8.6 Loan Agreement. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, this Mortgage shall govern.

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Section 8.7 Release or Reconveyance. Upon payment in full of the Indebtedness and performance in full of the Obligations or as otherwise required under the Loan Agreement and this Mortgage, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage.

Section 8.8 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Indebtedness and Obligations secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 8.9 Applicable Law. The provisions of this Mortgage regarding the creation, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Property is located. All other provisions of this Mortgage shall be governed by the laws of the State of California without regard to conflicts of law principles.

Section 8.10 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 8.11 Entire Agreement. This Mortgage embodies the entire agreement and understanding between Mortgagor and Mortgagee and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Mortgage may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

ARTICLE 9

Section 9.1 Relationship of Mortgagee and Mortgagor. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of Mortgagor and Mortgagee hereunder is solely that of debtor/creditor.

Section 9.2 Time of the Essence. Time is of the essence of the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage.

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Section 9.3 No Merger. The parties hereto intend that this Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if Mortgagee acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

Section 9.4 Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to Thirty Million and No/100 (\$30,000,000.00) Dollars.

Section 9.5 Consent to Jurisdiction. MORTGAGOR HEREBY WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

Section 9.6 Waiver of Jury Trial. MORTGAGOR AND MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (b) ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

ARTICLE 10

Section 10.1 At any time, in such manner and from time to time, upon such terms and at such times as it considers best and with or without notice to Mortgagor, and without affecting Mortgagor's continuing liability hereunder, Mortgagor authorizes Mortgagee to (i) change the time or manner of payment of any of the obligations of Borrower under the Loan Documents by renewal, extension, acceleration or otherwise, (ii) alter or change any other provision under the Loan Documents including the rate of interest thereon, (iii) accept partial payment on any of the obligations under the Loan Documents, (iv) accept new or additional instruments, agreements or documents relative to any of the obligations under the Loan Documents, (v) release, substitute or add one or

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more endorsers, cosigners or guarantors therefor, (vi) amend or modify the terms of the Loan Documents, including the maximum liability thereunder, (vii) obtain collateral for the payment of any obligations under the Loan Documents; (viii) waive, release, exchange, substitute, release or modify, in whole or in part, existing or after-acquired collateral securing payment of the obligations under the Loan Documents on such terms as Mortgagee at its sole discretion shall determine, (ix) subordinate payment of all or any part of the obligations under the Loan Documents to other creditors of Borrower or other persons on such terms as Mortgagee deems appropriate, (x) apply any sums received from Borrower, endorser or cosigner or from the sale or collection of collateral or its proceeds to any indebtedness whatsoever in any order and regardless of whether or not such indebtedness is secured hereby, is secured by collateral or is due and payable, (xi) apply any sums received from Mortgagor or from the sale of the Property to any, all, or any portion of the obligations under the Loan Documents in any order regardless of whether said obligations are due and payable, and (xii) exercise any right or remedy it may have with respect to any obligations under the Loan Documents or any collateral securing any such obligations, this Mortgage or any guaranty, including bidding and purchasing at any sale of any such collateral, and compromising, collecting or otherwise liquidating any collateral or any obligations.

Section 10.2 Mortgagor acknowledges that Mortgagor may have certain rights under California law which, if not waived by Mortgagor, might provide Mortgagor with defenses against Mortgagor's liability under this Mortgage. Among those rights are certain rights of subrogation, reimbursement, indemnification and contribution, and rights provided in sections 2787 to 2855, inclusive, of the California Civil Code ("CC"). Mortgagor waives all of Mortgagor's rights of subrogation, reimbursement, indemnification, and contribution, and any other rights and defenses that are or may become available to Mortgagor by reason of any or all of CC §§ 2787 to 2855, inclusive, including, without limitation, Mortgagor's rights:

- (a) To require Mortgagee to notify Mortgagor of any default by Borrower, provide Mortgagor with notice of any sale or other disposition of security for the Loan Documents, disclose information with respect to the Loan Documents, Borrower, or any other Mortgagor, co-signer or endorser, or with respect to any collateral;
- (b) That Mortgagor's obligation under this Mortgage must be commensurate with that of Borrower;
- (c) To be discharged based upon the absence of any liability of Borrower, at any time, by virtue of operation of law, or otherwise, or due to any other disability or defense of Borrower or any other guarantor, endorser or co-signer;
- (d) To be discharged if any of the terms, conditions or provisions of the Loan Documents are altered in any respect;

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- (e) To be discharged upon acceptance by Mortgagee of anything in partial satisfaction of the Loan Documents, and/or if Mortgagee designates the portion of the Loan Documents to be satisfied;
- (f) To be discharged upon any modification of the Loan Documents or the release by Mortgagee of Borrower or any other guarantor, endorser or co-signer;
- (g) To require Mortgagee to proceed against Borrower, or any other guarantor, endorser, co-signer, or other person, or to pursue or refrain from pursuing any other remedy in Mortgagee's power;
- (h) To receive the benefit of or participate in any and all security for repayment and/or performance of the Loan Documents;
- (i) To have any security for the Loan Documents first applied to satisfy or discharge the Loan Documents;
- (j) That any arbitration award rendered against Borrower not constitute an award against Mortgagor;
- (k) To be discharged based upon any failure by Mortgagee to perfect or continue perfection of any lien, use due diligence to collect all or any portion of the Loan Documents, or if recovery against Borrower becomes barred by any statute of limitations, or if Borrower is not liable for any deficiency after Mortgagee realizes upon any collateral; and
- (l) To be discharged due to the release or discharge of any collateral for all or any portion of the Loan Documents or guaranty, or relating to the validity, value or enforceability of any collateral.

Mortgagor further waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Mortgage, notices of the existence, creation or incurring of any new or additional obligations, and all other notices and demands of any kind or nature whatsoever except as expressly set forth herein, including, without limiting the generality of the foregoing, notice of the existence, creation or incurring of new or additional obligations or of any action or non-action on the part of Borrower, Mortgagee, any endorser, any creditor of Borrower or Mortgagor under this or any other instrument, or any other person whatsoever, in connection with any obligation or evidence of indebtedness of Borrower held by Mortgagee as collateral or in connection with any such indebtedness.

Section 10.3 Mortgagor, by execution hereof, represents and warrants to Mortgagee that the relationship between Mortgagor and Borrower is such that Mortgagor has access to all relevant facts and information concerning the indebtedness under the Loan Documents and Borrower, and each of them, and that Mortgagee can rely upon Mortgagor having such access. Mortgagor waives and agrees not to assert any duty on

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the part of Mortgagee to disclose to Mortgagor any facts that it may now or hereafter know about Borrower, regardless of whether Mortgagee has reason to believe that any such facts materially increase the risk beyond that which Mortgagor intends to assume or has reason to believe that such facts are unknown to Mortgagor or has a reasonable opportunity to communicate such facts to Mortgagor. Mortgagor is fully responsible for being and keeping informed of the financial condition of Borrower and all circumstances bearing on the risk of non-payment of any indebtedness of Borrower to Mortgagee.

Section 10.4 Mortgagor acknowledges that all or a portion of the present or future obligations of Borrower to Mortgagee is or may be secured by deeds of trust or mortgages covering certain interest in real property including, but not limited to, this Mortgage. Mortgagor understands that the exercise by Mortgagee of certain rights and remedies contained in deed(s) of trust or other Loan Documents executed by or to be executed by Borrower or any other person or Mortgagee's purchase or other acquisition of any real property or other collateral may impair, diminish, affect or eliminate Mortgagee's rights against Borrower or any guarantor, endorser or co-signor including, without limitation, the right to seek and obtain a money judgment against Borrower and, therefore, Mortgagor's right of subrogation to seek a money judgment against Borrower or any such other party. Mortgagor further acknowledges that if Mortgagee fails to bring an action against Borrower, or any of them, to obtain a deficiency judgment within the time required by California Code of Civil Procedure ("CCP") §580a or §726, Mortgagee may be barred from seeking a money judgment against Borrower, or any of them.

Section 10.5 (a) Mortgagor acknowledges that (i) if Mortgagee forecloses on real property collateral by non-judicial sale, Borrower will and any guarantor, endorser or co-signor may, by virtue of CCP §580d, no longer be liable for a money judgment on the obligation secured by any deed(s) of trust, mortgage(s) or other documentation executed by Borrower or any other person, (ii) if Mortgagee takes any action against Borrower or against Borrower's property, involuntarily other than by non-judicial foreclosure or by judicial foreclosure pursuant to CCP §726, including setoff or other self-help remedies, Mortgagee may be prohibited, in certain circumstances, from pursuing Borrower or any other obligated party, for any money judgment upon the obligations under the Loan Documents, and may, in certain circumstances, be barred from pursuing recovery from any real property or other collateral for said obligations.

(b) Mortgagor further acknowledges that the exercise of any such rights and remedies by Mortgagee, or any other action by Mortgagee as hereinabove described, may also affect or eliminate Mortgagor's right of subrogation to seek a money judgment or Mortgagor's right to enforce other rights against Borrower or such other parties. Mortgagor may, therefore, succeed to a partially or totally non-reimbursable liability, and Mortgagor understands and acknowledges that Mortgagor's subrogation rights to seek a judgment or to pursue recovery against such parties, or to pursue collateral security for said obligations, or any of them, may, therefore, be substantially impaired or destroyed. Nevertheless, Mortgagor hereby authorizes and empowers Mortgagee, at its sole option, without notice or demand and without affecting the liability of Mortgagor under this Mortgage, to exercise, in its sole discretion, any rights and

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remedies, or any combination thereof, which may be available to it, including the right to foreclose by non-judicial sale, any or all of the deed(s) of trust or mortgage(s) or any other right or remedy Mortgagee has, by law or in equity.

(c) Mortgagor shall have no liability for any deficiency after a judicial or non-judicial foreclosure sale of real property collateral, or deed or other transfer in lieu of foreclosure, or any liability under the Loan Documents except to the extent of its interest in the real property collateral encumbered by the Mortgage.

Section 10.6 To the maximum extent permitted by law, Mortgagor further waives any and all rights to receive any notice of judicial or non-judicial sale or foreclosure of any real property or other collateral which may be the subject of any deed(s) of trust, mortgage(s) or other documents securing the obligations under the Loan Documents, and Mortgagor's failure to receive any such notice shall not impair or affect Mortgagor's liability. Notwithstanding any foreclosure of such real property or other collateral securing the obligations under the Loan Documents, or any other guaranty, whether by the exercise of the power of sale contained therein, by any action for judicial foreclosure, or by any acceptance of a deed or other transfer in lieu of foreclosure, whether or not such method of foreclosure or transfer in lieu of foreclosure was for a consideration equal to or greater than the fair market value of the security property, Mortgagor shall remain bound under this Mortgage for the obligations of Borrower to Mortgagee under the Loan Documents (to the extent of the security interest in the Property granted by Mortgagor to Mortgagee in this Mortgage.)

Section 10.7 Mortgagor also waives all rights and defenses that Mortgagor may have because the Borrower's debt is or may be secured by real property. This means, among other things: (1) Mortgagee may collect from Mortgagor without first foreclosing on any real property or other collateral pledged by Borrower; (2) If Mortgagee forecloses on any real property collateral pledged by the Borrower: (A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, (B) Mortgagee may collect from Mortgagor even if Mortgagee, by foreclosing on the real property collateral, has destroyed any right Mortgagor may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Mortgagor may have because Borrower's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses directly or indirectly based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

HAVING ACKNOWLEDGED THE FOREGOING RIGHTS AND DEFENSES WHICH MORTGAGOR MAY HAVE AND THE CONSEQUENCES OF WAIVING THE FOREGOING RIGHTS AND DEFENSES, AND GIVING THE FOREGOING AUTHORIZATIONS, MORTGAGOR HEREBY FURTHER WAIVES ALL RIGHTS AND DEFENSES ARISING OUT OF AN ELECTION OF REMEDIES BY MORTGAGEE, EVEN THOUGH THAT ELECTION OF REMEDIES, SUCH AS A NON-JUDICIAL FORECLOSURE WITH RESPECT TO SECURITY FOR A GUARANTEED OBLIGATION, HAS DESTROYED MORTGAGOR'S RIGHTS OF

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SUBROGATION AND REIMBURSEMENT AGAINST THE PRINCIPAL BY THE OPERATION OF SECTION 580d OF THE CALIFORNIA CODE OF CIVIL PROCEDURE OR OTHERWISE.

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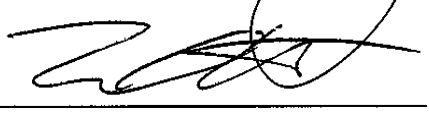
Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, INDIGO REALTY, LLC, a Delaware limited liability company has executed this Mortgage as of the day and year first above written and by authority duly given.

INDIGO REALTY, LLC,
a Delaware limited liability company

By: 
Name: Brent E. Carey
Its: Officer

By: 
Name: Michael E. Kite
Its: Officer

Property of Cook County Clerk's Office

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CA)
County of Los Angeles)

On 12/11/17, before me, Michelle Kernan, a Notary Public, personally appeared

Brent Carey, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Michelle Kernan

Seal of the County Clerk's Office

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ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Los Angeles }

On 10/31/17 before me, Michelle Kernan, Notary Public
(Here insert name and title of the officer)

personally appeared Brent Carey
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Michelle Kernan
Notary Public Signature (Notary Public Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT
mortgage document - Rosewell Rd.
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 21 Document Date 10/31/17

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statute regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

(Title)

- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

UNOFFICIAL COPY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CA)
County of Los Angeles)

On 10/31/17, before me, Michelle Kernan, a Notary Public personally appeared

Michael Kite, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Michelle Kernan

Proprietor of County Clerk's Office

UNOFFICIAL COPY

ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

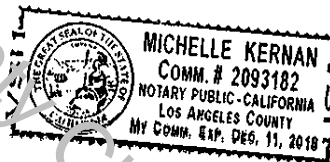
County of Los Angeles }

On 10/31/17 before me, Michelle Kernan, Notary Public
(Here insert name and title of the officer)

personally appeared Michael Kite
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Michelle Kernan
Notary Public Signature (Notary Public Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT
mortgage document - Russell Rd
(Title or description of attached document)

(Title or description of attached document continued)
Number of Pages 24 Document Date 10/30/17

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statute regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CAPACITY CLAIMED BY THE SIGNER
 Individual (s)
 Corporate Officer

(Title)
 Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

UNOFFICIAL COPY

Exhibit A

LEGAL DESCRIPTION

LOTS 174, 175, 176, 177, 178, 179, 180, 181, 182 AND 183 IN WILLIAM ZELOSKY'S TERMINAL ADDITION TO WESTCHESTER SUBDIVISION IN THE SOUTH 1/2 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Street Address: 9902-20 West Roosevelt Road, Westchester, Illinois

Property of Cook County Clerk's Office