

Illinois Anti-Predatory
Lending Database
Program

Doc#: 1736157098 Fee: \$114.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/27/2017 11:10 AM Pg: 1 of 34

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN:** 17-09-451-036-0000

Address:

Street: 108 NORTH STATE STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60602

Lender: HUSKY FINCO, LLC

Borrower: NORTH STATE STREET AIR RIGHTS (CHICAGO) OWNER, LLC

Loan / Mortgage Amount: \$225,000,000.00

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: 49D12D36-CBB9-4733-A9A3-AA4EF546942B

Execution date: 12/22/2017

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**PREPARED BY AND UPON
RECORDATION RETURN TO:**

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attention: Julian M. Wise, Esq.
Ref. No.: 052688.0146

NORTH STATE STREET AIR RIGHTS (CHICAGO) OWNER, LLC,
as mortgagor
("**Borrower**")

to

HUSKY FINCO, LLC, as Mortgagee
("**Lender**")

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

Dated: As of December 22, 2017

Address: 108 N State Street
(commonly known as 25 W Randolph St)

City: Chicago

County: Cook

State: Illinois

This document serves as a Fixture Filing under the Illinois Uniform Commercial Code, Chapter
810 ILCS 5/9-502(c), et seq.
Borrower's Organizational Identification Number is 5214438

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as the same may be amended, restated, replaced, supplemented or otherwise modified, being hereinafter referred to as this "**Security Instrument**") is made as of December 22, 2017, by **NORTH STATE STREET AIR RIGHTS (CHICAGO) OWNER, LLC**, a Delaware limited liability company, having its principal place of business at c/o The CIM Group, 4700 Wilshire Boulevard, Los Angeles, California 90010, as mortgagor ("**Borrower**"), in favor of **HUSKY FINCO, LLC**, a Delaware limited liability company, having an address at c/o Blackstone Mortgage Trust Inc., 345 Park Avenue, New York, New York 10154, as mortgagee, (together with its successors and assigns, collectively, "**Lender**").

RECITALS:

A. This Security Instrument is given to secure a loan (the "**Loan**") in the maximum principal sum of TWO HUNDRED TWENTY-FIVE MILLION AND NO/100 DOLLARS (\$225,000,000.00) made pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower and Lender (as the same may hereafter be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by that certain Promissory Note, dated as of the date hereof, made by Borrower in favor of Lender in the maximum original principal amount of TWO HUNDRED TWENTY-FIVE MILLION AND NO/100 DOLLARS (\$225,000,000.00) (as the same may be amended, restated, replaced, supplemented, extended or otherwise modified from time to time, collectively, the "**Note**"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. Borrower desires to secure the payment of the Debt and the performance of the Other Obligations (hereinafter defined).

C. This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations there under and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents, dated as of the date hereof, made by Borrower in favor of Lender delivered in connection with this Security Instrument (as the same may hereafter be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**"), including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, the Assignment of Leases and all other documents executed and delivered by Borrower and/or any Guarantor evidencing or securing or otherwise setting out the conditions, covenants, representations and/or remedies in favor of Lender in connection with the funding of the Debt (including all additional mortgages, deeds of trust, deeds to secure debt and assignments of leases and rents) and executed and delivered by Borrower or Guarantor in

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connection therewith, as the same may, from time to time, be modified, amended or supplemented, are hereinafter referred to collectively as the "**Loan Documents**").

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

ARTICLE 1

GRANTS OF SECURITY

Section 1.1 Property Mortgaged. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender, with power of sale for the benefit and security of Lender, all of the real, personal, tangible and intangible property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**") including, without limitation, the following:

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

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

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

(d) **Intentionally omitted**.

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

(f) **Equipment**. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, heating, ventilation or

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air conditioning equipment, garbage equipment and apparatus, incinerators, boilers, furnaces, motors, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to the property manager or tenants under leases except to the extent that Borrower shall have any right or interest therein;

(g) **Fixtures.** All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases, except to the extent that Borrower shall have any right or interest therein;

(h) **Personal Property.** All of Borrower's right, title and interest in, to and under all furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Borrower, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above. Notwithstanding the foregoing, "Personal Property" shall not include any of the foregoing property which any tenant, or any Person claiming by, through, or under any tenant, owns or are entitled to remove pursuant to a Lease except to the extent that Borrower shall have any right or interest therein, and then only to the extent of such interest;

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(i) Leases and Rents. All leases (including, without limitation, ground leases, subleases or subsubleases), lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "**Leases**"), whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, rent equivalents, tenant termination and contraction fees, moneys payable as damages or in lieu of rent or rent equivalents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, deposits (including, without limitation, security, utility and other deposits) accounts and receipts from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt and the performance of the Other Obligations;

(j) Condemnation Awards. Subject to the terms of Article VI of the Loan Agreement, all Awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to all or any portion of the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property including, without limitation, any Award or Awards, or settlements or payments, hereafter made resulting from (i) condemnation proceedings or the taking of all or any portion of the Improvements, the Equipment, the Fixtures, the Leases or the Personal Property, or any part thereof, under the power of eminent domain; or (ii) the alteration of grade or the location or the discontinuance of any street adjoining the Property or any portion thereof; and Borrower hereby agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm such assignment to Lender of any such award, damage, payment or other compensation;

(k) Insurance Proceeds. Subject to the terms of Article VI of the Loan Agreement, all Insurance Proceeds in respect of the Property under any Policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any Policies, judgments, or settlements made in lieu thereof, in connection with a Casualty to the Property in accordance with the terms of the Loan Agreement;

(l) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Taxes or Other Charges charged against the Property, including, without limitation, as a result of tax certiorari or any applications or proceedings for reduction;

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(m) Conversion. All proceeds (to the extent actually received by or payable to Borrower) of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, Insurance Proceeds and Awards, into cash or liquidation claims;

(n) Rights. The right, in the name and on behalf of Borrower, (i) while an Event of Default (as defined in the Loan Agreement) exists and remains uncured to appear in and defend any action or proceeding brought with respect to the Property and (ii) to commence any action or proceeding to protect the interest of Lender in the Property;

(o) Agreements. All of Borrower's right, title and interest in and to all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, during the continuance of an Event of Default, to receive and collect any sums payable to Borrower thereunder;

(p) Intellectual Property. All Borrower's right, title and interest in any intellectual property, including without limitation, all tradenames, trademarks, servicemarks, logos, copyrights, websites, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(q) Accounts. Subject to the terms of the Loan Agreement, all reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, all accounts now or hereafter established or maintained pursuant to the Loan Agreement, Clearing Account Agreement, Cash Management Agreement, Imprest Account Agreement or any other Loan Documents, any other account maintained by Borrower, or any account in which moneys, proceeds, receivables or other items of deposit are held for the benefit of Borrower; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(r) Interest Rate Cap Agreement. The Interest Rate Cap Agreement and any replacements, amendments or supplements thereto, including, but not limited to, all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing, and all claims of Borrower for breach by the counterparty thereunder of any covenant, agreement, representation or warranty contained in the Interest Rate Cap Agreement; and all products and proceeds of any of the foregoing; and

(s) Other Rights. All of Borrower's right, title and interest in other or greater rights and interests of every nature in the Real Property (as hereinafter defined) and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower (including, without limitation, any and all other rights of Borrower in and to the items set forth in Subsections (a) through (r) above).

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

Section 1.2 Assignment of Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement, Assignment of Leases, the Cash Management Agreement and Section 7.1(h) of this Security Instrument, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents and, Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property including all accounts established by Lender pursuant to the Loan Agreement, the Clearing Account Agreement or Cash Management Agreement. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "**Collateral**"). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all actual, out-of-pocket expenses, including reasonable legal expenses and attorneys' fees and costs, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. Upon occurrence and during the

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continuance of an Event of Default, the proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law or the Loan Agreement, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Borrower's (debtor's) principal place of business is as set forth on the first page hereof and the address of Lender (secured party) is as set forth on the first page hereof.

Section 1.4 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement (naming Borrower as the Debtor with an address as set forth on the first page hereof and an organizational identification number of 6593542, and Lender as the Secured Party with an address as set forth on the first page hereof) filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

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

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever;

WITH POWER OF SALE, to secure Borrower's payment to Lender of the Debt and performance of the Other Obligations at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly (a) pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, (b) perform the Other Obligations as set forth in the Loan Agreement, this Security Instrument and the other Loan Documents, and (c) abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release. Lender shall execute and deliver for recording, at Borrower's sole cost and expense, any documentation reasonably requested by Borrower to evidence such termination (including, without limitation, a recordable mortgage satisfaction or any other documentation reasonably required by a title company) or alternatively assign the Note and Security Instrument to a new lender at Borrower's request in accordance with the terms of the Loan Agreement in the event of a permitted refinancing that fully satisfies all Debt.

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ARTICLE 2

DEBT AND OBLIGATIONS SECURED

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

Section 2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article 1 hereof are also given for the purpose of securing the Other Obligations.

ARTICLE 3

BORROWER COVENANTS

Borrower covenants and agrees that:

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

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

Section 3.3 Maintenance of Property. Borrower shall cause the Property to be maintained in a good and safe condition and repair as more fully set forth in the Loan Agreement. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender or as otherwise permitted pursuant to the Loan Agreement. To the extent required by, and subject to the terms of the Loan Agreement, Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.4 Waste. Borrower shall not commit or suffer any physical waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Subject to the terms of the Loan Agreement, Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

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Section 3.5 Payment for Labor and Materials.

(a) Subject to the Loan Agreement and the provisions of Section 3.5(b) below, Borrower (i) will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("**Labor and Material Costs**") incurred by or on behalf of Borrower in connection with the Property, unless Borrower is contesting the same in good faith pursuant to the terms of this Security Instrument, the Loan Agreement and the other Loan Documents, (ii) never permit to exist beyond the due date thereof in respect of the Property, or any part thereof, any Lien or security interest for Labor and Material Costs, even though inferior to the Liens and security interests created hereby and by the other Loan Documents unless Borrower is contesting the same in good faith pursuant to the terms of this Security Instrument, the Loan Agreement and the other Loan Documents, and (iii) never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests created hereby and by the other Loan Documents except for the Permitted Encumbrances.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Borrower and from the Property or Borrower shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) Borrower either shall have bonded over the liens securing such Labor and Material Costs or shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

Section 3.6 Performance of Other Agreements. Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 3.7 Change of Name, Identity or Structure. Except as expressly permitted under the Loan Agreement, including, without limitation, in connection with a Permitted Transfer (as defined in the Loan Agreement), Borrower shall not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, limited liability company, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender if such consent is required pursuant to the terms of the Loan Agreement. Borrower shall execute and

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deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interests granted herein. At the request of Lender from time to time, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower is operating or intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

ARTICLE 4

OBLIGATIONS AND RELIANCES

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

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

Section 4.3 No Lender Obligations.

(a) Notwithstanding the provisions of Subsections 1.1(i) and (o) or Section 1.2 hereof, Lender is not undertaking the performance of (i) any obligations under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

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

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

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representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

ARTICLE 5

FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, etc. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance required to be delivered herein or pursuant to the terms of the Loan Documents to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and to fully protect and perfect the Lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all recording taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, etc. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower, on demand, will execute and deliver, and in the event it shall fail to so execute (if applicable) and deliver, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of (i) exercising during the continuance of an Event of Default, and (ii) perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section 5.2.

Section 5.3 Documentary Stamp Laws.

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(a) Intentionally Omitted.

(b) Intentionally Omitted.

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

Section 5.4 Severing of Mortgage. This Security Instrument and the Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be severed into two or more notes and two or more security instruments as set forth in, and subject to the terms and conditions of Article 9 of the Loan Agreement.

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

ARTICLE 6

DUE ON SALE/TRANSFER

Section 6.1 Lender Reliance. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for the repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

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

ARTICLE 7

RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand,

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except as provided in the Loan Agreement, to the fullest extent permitted by law, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, to the fullest extent permitted by applicable law, without impairing or otherwise affecting the other rights and remedies of Lender subject to, in all cases, the terms of the Loan Agreement:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure, in accordance with Illinois law, of this Security Instrument under any applicable provision of law, in which case the Property, or any interest therein, may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing Lien and security interest of this Security Instrument for the balance of the Debt and the Other Obligations not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; and, without limiting the foregoing:
 - (i) in connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on, or within the Real Property, Lender shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;
 - (ii) Lender shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Lender so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Lender;
 - (iii) should Lender elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that Lender has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Lender shall give such notice of the occurrence of an

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Event of Default, if any, and its election to sell such Property as may then be required by law. Thereafter, upon the giving of such notice of sale and the expiration of any required time period as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Borrower or Lender at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

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

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

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

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof;

(h) provided that Lender has provided Borrower prior written notice, the license granted to Borrower under Section 1.2 hereof shall be suspended and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys, and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise, and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat, (ii) complete any construction on the Property in such manner and form as Lender deems

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advisable, (iii) make alterations, additions, renewals, replacements and improvements to or on the Property, (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict Tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof, (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower, (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise, and (vii) apply the receipts from the Property to the payment of the Debt and the performance of the Other Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all actual out-of-pocket expenses (including reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and/or the Personal Property; and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment and/or the Personal Property and make them available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower;

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

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;

and/or

(v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including, without limitation, the Spread Maintenance Fee, if applicable, and advances made by Lender pursuant to the terms of this Security Instrument;

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(k) pursue such other remedies as Lender may have under applicable law; or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as stated in the Loan Agreement.

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

Section 7.2 Application of Proceeds. Subject to the terms of the Loan Agreement, upon the occurrence and during the continuance of an Event of Default, the purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper to the extent consistent with applicable law.

Section 7.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Default or Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower (except as expressly required hereunder or under the Loan Agreement) and without releasing Borrower from any Other Obligations hereunder, make any payment or do any act required of Borrower hereunder or in the other Loan Documents with respect to any Other Obligations which payment or action on the part of Lender shall be in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or to collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and expenses actually incurred, to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such out-of-pocket costs and expenses incurred by Lender in remedying an Event of Default or in appearing in, defending, or bringing any such action or proceeding, as hereinabove provided, shall bear interest at the Default Rate, for the period beginning on the first day after notice from Lender that such cost or expense was incurred and continuing until the date of payment to Lender. All such costs and expenses incurred by Lender, together with interest thereon calculated at the Default Rate, shall be deemed to constitute a portion of the Debt and to be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 7.4 Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole and absolute discretion, decides should be brought to protect its interest in the Property.

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Section 7.5 Recovery of Sums Required To Be Paid. Lender shall have the right, from time to time, to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for any Event of Default by Borrower existing at the time such earlier action was commenced.

Section 7.6 Other Rights, etc.

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

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

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

Section 7.7 Right to Release Any Portion of the Property. Upon the occurrence and during the continuance of an Event of Default, Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and Lender may accept by assignment, pledge or otherwise any other

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property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a Lien and security interest in the remaining portion of the Property.

Section 7.8 Recourse and Choice of Remedies. Notwithstanding any other provision of this Security Instrument or the Loan Agreement, including, without limitation, Section 9.4 of the Loan Agreement, Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Borrower without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure, exercise of a power of sale or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property or exercises its power of sale pursuant to this Security Instrument, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower. The provisions of Section 7.1 hereof are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and Borrower with respect to the Loan is fully and personally liable for the obligations set forth in said Section 7.1 hereof. The liability of Borrower with respect to the Loan pursuant to Section 7.1 hereof is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising its power of sale pursuant to this Security Instrument or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Section 7.1 hereof whether or not an action is brought against any other Person and whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article 7 or Article 8 herein.

Section 7.9 Right of Entry. Upon reasonable notice to Borrower, Lender and its agents shall have the right (which may be given verbally), subject to the rights of Tenants, to enter and inspect the Property at all reasonable times.

Section 7.10 Lender Not Obligated; Cumulative Rights. Nothing in this instrument shall be construed as obligating Lender to take any action or incur any liability with respect to the Property, and all options given to Lender are for its benefit and shall and may be exercised in such order and in such combination as Lender in its sole discretion may from time to time decide. Each remedy is distinct and cumulative to all other rights and remedies under this Instrument and the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently or successively, in any order whatsoever.

ARTICLE 8

MORTGAGE TAX INDEMNIFICATION

Section 8.1 Mortgage and/or Intangible Tax. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from

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and against any and all Losses imposed upon, incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

ARTICLE 9

WAIVERS

Section 9.1 Waiver of Counterclaim. To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 9.2 Marshalling and Other Matters. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument.

Section 9.3 Waiver of Notice. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT BE ENTITLED TO ANY NOTICES OF ANY NATURE WHATSOEVER FROM LENDER EXCEPT WITH RESPECT TO MATTERS FOR WHICH THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS SPECIFICALLY AND EXPRESSLY PROVIDE FOR THE GIVING OF NOTICE BY LENDER TO BORROWER AND EXCEPT WITH RESPECT TO MATTERS FOR WHICH LENDER IS REQUIRED BY APPLICABLE LAW TO GIVE NOTICE, AND BORROWER HEREBY EXPRESSLY WAIVES THE RIGHT TO RECEIVE ANY NOTICE FROM LENDER WITH RESPECT TO ANY MATTER FOR WHICH THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS DO NOT SPECIFICALLY AND EXPRESSLY PROVIDE FOR THE GIVING OF NOTICE BY LENDER TO BORROWER.

Section 9.4 Waiver of Statute of Limitations. To the extent permitted by applicable law, Borrower hereby expressly waives and releases its right to plead any statute of limitations as a defense to payment of the Debt or performance of the Other Obligations.

Section 9.5 Waiver of Jury Trial. BORROWER AND LENDER (BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT) HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND BORROWER AND LENDER (BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT) FOREVER WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS

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SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND ARE INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

ARTICLE 10

EXCULPATION

The provisions of Section 3.1 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

ARTICLE 11

NOTICES

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

ARTICLE 12

APPLICABLE LAW

Section 12.1 Governing Law; Jurisdiction; Service of Process.

(a) WITH RESPECT TO MATTERS RELATING TO THE ATTACHMENT, CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS CREATED PURSUANT TO THIS SECURITY INSTRUMENT, THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE LAND IS LOCATED (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF), IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF) SHALL GOVERN ALL MATTERS RELATING TO THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

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(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST BORROWER OR LENDER ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT OR THE ATTACHMENT, CREATION, PERFECTION, OR ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED UNDER THIS SECURITY INSTRUMENT SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT LOCATED IN NEW YORK, INCLUDING WITHOUT LIMITATION, ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF NEW YORK AND EACH OF BORROWER AND LENDER (BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT) WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF BORROWER AND LENDER (BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT) HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY AGREE THAT SERVICE OF PROCESS UPON BORROWER AT THE ADDRESS FOR BORROWER SET FORTH HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF BORROWER SET FORTH HEREIN, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE AN AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH AN AUTHORIZED AGENT IF BORROWER CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY JURISDICTION.

Section 12.2 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE 13

DEFINITIONS

All capitalized terms used but not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in the singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest

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therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable out-of-pocket attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns and pronouns shall include the plural and vice versa.

ARTICLE 14

MISCELLANEOUS PROVISIONS

Section 14.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.2 Successors and Assigns. This Security Instrument shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and permitted assigns, as set forth in the Loan Agreement. Lender shall have the right to assign or transfer its rights under this Security Instrument in connection with any assignment of the Loan and the Loan Documents. Any assignee or transferee of Lender in accordance with the Loan Agreement shall be entitled to all the benefits afforded to Lender under this Security Instrument. Borrower shall not have the right to assign or transfer its rights or obligations under this Security Instrument without the prior written consent of Lender, or as otherwise expressly provided in the Loan Agreement, and any attempted assignment without such consent shall be null and void.

Section 14.3 Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 14.4 Headings, etc. The headings and captions of the various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 14.5 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used and the extent permitted by applicable law, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect

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in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the payment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 14.6 Entire Agreement. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 14.7 Limitation on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger, except to the extent caused by the gross negligence or willful misconduct of Lender. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

Section 14.8 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Security Instrument and the terms and conditions of the Loan Agreement, the terms and conditions of the Loan Agreement shall control and be binding.

Section 14.9 Severability. In case any one or more of the provisions of this Security Instrument, the Note, the Assignment of Leases, the Loan Agreement, any of the other Loan Documents, or any other agreement now or hereafter executed in connection with any one or more of the foregoing is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof. Each of the provisions of every such agreement, document or instrument shall be enforceable by Lender to the fullest extent now or hereafter permitted by law.

Section 14.10 No Partnership or Joint Venture. No provision of this Security Instrument or any of the other Loan Documents shall constitute a partnership, joint venture, tenancy in common or joint tenancy between Borrower and Lender, it being intended that the only relationship created by this Security Instrument, the Loan Agreement, the Note and the other Loan Documents shall be that of debtor and creditor.

Section 14.11 No Merger. So long as the Obligations owed to Lender secured hereby remain unpaid and undischarged and unless Lender otherwise consents in writing, the fee, leasehold, subleasehold and sub-subleasehold estates in and to the Property will not merge but

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will always remain separate and distinct, notwithstanding the union of such estates (without implying Borrower's consent to such union) either in Borrower, Lender, any Tenant or any third party by purchase or otherwise, in the event this Security Instrument is originally placed on a leasehold estate and Borrower later obtains fee title to the Property, such fee title will be subject and subordinate to this Security Instrument.

ARTICLE 15

STATE-SPECIFIC PROVISIONS

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

Section 15.2 Business Loan Recital/Statutory Exemption/Usury

(a) Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(1)), (B) the Debt secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4, (C) the Debt secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4, and (D) the secured Debt is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et seq.* and has been entered into solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said section.

(b) Without limiting the generality of anything contained herein, Borrower acknowledges and agrees that the transaction of which this Security Instrument is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 (1992)) or residential real estate (as defined in 735 5/15-1219 (1992)).

Section 15.3 Waiver of Redemption and Reinstatement Borrower further agrees, to the full extent permitted by applicable law, that during the continuance of an Event of Default, neither Borrower nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisal, valuation, stay or extension laws now or hereafter in force, or take any other action that would prevent or hinder the enforcement or foreclosure of this Security Instrument or the absolute sale of the Property, or the final and absolute delivery of possession thereof, immediately after such foreclosure sale, of the purchaser thereat. Borrower, for itself and all who may, at any time, claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such applicable law, and any and all right to have the assets comprising the Property marshaled upon any foreclosure of the lien hereto, and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Property in part or as an entirety. On behalf of Borrower, and each and every person acquiring any interest in, or title to, the Property subsequent to the date of this Security Instrument, and on behalf of all other persons, to the maximum extent permitted by any applicable law, Borrower hereby waives any and all rights: (x) of redemption from any foreclosure, or other disposition of any kind or

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nature, of the Property, or any part thereof, or interest therein, under or pursuant to rights herein granted to Lender, and (y) to reinstatement of the Debt hereby secured, including, without limitation, any right to reverse any acceleration of such Debt pursuant to 735 ILCS 5/15-1602. All waivers by Borrower in this Security Instrument have been made voluntarily, intelligently and knowingly by Borrower, after Borrower has been afforded an opportunity to be informed by counsel of Borrower's choice as to possible alternative rights. Borrower's execution of this Security Instrument shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

Section 15.4 Receiver. If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled, as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Debt, or the insolvency of any party bound for its payment, to the appointment of a receiver to take possession of, and to operate, the Property, and to collect and apply the Rents and other benefits thereof. The receiver shall have all rights and powers to the fullest extent permitted under applicable law. Borrower shall pay to Lender, upon demand, all of Lender's reasonable out-of-pocket costs and expenses, including, without limitation, receiver's fees and expenses and reasonable attorneys' fees and expenses, incurred pursuant to this Section, plus interest thereon at the Default Rate, and all such amounts shall be additional Debt secured hereby.

Section 15.5 Illinois Collateral Protection Act. Unless Borrower provides Lender with evidence of the insurance coverage required by the Loan Agreement or any other of the Loan Documents, if any, Lender may purchase such insurance at Borrower's expense to protect Lender's interests in the Property. This insurance may, but need not, protect Borrower's interest. The coverage that Lender purchases may not pay any claim that Borrower may make or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by this Security Instrument. If Lender purchases insurance for the Property, Borrower will be responsible for the costs of such insurance, including interest and any other charges that may be imposed in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Security Instrument or any other Loan Document, the cost of such insurance shall be added to the Debt secured hereby. The cost of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

Section 15.6 Purchase by Lender. Upon any foreclosure sale, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of any Obligation secured hereby as a credit to the purchase price.

Section 15.7 Compliance with Illinois Mortgage Foreclosure Law. In the event that any provision in this Security Instrument shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. Furthermore, if any provision of this Security Instrument grants to Lender any rights or remedies, upon default of Borrower, that are more limited than the rights that would otherwise be vested in Lender under

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the Act, in the absence of said provision, Lender shall be vested with the rights granted in the Act, to the full extent permitted by applicable law. Without limiting the generality of the foregoing, all expenses incurred by Lender, to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Security Instrument, shall be added to the Debt and Obligations secured by this Security Instrument or by the judgment of foreclosure.

Section 15.8 Future Advances. At all times, regardless of whether any loan proceeds have been disbursed, this Security Instrument secures as part of the Debt and Obligations the payment of all loan commissions, service charges, liquidated damages, reasonable attorneys' fees, expenses and advances due to or incurred by Lender in connection with the Obligations, all in accordance with the Loan Agreement, this Security Instrument, and the other Loan Documents, provided, however, that in no event shall the total amount of the Debt, including loan proceeds disbursed plus any additional charges, exceed two hundred percent (200%) of the Loan Amount.

Section 15.9 Protective Advances. Without limitation on anything contained in this Security Instrument, all advances, disbursements and expenditures made by the Lender before and during a foreclosure, and before and after a judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes in addition to those otherwise authorized by this Security Instrument or by the Act, shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "**Protective Advances**").

(a) all advances by the Lender in accordance with the terms of this Security Instrument to (A) preserve or maintain, repair, restore or rebuild any improvements upon the Property, (B) preserve the lien of this Security Instrument or the priority thereof, or (C) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 5-1302 of the Act,

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

(c) advances by the Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any prior liens,

(d) attorneys' fees and other expenses incurred (A) in connection with the foreclosure of this Security Instrument as referred to in Section 15-1504(d)(2) and 15-1510 of the Act, (B) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Security Instrument or arising from the interest of the Lender hereunder, or (C) in the preparation for the commencement or defense of any such foreclosure or other action,

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(e) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act,

(f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act, and

(g) expenses incurred and expenditures made by the Lender for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof, (B) if any interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease, (C) premiums for casualty and liability insurance paid by the Lender whether or not the Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Property as imposed by subsection (c)(1) of Section 15-1704 of the Act, (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards, (E) payments required or deemed by the Lender to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property, (F) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member if in any way affecting the Property, (G) costs incurred by the Lender for demolition, preparation for and completion of construction, and (H) pursuant to any lease or other agreement, for occupancy of the Property.

All Protective Advances shall be so much additional Debt secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the applicable rate set forth in the Loan Agreement. This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Debt secured by this Security Instrument at any time, (B) the amount of the Debt found due and owing to the Lender in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Debt becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the Court may reserve jurisdiction for such purpose), (C) if right of redemption is deemed not to be waived by this Security Instrument, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5-1603 of the Act, (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act, (E) application of income in the hands of any receiver or the mortgagee in possession, and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of sections 15-1508 and Section 15-1511 of the Act.

Section 15.10 Open-End Mortgage Maximum Principal Amount. This Security Instrument is an open-end mortgage, and shall secure the payment of any amounts

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advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. The maximum amount of unpaid principal of the Debt and Obligations arising under or in connection with this Security Instrument (exclusive of (x) interest thereon, (y) any fees, premiums or reimbursements for costs or expenses payable in accordance with the Loan Documents, and (z) amount of any Protective Advances made in accordance herewith and the Loan Agreement), which may be outstanding at any time and secured hereby shall be the Loan Amount. This Security Instrument also secures any and all Debt and Obligations arising under or in connection with this Security Instrument, which future Debt and Obligations shall have the same priority as if all such Debt and Obligations were made on the date of execution hereof. Nothing in this Section or in any other provision of this Security Instrument shall be deemed an obligation on the part of Lender to make any future advances of any sort. At all times, regardless of whether any Loan proceeds have been disbursed, this Security Instrument shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Lender in connection with the Debt and Obligations to be secured hereby and which are to be reimbursed by Borrower under the terms of this Security Instrument and the Loan Agreement, provided, however, that in no event shall the total amount of Loan proceeds disbursed plus such additional amounts plus all the portions of the Debt and the other Obligations arising under or in connection with this Security Instrument exceed \$450,000,000.00 (two hundred percent (200%) of the Loan Amount).

Section 15.11 Lender's Right to Possession. Upon and during the continuance of an Event of Default, and subject to the requirements of 735 ILCS 5/1701(b)(2), Lender shall be entitled to be placed in possession of the Property and to exercise the rights and powers of a mortgagee in possession under the Act.

[No Further Text on this Page; Signature Page Follows]

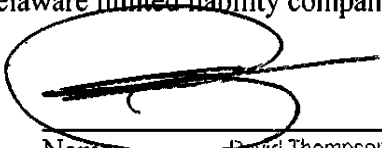
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IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first above written.

BORROWER:

**NORTH STATE STREET AIR RIGHTS
(CHICAGO) OWNER, LLC,**
a Delaware limited liability company

By:


 Name: David Thompson
 Title: Vice President
 and
 Chief Financial Officer

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.

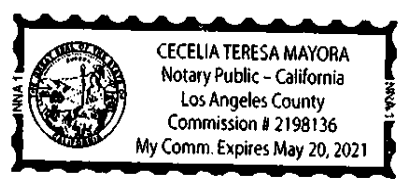
On December 15, 2017 before me, Cecelia Teresa Mayora, Notary Public
(insert name and title of the officer)

personally appeared David Thompson,
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.

Signature Cecelia Teresa Mayora (Seal)



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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

(PART BETWEEN +92.50 C.C.D. TO +689.50 C.C.D)

THAT PART OF VACATED WEST RANDOLPH STREET TOGETHER WITH THAT PART OF VACATED NORTH STATE STREET TOGETHER WITH THAT PART OF A TRACT OF LAND CONSISTING OF ALL LOTS, STREETS AND ALLEYS WITHIN BLOCK 37 OF ORIGINAL TOWN OF CHICAGO IN THE EAST PART OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH A STRIP OF LAND LYING EAST OF AND ADJOINING SAID BLOCK 37 AND WEST OF THE WEST LINE OF STATE STREET AS ESTABLISHED BY AN ACT OF THE LEGISLATURE OF THE STATE OF ILLINOIS, APPROVED MARCH 3, 1845, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +689.50 FEET CHICAGO CITY DATUM AND ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +92.50 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF BLOCK 37, AFORESAID; THENCE NORTH 00°01'10" EAST, ALONG THE WESTERLY LINE OF THAT PART OF VACATED WEST RANDOLPH STREET, AFORESAID, 5.00 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 89°08'58" EAST, ALONG THE NORTHERLY LINE OF THAT PART OF VACATED WEST RANDOLPH STREET, AFORESAID, 329.63 FEET TO THE EASTERLY LINE OF THAT PART OF VACATED NORTH STATE STREET, AFORESAID; THENCE SOUTH 00°00'00" WEST, ALONG THE EASTERLY LINE OF THAT PART OF VACATED NORTH STATE STREET, AFORESAID, 89.12 FEET; THENCE NORTH 90°00'00" WEST, 229.85 FEET; THENCE SOUTH 12°36'25" WEST, 46.74 FEET; THENCE SOUTH 15°39'45" WEST, 41.34 FEET; THENCE NORTH 90°00'00" WEST, 78.44 FEET TO THE WEST LINE OF BLOCK 37, AFORESAID; THENCE NORTH 00°01'10" EAST, ALONG THE WEST LINE OF BLOCK 37, AFORESAID 174.43 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

(PART ABOVE +689.50 C.C.D.)

THAT PART OF A TRACT OF LAND CONSISTING OF ALL LOTS, STREETS AND ALLEYS WITHIN BLOCK 37 OF ORIGINAL TOWN OF CHICAGO IN THE EAST PART OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH A STRIP OF LAND LYING EAST OF AND ADJOINING SAID BLOCK 37 AND WEST OF THE WEST LINE OF STATE STREET AS ESTABLISHED BY AN ACT OF THE LEGISLATURE OF THE STATE OF ILLINOIS, APPROVED MARCH 3, 1845, ALL TAKEN AS A TRACT, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +689.50 FEET CHICAGO

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CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF BLOCK 37, AFORESAID; THENCE SOUTH 89°08'58" EAST, ALONG THE NORTH LINE OF SAID BLOCK 37 AND THE EASTERLY EXTENSION THEREOF, 324.63 FEET TO THE WEST LINE OF STATE STREET AS ESTABLISHED BY AN ACT OF THE LEGISLATURE OF THE STATE OF ILLINOIS, AFORESAID; THENCE SOUTH 00°00'00" WEST, ALONG SAID WEST LINE, 84.19 FEET; THENCE NORTH 90°00'00" WEST, 224.85 FEET; THENCE SOUTH 12°36'25" WEST, 46.74 FEET; THENCE SOUTH 15 39'45" WEST, 41.34 FEET; THENCE NORTH 90°00'00" WEST, 78.44 FEET TO THE WEST LINE OF BLOCK 37, AFORESAID; THENCE NORTH 00°01'10" EAST, ALONG THE WEST LINE OF BLOCK 37, AFORESAID 174.43 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

NON-EXCLUSIVE EASEMENT IN FAVOR OF PARCELS 1 AND 2 AS CREATED BY DECLARATION OF EASEMENTS, RESERVATIONS, COVENANTS AND RESTRICTIONS, DATED NOVEMBER 10, 2005 AND RECORDED NOVEMBER 14, 2005 AS DOCUMENT NUMBER 0531834084, MADE BY CHICAGO TRANSIT AUTHORITY, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, 108 NORTH STATE STREET II, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY, BLOCK 37, L.L.C, A DELAWARE LIMITED LIABILITY COMPANY AND BLOCK 37 OFFICE, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY; FOR THE FOLLOWING PURPOSES:

(A) INGRESS, EGRESS AND ACCESS TO AND FROM THE BLOCK 37 PARCEL OVER, UNDER, ACROSS AND THROUGH THE PORTION OF THE DEVELOPMENT SITE FOR THE PURPOSE OF DEVELOPMENT AND CONSTRUCTION OF THE DEVELOPMENT PROJECT AND THE CTA PROJECT, INCLUDING, WITHOUT LIMITATION, CONSTRUCTION AND COMPLETION BY 108 NORTH STATE STREET II, L.L.C. OF THE MILLS PORTION OF THE CTA PROJECT PURSUANT TO THE DEVELOPMENT AGREEMENT (SUCH EASEMENT TO INCLUDE, WITHOUT LIMITATION, NECESSARY EXCAVATION, TUNNELING, CONSTRUCTION, MATERIAL STORAGE AND ALL OTHER RELATED CONSTRUCTION ACTIVITY BY CONTRACTORS, SUBCONTRACTORS, REPRESENTATIVES, SURVEYORS, CONSULTANTS, EMPLOYEES AND AGENTS FROM TIME TO TIME OF BLOCK 37, L.L.C., 108 NORTH STATE STREET II, L.L.C., BLOCK 37 OFFICE, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY AND CHICAGO TRANSIT AUTHORITY, AS THE CASE MAY BE) (DEFINED THEREIN AS THE "CONSTRUCTION ACCESS EASEMENTS"); (B) SUPPORT IN AND TO ALL STRUCTURAL MEMBERS, SLABS, CAISSONS, BEAMS, FOUNDATIONS, COLUMNS AND OTHER FACILITIES LOCATED WITHIN THE DEVELOPMENT PROJECT (DEFINED THEREIN AS THE "SUPPORT EASEMENTS"); (C) INSTALLATION, USE AND MAINTENANCE OF UTILITY LINES AND FACILITIES, INCLUDING THE RIGHT TO INSTALL, LAY, MAINTAIN, REPAIR, REPLACE LINES, WIRES, CONDUITS AND EQUIPMENT FOR UTILITY SERVICE REQUIRED FOR THE DEVELOPMENT PROJECT (DEFINED THEREIN AS THE "UTILITY EASEMENTS"); (D) CONSTRUCTION, USE AND MAINTENANCE OF COMMON WALLS, FLOORS,

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CEILINGS AND ENCLOSURES ALONG ANY COMMON PROPERTY LINES AND BOUNDARIES, INCLUDING THE RIGHT TO MAINTAIN UNINTENTIONAL ENCROACHMENTS RESULTING FROM CONSTRUCTION OF THE DEVELOPMENT PROJECT (DEFINED THEREIN AS THE "COMMON EASEMENTS"); (E) SUCH EASEMENTS AS SHALL BE REASONABLY NECESSARY FOR THE CONSTRUCTION, REPAIR, REPLACEMENT, MAINTENANCE AND OPERATION OF THE DEVELOPMENT

PROJECT (DEFINED THEREIN AS "MISCELLANEOUS EASEMENT"); AND (F) INGRESS, EGRESS AND ACCESS OVER, ACROSS AND THROUGH THE CTA PARCEL AND THE EXISTING CTA FACILITIES AS SHALL BE REQUIRED TO ENABLE 108 NORTH STATE STREET II, L.L.C. TO EXERCISE THE "MILLS SELF-HELP RIGHT" AS PROVIDED IN THE DEVELOPMENT AGREEMENT (DEFINED THEREIN AS THE "MILLS SELF-HELP RIGHT EASEMENT").

PARCEL 4:

EASEMENTS (INCLUDING FOR PEDESTRIAN ACCESS, TEMPORARY CONSTRUCTION, UTILITIES, COMMON AREAS AND MAINTENANCE AND REPAIR), AFFORDED TO THE "AIR RIGHTS PARCEL" AS DEFINED IN, AND AS ARE SET FORTH AND MORE PARTICULARLY DESCRIBED IN, THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RECIPROCAL EASEMENTS (BLOCK 37 AIR RIGHTS) DATED NOVEMBER 21, 2013, RECORDED JANUARY 29, 2015, AS DOCUMENT NUMBER 1502945047 AS AMENDED BY THE FIRST AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RECIPROCAL EASEMENTS (BLOCK 37 AIR RIGHTS) DATED JANUARY 23, 2015, AND RECORDED JANUARY 29, 2015, AS DOCUMENT NUMBER 1502945048.

Pin No. 17-09-451-036-0000

Pin No. 17-09-451-037-0000

Pin No. 17-09-451-038-0000

Note for information: Being commonly known as Air Rights Parcel at 108 North State Street, in the City of Chicago, Cook County, Illinois.