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Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*1815712008\*

Doc# 1815712008 Fee \$94.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 06/06/2018 09:30 AM PG: 1 OF 29

The property identified as: PIN: 07-27-201-039

Address:

Street: 975 ROSELLE ROAD

Street line 2:

City: SCHAUMBURG

State: IL

ZIP Code: 60193

Lender: MIDCAP FINANCIAL TRUST

Borrower: WEST SUBURBAN BANK A/T/U/T/A DATED MARCH 15, 1988 A/K/A TRUST NO. 8076 AND SAMBELL OF SCHAUMBURG LIMITED PARTNERSHIP

18007621 NC LK 6/12

Loan / Mortgage Amount: \$8,000,000.00

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.

Box 400

Y  
S  
P 29  
S  
SC  
INT

Certificate number: 647C8F46-8C5D-4CCC-9832-AB753A5686F2

Execution date: 5/29/2018

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PREPARED BY, RECORDING  
REQUESTED BY AND WHEN  
RECORDED RETURN TO:

Vedder Price P.C.  
222 N. LaSalle Street, Suite 2600  
Chicago, IL 60601  
ATTN: Charles W. Murphy  
(CWM)

18007621NC448

SPACE ABOVE THIS LINE FOR RECORDER'S USE.

THIS INSTRUMENT AFFECTS REAL AND PERSONAL PROPERTY SITUATED IN THE STATE OF ILLINOIS, COUNTY OF COOK, KNOWN AS AND BY STREET ADDRESS 975 ROSELLE ROAD, SCHAUMBURG, ILLINOIS 60193.

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF MORTGAGOR, AS "DEBTOR", AND MORTGAGEE, AS "SECURED PARTY".

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING (SECOND LIEN)  
(Schaumburg, IL)**

**THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Security Document") is made as of this 29 day of May, 2018, by **WEST SUBURBAN BANK**, not personally but as Trustee under Trust Agreement dated March 15, 1988 and known as Trust Number 8076 (the "Land Trust"), with an address at 711 Southern Westmore Avenue, Lombard, IL 60148, and the beneficiary thereof, **SAMBELL OF SCHAUMBURG LIMITED PARTNERSHIP**, an Illinois partnership (the "Beneficiary"); and together with the Land Trust are hereinafter referred to as the "Mortgagor", having its principal place of business at c/o Lexington Health Network, 665 W. North Avenue, Suite 500, Lombard, IL 60418, as mortgagor, for the benefit of **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, its successors and assigns, having an address at c/o MidCap Financial Services, LLC, as servicer, 7255 Woodmont Ave., Suite 200, Bethesda, Maryland 20814, as mortgagee, in its capacity as agent (and in such capacity, "Agent" for Lenders (as defined below).

**RECITALS:**

A. This Security Document is given to secure a certain revolving loan (the "Loan") in the maximum principal amount of EIGHT MILLION and No/100 Dollars (\$8,000,000.00) advanced pursuant to that certain Credit and Security Agreement dated as of the date hereof (as

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the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Credit Agreement"), among certain affiliates of Beneficiary, certain affiliates thereof and any additional borrower that may hereafter be added to the Credit Agreement (individually and collectively, "Borrowers"), Agent, and the other financial institutions who are or hereafter become parties to the Credit Agreement (collectively or individually, as the context may require, referred to herein as "Lenders"); and evidenced by the Notes (as defined in the Credit Agreement); together with the Credit Agreement, this Security Document, such other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "Financing Documents").

B. Beneficiary, Borrowers, Agent, as revolving agent and as term agent, and certain other parties party thereto have entered into that certain Cross-Collateralization, Cross-Default and Cross-Guaranty Agreement, dated as of even date herewith (as further amended, modified, reaffirmed, or restated from time to time being hereafter referred to as the "**Cross-Guaranty Agreement**"), wherein Beneficiary has guaranteed the Indebtedness and Obligations (as each is defined in the Cross-Guaranty Agreement) and the Indebtedness and Obligations are to be secured, among other things, by this Security Document. The terms and provisions of the Credit Agreement and Cross-Guaranty Agreement are hereby incorporated by reference in this Security Document.

C. Mortgagor desires to secure the payment and performance of the Secured Obligations (as defined in Section 1.2 below).

D. Mortgagor shall receive material benefits and consideration as a result of Agent's and Lenders' extension of credit to Borrowers pursuant to the Credit Agreement and Notes, as an affiliate of Mortgagor.

E. This Security Document is given pursuant to the Credit Agreement, and payment, fulfillment, and performance by each Borrower of obligations hereunder and under the other Financing Documents are secured hereby.

F. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Credit Agreement.

G. The Recitals and Exhibits to this Security Document are hereby incorporated in this Security Document.

THIS SECURITY DOCUMENT IS GIVEN TO SECURE THE (i) payment of the Notes, together with all interest, premiums, prepayment fees, exit fees and any other amounts and obligations, if any, due in accordance with the terms of the Notes (including the Loan) and/or the Credit Agreement, as well as the payment of any additional indebtedness accruing to Agent or the Lenders on account of any future payments, advances or expenditures made by Agent or the Lenders pursuant to the Notes, the Credit Agreement, this Security Document, or any other Financing Document or otherwise in connection with the Loan (all such payment obligations are hereinafter referred to as the "Indebtedness") and (ii) the performance of all other obligations and covenants under the Financing Documents.

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## ARTICLE ONE SECURITY

1.1. Granting Clause. To secure the payment of the Indebtedness and performance of the Secured Obligations (as defined in Section 1.2) incurred pursuant to the Financing Documents and the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Security Document, the Financing Documents, and any other documents and instruments now or hereafter executed by the Borrowers, to evidence, secure or guarantee the payment of all or any portion of the Secured Obligations, Mortgagor does hereby mortgage and warrant, bargain, sell, convey, grant, assign, transfer, pledge and deliver to Agent and grant to Agent, for its benefit and the benefit of the Lenders, a security interest in the Mortgagor's interests (now owned or hereafter acquired) in the following described property, subject to the terms and conditions herein:

(a) The land legally described in attached Exhibit A ("Land");

(b) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land and all of the Mortgagor's interests (now owned or hereafter acquired) in machinery, appliances, equipment, furniture and all other personal property of every kind or nature which constitute fixtures with respect to the Land, together with all extensions, additions, improvements, substitutions and replacements of the foregoing ("Improvements");

(c) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired ("Appurtenances");

(d) Subject to the terms and provisions of the Credit Agreement: (i) all judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto; (ii) all compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent domain, of the Land, Improvements or Appurtenances or any part thereof, (b) damage to all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances or of other property, or (c) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances or any part thereof; and, except as otherwise provided herein, Agent is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein, to apply the same toward the payment of the Secured Obligations; and (iii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements or Appurtenances;

(e) All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "Rents"); it being

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intended that this Section 1.1(e) shall constitute an absolute and present assignment of the Rents, subject, however, to the license given to Mortgagor to collect and use the Rents as provided in this Security Document;

(f) To the extent assignable, any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements or Appurtenances, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the "Leases"), subject, however, to the license given in this Security Document to Mortgagor to collect the Rents arising under the Leases as provided in this Security Document;

(g) All of Mortgagor's right, title and interest in all goods, materials, supplies, work in process, chattels, furniture, fixtures, equipment, appliances, machinery and other personal property of any kind, now or later to be attached to, incorporated into, placed in, on or about, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and the Improvements, whether stored on the Land or elsewhere, including all elevator, kitchen, medical, dental or rehabilitation fixtures, cleaning apparatus, beds, linens, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, rehabilitation equipment, restaurant and kitchen equipment, and medical, dental, therapeutic, paramedical, or rehabilitation equipment and supplies, pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property, fixtures or personal property (as defined and governed by the Code (as hereinafter defined)) for purposes of this Security Document;

(h) Any rights of Mortgagor arising from or held in connection with the ownership or operation of an assisted care facility or skilled nursing facility located on the Land, including, to the extent not prohibited or restricted under applicable law concerning residents of a nursing home or assisted living facility, any rights to payment for goods sold or leased or to be sold or leased or for services rendered or to be rendered;

(i) All interest in and to all operating accounts relating to the Land, all funds on deposits in any escrow or reserve required under the Credit Agreement, and any other accounts held by Mortgagor or monies on deposit with or for the benefit of Lender, including (i) deposits for the payment of real estate taxes and insurance relating to the Land, (ii) tenant improvement and leasing commissions relating to the Land and (iii) any cash collateral account or bank accounts of Mortgagor relating to the Land;

(j) To the extent assignable and related to the Land, all management contracts, permits, licenses (including business licenses, state health department licenses, food service licenses, certificates of need and all such other permits, licenses and rights, obtained from any governmental, quasi-governmental or private person or entity whatsoever concerning ownership, operation, use or occupancy of the Mortgaged Property), applications, approvals, plans, specifications and drawings, contracts, purchase and sale agreements, purchase options, entitlements, soil test reports, other reports of examination or analysis of the Land or the Improvements, development rights and authorizations, however characterized with respect to any

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of the foregoing, issued or in any way furnished for the acquisition, construction, development, operation and use of the Land, Improvements and/or Leases, including building permits, environmental certificates, certificates of operation, warranties and guaranties;

(k) To the extent related to the Land or Mortgagor's ownership and operation thereof, all of the following types of collateral arising from the ownership and operation of the Land, as defined in the Uniform Commercial Code as in effect from time to time in the State of Illinois (the "Code"): accounts, but only in the manner permitted by applicable law as to any government accounts, general intangibles, chattel paper, documents, instruments, inventory, goods, equipment, investment property, deposit accounts, letter(s) of credit and any rights associated therewith, commercial tort claims, health-care-insurance receivables and all books and records relating to the foregoing, provided that Mortgagor will cooperate with Agent and Lender in obtaining "control" as defined in the Code with respect to collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper;

(l) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records");

(m) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding subsections within this Section 1.1; and

(n) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses;

All of the mortgaged property described in this Section 1.1 is hereinafter referred to as the "Mortgaged Property."

1.2. Secured Obligations. Mortgagor makes the grant, conveyance, and mortgage set forth in Section 1.1 hereof, and grant(s) the security interest set forth in Section 2.18 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Agent may choose:

(a) Payment and performance of the Indebtedness and all other Obligations of Borrowers under the Cross-Guaranty Agreement;

(b) Payment and performance of all future advances and other obligations that Borrowers or any successors may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Agent, when a writing evidences the parties' agreement that the advance or obligation be secured by this Security Document;

(c) Payment of any and all loan commissions, service charges, liquidated damages, fees, advances due to or incurred by Agent regardless of whether any Loan proceeds have been disbursed and any advance(s) made by any Lender to protect its interest in any portion of the Property;

(d) Payment and performance of all obligations under the Affiliated Financing Documents (as defined in the Credit Agreement);

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(e) Payment and performance of all Affiliated Obligations under the Affiliated Financing Documents; and

(f) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations set forth above.

1.3. Future Advances. This Security Document is given to secure not only the existing Secured Obligations, but also any Secured Obligations incurred on or after the date hereof, including but not limited to any future advances (whether such advances are obligatory or are made at the option of Agent, or otherwise) made by Agent and/or the Lenders pursuant to and under the Credit Agreement, the Notes or any other Financing Document or this Security Document, to the same extent as if such future advances were made on the date of the execution of this Security Document. Funds disbursed that, in the reasonable exercise of Agent's judgment, are needed to complete Improvements or to protect Agent's and Lenders' security interest in the Mortgaged Property, are to be deemed obligatory advances hereunder, and will be added to the Indebtedness and shall be part of the Secured Obligations secured by this Security Document, and the Indebtedness shall be increased accordingly. The total amount of Indebtedness secured hereby may increase or decrease from time to time. This Security Document shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

1.4. Successors. All persons who may have or acquire an interest in all or any part of the Mortgaged Property will be considered to have notice of, and will be bound by, the terms of the Financing Documents and each other agreement or instrument made or entered into in connection with each of the Financing Documents. Such terms include any provisions in the Notes or the Credit Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

## ARTICLE TWO COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Agent and Lenders as follows:

2.1. Performance under Credit Agreement, Security Document and Other Financing Documents. Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof, of the Credit Agreement, every Financing Document and every instrument evidencing or securing the Secured Obligations.

2.2. General Covenants and Representations. Mortgagor covenants, represents and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is seized of an indefeasible estate in fee simple in that portion of the Mortgaged Property which is real property, and has good and absolute title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever, except Permitted Liens under the Credit Agreement (such Permitted Liens to

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expressly include the liens created by the Prior Mortgage (as hereinafter defined), the liens of such Prior Mortgage to be paramount to the liens created by this Security Document) and those otherwise permitted in writing by Agent (such liens, security interests, charges and encumbrances being hereinafter referred to as the "Permitted Encumbrances"); and (b) Mortgagor will maintain and preserve the lien of this Security Document as a second lien (subordinate only to the Prior Mortgage) on the Mortgaged Property, subject only to the Permitted Encumbrances, until the Secured Obligations have been paid in full and Agent's obligations under the Credit Agreement have been terminated.

2.3. Compliance with Laws and Other Restrictions. Mortgagor covenants and represents that to the best of its knowledge, the Land and the Improvements and the use thereof presently comply with, and, to the extent required by the Credit Agreement, will continue to comply with, all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations if the failure to so comply would have a Material Adverse Effect, provided that the Mortgagor may contest any acts, rules, regulations, orders and directions of such bodies or officials in any reasonable manner which Agent determines, in the exercise of its reasonable business judgment, will not materially and adversely affect Agent's or the Lenders' rights or priorities in the Mortgaged Property.

2.4. Taxes and Other Charges.

(a) Taxes and Assessments. Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Security Document or the Secured Obligations; provided, however, that Mortgagor may in good faith contest the validity, applicability or amount of any tax, assessment or other charge, if, on or before the due date of the asserted tax, assessment, or other charge, Mortgagor shall obtain an endorsement, in form and substance satisfactory to Agent, to the loan policy of title insurance issued to Agent insuring the lien of this Security Document, insuring over such tax, assessment or other charge and if Mortgagor otherwise complies with any provisions which may be set forth in the Credit Agreement regarding the contest of taxes.

(b) Taxes Affecting Agent's Interest. If any state, federal, municipal or other governmental law, order, rule or regulation, which becomes effective subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes, so as to impose on Agent a tax by reason of its ownership of any or all of the Financing Documents or measured by the principal amount of the Secured Obligations, requires or has the practical effect of requiring Agent to pay any portion of the real estate taxes levied in respect of the Mortgaged Property or to pay any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Agent or any Lender in respect of the Secured Obligations, this Security Document or the other Financing Documents, the Secured Obligations and all interest accrued thereon shall, upon thirty (30) days' notice, become due and payable forthwith at the option of Agent, whether or not there shall have occurred an Event of Default, provided, however, that, if Mortgagor may, without violating or causing a violation of such law, order, rule or regulation,



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pay such taxes or other sums as are necessary to eliminate such adverse effect upon the rights of Agent or any Lender and does pay such taxes or other sums when due, Agent may not elect to declare due the Secured Obligations by reason of the provisions of this Section 2.4(b).

2.5. Construction and Other Liens. Mortgagor shall not permit or suffer any construction, mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due) to be created upon or against the Mortgaged Property except Permitted Encumbrances; provided, however, that Mortgagor may in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted lien, if Mortgagor shall first obtain an endorsement, in form and substance satisfactory to Agent, to the loan policy of title insurance issued to Agent insuring the lien of this Security Document, insuring over such asserted lien and if Mortgagor otherwise complies with any provisions which may be set forth in the Credit Agreement regarding the contest of liens.

2.6. Insurance and Condemnation.

(a) Insurance Policies. Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain for the benefit of Agent, until the Secured Obligations are paid in full, such policies of insurance as are required by the Credit Agreement.

(b) Adjustment of Loss; Application of Proceeds. Except as otherwise may be provided by the Credit Agreement, Agent is hereby authorized and empowered, in its reasonable business judgment, to adjust or compromise any loss under any insurance policies covering the Mortgaged Property and to collect and receive the proceeds from any such policy or policies. Mortgagor hereby irrevocably appoints Agent as its attorney-in-fact for the purposes set forth in the preceding sentence. The entire amount of such proceeds, award or compensation shall be applied as provided in the Credit Agreement.

(c) Condemnation Awards. Subject to the terms of the Credit Agreement, Agent, as agent for the Lenders, shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of other property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property, but in any case not in an amount in excess of the Secured Obligations. Subject to the terms of the Credit Agreement, Agent is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor hereby irrevocably appoints Agent as its attorney-in-fact for the purposes set forth in the preceding sentence. In the event that Mortgagor acquires any real estate to replace all or any portion of the Mortgaged Property which became subject to any such action or proceeding, Mortgagor shall execute and deliver to Agent a mortgage of such replacement property, which mortgage shall be in substantially the same form as this Security Document, and Mortgagor shall deliver to Agent a survey and a title insurance policy and such other items in connection with such replacement property as Agent may require, all in form and substance satisfactory to Agent.

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(d) Obligation to Repair. If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Section 2.6(b), Mortgagor shall promptly and with all due diligence restore and repair, to the extent required by and in accordance with the Credit Agreement, the Mortgaged Property whether or not the proceeds, award or other compensation are made available to Mortgagor or are sufficient to pay the cost of such restoration or repair.

2.7. Agent May Pay; Default Rate. Upon Mortgagor's failure to pay any amount required to be paid by Mortgagor under any provision of this Security Document within the time period set forth in the Credit Agreement, Agent may pay the same. Mortgagor shall pay to Agent immediately upon demand the amount so paid by Agent together with interest at the default rate of interest set forth in the Credit Agreement and the amount so paid by Agent, together with interest, shall be added to the Secured Obligations.

2.8. Care of the Mortgaged Property. Mortgagor shall be responsible for preserving and maintaining the Mortgaged Property in good operating condition. Mortgagor shall not, without the prior written consent of Agent, permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof.

2.9. Transfer or Encumbrance of the Mortgaged Property. Except as permitted by the Credit Agreement, Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, transfer, mortgage, lease or encumbrance of the Mortgaged Property, any part thereof, or any interest therein, without the prior written consent of Agent having been obtained.

2.10. Further Assurances. At any time and from time to time, upon Agent's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Agent, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Agent, any and all such further mortgages, security agreements, financing statements, instruments of further assurance, certificates and other documents as Agent may consider reasonably necessary in order to effectuate or perfect, or to continue and preserve the Secured Obligations under, this Security Document.

2.11. Assignment of Rents.

(a) As additional security for the payment of the Indebtedness and payment and performance of all Secured Obligations, Mortgagor hereby assigns to Agent, for its benefit and the benefit of the Lenders, all of Mortgagor's right, title and interest in and to the Leases, but without Agent thereby becoming liable for the performance of the lessor's obligations under the Leases. The assignment of rents, income and other benefits contained in Section 1.1 of this Security Document shall be absolute, unconditional, and effective immediately as of the date hereof, and fully operative without any further action on the part of either party. Notwithstanding the foregoing, Mortgagor shall have a license to receive, collect and enjoy the Rents until the occurrence of an Event of Default hereunder. Upon the occurrence of an Event of Default, the aforesaid license shall cease automatically, without notice, possession,

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foreclosure or any other act or procedure, the right of Mortgagor to receive, collect and enjoy the Rents shall belong exclusively to Agent, and all Rents assigned by this Security Document shall thereafter be paid directly to Agent. Such rights and this assignment shall be operative during any period of redemption following foreclosure. In the event of any sale or foreclosure which shall result in a deficiency, this assignment shall stand as security during the redemption period for the payment of such deficiency. Mortgagor hereby further grants to Agent, for its benefit and for the benefit of the Lenders, the right effective upon the occurrence of an Event of Default, and so long as the Event of Default exists and during the pendency of any foreclosure proceedings and period of redemption to do any or all of the following, at Agent's option: (i) enter upon and take possession of the Mortgaged Property either personally or through a receiver for the purpose of collecting the Rents; (ii) dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Agent; (iii) lease the Mortgaged Property or any part thereof; (iv) repair, restore and improve the Mortgaged Property; and (v) apply the Rents after payment of certain expenses and capital expenditures relating to the Mortgaged Property, on account of the Secured Obligations in such order and manner as Agent may elect. Such assignment and grant shall continue in effect until the Secured Obligations are paid in full, the execution of this Security Document constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Agent and to the appointment of a receiver if requested by Agent pursuant to such grant, whether or not foreclosure proceedings have been instituted. Neither the exercise of any rights under this section by Agent nor the application of any such Rents to payment of the Secured Obligations shall cure or waive any Event of Default or notice provided for hereunder, or invalidate any act done pursuant hereto or pursuant to any such notice, but shall be cumulative of all other rights and remedies. This assignment is given as collateral security only and shall not be construed as obligating Agent to perform any of the covenants or undertakings required to be performed by Mortgagor contained in the Leases. No action taken by Agent hereunder shall make Agent a "mortgagee-in-possession" or obligate Agent to attempt to collect rent or other amounts from any tenant or to perform any obligations of landlord under any of the Leases.

(b) Mortgagor shall not permit Rents under any of the Leases to be collected more than thirty (30) days in advance of the due date thereof and, upon any receiver, Agent, anyone claiming by, through or under Agent or any purchaser at a foreclosure sale coming into possession of the Mortgaged Property, no tenant shall be given credit for any rent paid more than thirty (30) days in advance of the due date thereof.

2.12. After-Acquired Property. To the extent permitted by, and subject to, applicable law, the lien of this Security Document shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.

2.13. Leases Affecting Mortgaged Property. Mortgagor shall comply with and perform in a complete and timely manner all of its obligations as landlord under the Leases. The

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assignment contained in Sections 1.1(e) and 1.1(f) shall not be deemed to impose upon Agent any of the obligations or duties of the landlord or Mortgagor provided in any of the Leases.

2.14. Management of Mortgaged Property. Mortgagor shall cause the Mortgaged Property to be managed at all times in accordance with sound business practice.

2.15. Execution of Leases. Mortgagor shall not (a) enter into any non-residential Leases or (b) modify, amend, or terminate any non-residential Lease without the prior written consent of Agent if the effect of such change or amendment would materially increase the obligations of Mortgagor or confer additional material rights on the third party lessee in a manner adverse to Mortgagor, Agent or the Lenders.

2.16. Expenses. In the event of foreclosure hereof, Agent shall be entitled to add to the Secured Obligations found to be due by the court a reasonable estimate of expenses to be incurred by or on behalf of Agent in connection therewith after entry of the decree of foreclosure.

2.17. Reserved.

2.18. Security Agreement.

(a) This Security Document shall also constitute a Security Agreement, as that term is used in the Code, with respect to any portion of the Mortgaged Property which are now or hereafter deemed to be personal property, fixtures or property other than real estate and all replacements, additions and substitutions thereto (the "UCC Collateral"). Mortgagor hereby grants a security interest and assigns to Agent, for its benefit and the benefit of the Lenders in all of Mortgagor's right, title and interest in and to the UCC Collateral to secure the payment of the indebtedness secured by and the performance of the Secured Obligations. Agent shall have, in addition to the rights and remedies granted to Agent under this Security Document, all of the rights and remedies of a secured party under the Code with respect to the UCC Collateral and Mortgagor hereby agrees that in the event Agent shall exercise any right or remedy under the Code following a default by Mortgagor under this Security Document, whether to dispose of the UCC Collateral or otherwise, ten (10) days notice by Agent to Mortgagor shall be deemed to be reasonable notice under any provision of the Code requiring such notice. Mortgagor shall, immediately upon request by Agent, execute and deliver to Agent, in a form prescribed by Agent, any financing statement, continuation statement, certificate or other document covering all or any portion of the UCC Collateral designated by Agent that, in the opinion of Agent, may be required to perfect, continue, affirm or otherwise maintain the existence and priority of the security interest in the UCC Collateral created under this Security Document. Mortgagor, if requested by Agent, shall also execute and deliver to Agent a Security Agreement covering the UCC Collateral and containing such covenants, conditions and agreements in addition or as a supplement to those contained in this Security Document as may be reasonably requested by Agent. Upon an Event of Default, Mortgagor shall gather all of the Mortgaged Property which is Improvements, at a location designated by Agent for sale pursuant to the terms hereof.

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(b) Agent shall have all the rights, remedies and recourses with respect to the Improvements, Leases and Rents afforded a secured party by the Code, now or hereafter in effect, in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Financing Documents and at law.

(c) The assignment and security interest herein granted shall not be deemed or construed to constitute Agent as a trustee in possession of the Mortgaged Property, to obligate Agent to operate the Mortgaged Property or attempt to do the same, or take any action, incur expenses or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

2.19. Fixture Filing. This Security Document shall be effective from the date of its recording as a financing statement filed as a "fixture filing", as that term is used in the Code, with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures. The mailing address of Mortgagor and the address of Agent from which information concerning the security interests may be obtained are set forth on the first page hereof.

## ARTICLE THREE DEFAULTS

3.1. Event of Default. The term "Event of Default," wherever used in this Security Document, shall mean any one or more of the following events:

(a) The failure by Mortgagor to keep, perform, or observe any covenant, condition or agreement on the part of Mortgagor in any of Section 2.4 and Section 2.6 of this Security Document.

(b) The failure by Mortgagor to keep, perform or observe any covenant, condition or agreement on the part of Mortgagor in this Security Document, other than as set forth in clause (a) above, which failure continues for more than thirty (30) days after the earlier of the date on which Mortgagor knew of such failure or the date that Mortgagor received notice from Agent of such failure; provided, however, in the case of a default of a covenant, condition or agreement which is capable of cure but cannot reasonably be cured within such thirty (30) day period, and provided Mortgagor shall have given Agent a written undertaking to, and shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional thirty (30) days; and provided further that if a different notice or grace period is specified under Section 11.1 of the Credit Agreement (or elsewhere in this Security Document or the Credit Agreement) after which such particular breach will become an Event of Default, the specific provision elsewhere in this Security Document or in the Credit Agreement shall control.

(c) The occurrence of an "Event of Default" under and as defined in the Credit Agreement or event of default under any of the other Financing Documents.

(d) The failure by Mortgagor to keep, perform or observe any covenant, condition or agreement on the part of Mortgagor within any applicable notice

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and cure period in connection with that certain Environmental Indemnity Agreement of even date herewith made by Mortgagor and such other parties thereto in favor of Agent and Lenders.

## ARTICLE FOUR REMEDIES

4.1. Acceleration of Maturity. If an Event of Default shall have occurred, Agent may declare the Indebtedness and Secured Obligations to be immediately due and payable, without further demand or notice.

4.2. Agent's Power of Enforcement.

(a) If an Event of Default shall have occurred, Agent may, either with or without entry or taking possession as provided in this Security Document or otherwise, and without regard to whether or not the Secured Obligations shall have been accelerated, and without prejudice to the right of Agent thereafter to bring an action of foreclosure or any other action for any Event of Default existing at the time such earlier action was commenced or arising thereafter, proceed by any appropriate action or proceeding: (i) to enforce the payment or performance of the Secured Obligations; (ii) to foreclose this Security Document through judicial proceedings or by advertisement and to have sold either as a whole or in parcels, as Agent shall elect, the Mortgaged Property; and (iii) to pursue any other remedy available to it. Agent may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Agent may determine. Mortgagor agrees that Agent may elect to foreclose and select any redemption period authorized by law.

(b) Upon the occurrence of an Event of Default, in accordance with applicable law, Agent shall have the option and is hereby authorized and empowered to enforce this Security Document and to commence foreclosure proceedings against the Mortgaged Property through judicial proceedings or by advertisement, pursuant to the statutes in such case made and provided, and to sell the Mortgaged Property or to cause the same to be sold at public sale, and to convey the same to the purchaser, in accordance with said statutes in a single parcel or in several parcels. The commencement of foreclosure proceedings by Agent shall be deemed an exercise of its option to accelerate the Secured Obligations, unless the proceedings on its face specifically indicates otherwise. It is intended hereby to give Agent the widest possible discretion permitted by law with respect to all aspects of any such sale or sales. The sale or sales by Agent of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Agent is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of the Mortgaged Property shall be less than the aggregate of the Secured Obligations and the expenses thereof, this Security Document and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale or sales had been made; provided, however, that Mortgagor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Property, but Agent shall have the

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right, at its sole election, to sell less than the whole of the Mortgaged Property. If sale is made because of a default in the payment of a portion of the Secured Obligations, such sale may be made subject to the unmatured part of the Secured Obligations; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the Secured Obligations, but as to such unmatured part, this Security Document shall remain in full force and effect as though no sale had been made hereunder without exhausting the right of sale for any unmatured part of the Secured Obligations. At any such sale (i) Mortgagor hereby agrees, on its behalf and on behalf of its heirs, executors, administrators, successors, personal representatives and assigns, that any and all recitals made in any deed of conveyance given by Agent with respect to the identity of Agent, the occurrence or existence of any Event of Default, the acceleration of the maturity of the Secured Obligations, the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms, and manner of sale, and receipt, distribution and application of the money realized therefrom, or the due and proper appointment of a substitute agent, and, without being limited by the foregoing, with respect to any other act or thing having been duly done by Agent or by Agent hereunder, shall be taken by all courts of law and equity as prima facie evidence that the statements or recitals state facts and are without further question to be so accepted, and Mortgagor hereby ratifies and confirms every act that Agent may lawfully do in the premises by virtue hereof; (ii) the purchaser may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Security Document, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract; and, (iii) Agent may bid and become the purchaser of all or any part of the Mortgaged Property at any foreclosure sale hereunder. Subject to applicable law, power is hereby granted to Agent, if default is made in the payment of the Secured Obligations or any part thereof, or in the payment of any other sums provided for herein, or in the performance of any covenants or condition of the Secured Obligations or as provided herein, in each case after the expiration of any applicable grace or cure period, to grant, bargain, sell, release and convey the Mortgaged Property at public auction or venue, and on such sale to execute and deliver to the purchaser or purchasers, his, her, its or their heirs, successors and assigns, good ample and sufficient deed or deeds of conveyance in law, pursuant to the statute in such case made and provided, and to apply the proceeds of such sale in the manner hereafter provided.

(c) Upon foreclosure sale of the Mortgaged Property or any part thereof, the proceeds of such sale shall be applied in the following order:

(i) to the payment of all costs of the suit or foreclosure, including reasonable attorneys' fees and the costs of title searches and abstracts;

(ii) then, to the payment of all other expenses of Agent, including all monies expended by Agent and all other amounts payable by Mortgagor to Agent hereunder, with interest thereon;

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(iii) then, to the payment of the Secured Obligations; and

(iv) then, to the payment of the surplus, if any, to Mortgagor or to whomsoever shall be entitled thereto.

(d) Upon any foreclosure sale of the Mortgaged Property, as same may be sold either as a whole or in parcels, as Agent may elect, and if in parcels, the same be divided as Agent may elect, and at the election of Agent may be offered first in parcels and then as a whole, that offer producing the highest price for the entire Mortgaged Property to prevail, any law, statutory or otherwise, to the contrary notwithstanding, and Mortgagor hereby waives the right to require any such sale to be made in a single or separate parcel or the right to select such parcels. Mortgagor hereby expressly waives any right pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or other matter to defeat, reduce or affect the right of Agent to sell the Mortgaged Property for the collection of the Secured Obligations (without any prior or different resort for collection), or the right of Agent to the payment of the Secured Obligations out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant.

(e) WAIVER OF DEFENSES; JURY TRIAL; FORUM; VENUE. MORTGAGOR, ON BEHALF OF ITSELF AND ANY GUARANTORS OF ANY OF THE OBLIGATIONS, TO THE EXTENT PERMITTED BY LAW, WAIVES EVERY PRESENT AND FUTURE DEFENSE, CAUSE OF ACTION, COUNTERCLAIM OR SETOFF WHICH MORTGAGOR MAY NOW HAVE OR HEREAFTER MAY HAVE TO ANY ACTION BY AGENT IN ENFORCING THIS SECURITY DOCUMENT EXCEPT ARISING FROM AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR WAIVES ANY IMPLIED COVENANT OF GOOD FAITH AND RATIFIES AND CONFIRMS WHATEVER AGENT MAY DO PURSUANT TO THE TERMS OF THIS SECURITY DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR AGENT AND LENDERS GRANTING ANY FINANCIAL ACCOMMODATION TO MORTGAGOR. AGENT AND MORTGAGOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS SECURITY DOCUMENT, THE NOTES OR ANY OF THE OTHER OBLIGATIONS, THE COLLATERAL, OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS SECURITY DOCUMENT, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH AGENT AND MORTGAGOR ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR AGENT AND LENDERS GRANTING ANY FINANCIAL ACCOMMODATION TO MORTGAGOR. TO INDUCE AGENT AND LENDERS TO MAKE THE LOANS, MORTGAGOR IRREVOCABLY AGREES THAT ALL ACTIONS ARISING,



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DIRECTLY OR INDIRECTLY, AS A RESULT OR CONSEQUENCE OF THIS SECURITY DOCUMENT, THE NOTES, ANY OTHER AGREEMENT WITH AGENT AND LENDERS OR THE COLLATERAL, SHALL BE INSTITUTED AND LITIGATED ONLY IN COURTS HAVING THEIR SITUS IN THE CITY OF BETHESDA, STATE OF MARYLAND, EXCEPT TO THE EXTENT NECESSARY TO FORECLOSE OR ENFORCE THE PROVISIONS OF THIS SECURITY DOCUMENT. MORTGAGOR HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT HAVING ITS SITUS IN SAID CITY, AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS. MORTGAGOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO MORTGAGOR AS SET FORTH HEREIN IN THE MANNER PROVIDED BY APPLICABLE STATUTE, LAW, RULE OF COURT OR OTHERWISE.

#### 4.3. Agent's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, (i) Mortgagor, upon demand of Agent, shall forthwith surrender to Agent the actual possession of the Mortgaged Property, and to the extent permitted by law, Agent itself, or by such officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property and may exclude Mortgagor and the agents and employees of Mortgagor wholly therefrom and shall have joint access with Mortgagor to the books, papers and accounts of Mortgagor; and (ii) notwithstanding the provisions of any of the Leases or other agreements to the contrary, Mortgagor shall pay monthly in advance to Agent, on Agent's entry into possession, or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Mortgagor, or any entity affiliated with or controlled by Mortgagor, and upon default in any such payment Mortgagor shall vacate and surrender possession of such part of the Mortgaged Property to Agent or to such receiver, and in default thereof Mortgagor may be evicted by summary proceedings or otherwise.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Agent's demand, Agent may obtain a judgment or decree conferring on Agent the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Agent, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Agent, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Agent, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Security Document.

(c) Upon every such entering upon or taking of possession, Agent, to the extent permitted by law, may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof.

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4.4. Leases. If an Event of Default shall have occurred, Agent is authorized to foreclose this Security Document prior to or subject to the rights, if any, of any or all tenants of the Mortgaged Property.

4.5. Purchase by Agent. Upon any foreclosure sale, Agent or any Lender may bid for and purchase all or any portion of the Mortgaged Property.

4.6. Application of Secured Obligations Toward Purchase Price. Upon any foreclosure sale, Agent may apply any or all of the Secured Obligations and other sums due under the Credit Agreement, the Notes, this Security Document or any other Financing Documents to the price paid by Agent at the foreclosure sale.

4.7. Waiver of Appraisal, Valuation, Stay and Extension Laws. In case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any reinstatement, appraisal, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Security Document or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after the expiration of the redemption period. Mortgagor, 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 laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Agent or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Further, Mortgagor waives any right otherwise available to require Agent to pursue its remedies against any other assets or any other person or entity who or which may be liable for any of the Secured Obligations.

4.8. Receiver – Agent in Possession. If an Event of Default shall have occurred, Agent, to the extent permitted by law and without regard to the value of the Mortgaged Property or the adequacy of the security for the Secured Obligations and other sums secured hereby, shall be entitled as a matter of right and without any additional showing or proof, at Agent's election, to which the Mortgagor irrevocably consents, without notice thereof, to either the appointment by the court of a receiver (without the necessity of Agent posting a bond) to enter upon and take possession of the Mortgaged Property and to collect all rents, income and other benefits thereof and apply the same as the court may direct or to be placed by the court into possession of the Mortgaged Property as mortgagee in possession with the same power herein granted to a receiver and with all other rights and privileges of a mortgagee in possession under law, and during any period allowed by law for the redemption from any sale ordered in foreclosure proceedings, and said receiver may be appointed irrespective of the value of the Mortgaged Property or its adequacy to secure or discharge the Secured Obligations due or to become due or the solvency of the Mortgagor.

4.9. Mortgagor to Pay the Secured Obligations in Event of Default. Upon occurrence of an Event of Default, Agent shall be entitled to sue for and to recover judgment against Mortgagor for the Secured Obligations due and unpaid together with costs and expenses, including the reasonable compensation, expenses and disbursements of Agent's agents, attorneys and other representatives, either before or during the pendency of any proceedings for the enforcement of this Security Document; and the right of Agent to recover such judgment shall

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not be affected by any taking of possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Security Document, or the foreclosure of the lien hereof.

4.10. Remedies Cumulative. No right, power or remedy conferred upon or reserved to Agent by the Credit Agreement, this Security Document or any other Financing Document or any instrument evidencing or securing the Secured Obligations is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Credit Agreement or any other Financing Document or any instrument evidencing or securing the Secured Obligations, or now or hereafter existing at law, in equity or by statute.

## ARTICLE FIVE MISCELLANEOUS PROVISIONS

5.1. Heirs, Successors and Assigns Included in Parties. Whenever Mortgagor or Agent is named or referred to herein, heirs and successors and assigns of such person or entity shall be included, and all covenants and agreements contained in this Security Document shall bind the successors and assigns of Mortgagor, including any subsequent owner of all or any part of the Mortgaged Property and inure to the benefit of the successors and assigns of Agent.

5.2. Notices. All notices, requests, reports, demands or other instruments required or contemplated to be given or furnished under this Security Document to Mortgagor or Agent shall be directed to Mortgagor or Agent, as the case may be, in the manner and at the addresses for notice set forth in the Credit Agreement.

5.3. Headings. The headings of the articles, sections, paragraphs and subdivisions of this Security Document are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

5.4. Invalid Provisions. In the event that any of the covenants, agreements, terms or provisions contained in this Security Document shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

5.5. Changes. Neither this Security Document nor any term hereof may be released, changed, waived, modified, amended, extended, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, modification, amendment, extension, discharge or termination is sought.

5.6. Governing Law. Except with respect to creation, perfection, priority and enforcement of the lien and security interest created hereunder, all of which shall be construed, interpreted, enforced and governed by the laws of the State of Illinois, the validity and interpretation of this Security Document shall be governed by and in accordance with the internal laws of the State of Maryland.

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5.7. Limitation of Interest. The provisions of the Credit Agreement regarding the payment of lawful interest are hereby incorporated herein by reference.

5.8. Last Dollar. The lien of this Security Document shall remain in effect until the last dollar of the Secured Obligations is paid in full and all of Mortgagor's obligations under the Credit Agreement have been terminated.

5.9. Release. In accordance with the terms and conditions of the Credit Agreement and upon full payment and satisfaction of the Secured Obligations and the termination of all Mortgagor's obligations under the Credit Agreement, Agent shall issue to Mortgagor an appropriate release or satisfaction in recordable form.

5.10. Time of the Essence. Time is of the essence with respect to this Security Document and all the provisions hereof.

5.11. Credit Agreement. The Loan is governed by terms and provisions set forth in the Credit Agreement and in the event of any conflict between the terms of this Security Document and the terms of the Credit Agreement, the terms of the Credit Agreement shall control.

5.12. Excess Interest. If it is determined that Mortgagor shall have paid or there shall have accrued interest on the indebtedness secured by this Security Document in an amount in excess of that permitted by law, such excess shall, to the extent required by law and otherwise at the option of Agent, either be applied to reduce the unpaid indebtedness secured by this Security Document or be refunded to Mortgagor.

5.13. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

5.14. Entire Agreement. This Security Document and the other Financing Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Mortgagor and Agent are superseded by the terms of this Security Document and the other Financing Documents.

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

5.16. Joint and Several Liability. If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Security Document and the other Financing Documents.

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5.17. Merger. No merger shall occur as a result of Agent or Lender's acquiring any other estate in or any other lien on the Mortgaged Property unless Agent or such Lender consents to a merger in writing.

5.18. Future Advances. This Security Document is given to secure not only the existing Secured Obligations, but also any Secured Obligations incurred on or after the date hereof, including but not limited to any future advances (whether such advances are obligatory or are made at the option of Agent, or otherwise) made by Agent and/or the Lenders under the Notes or this Security Document, to the same extent as if such future advances were made on the date of the execution of this Security Document. The total amount of Secured Obligations secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Agent may, but shall not be obligated to, make under this Security Document, the Financing Documents or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed five (5) times the aggregate face amount of the Notes. This Security Document shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

5.19. No Personal Liability. It is hereby agreed that, subject to the terms of this last sentence of this Section, the limited partners, officers, managers and directors of Mortgagor (each a "**Non-Liable Party**" and collectively, the "**Non-Liable Parties**") shall have no personal liability for any of the obligations of the Borrowers or the Affiliated Borrowers under the Loan, the Credit Agreement or any other Financing Documents or for any claim based on, in respect, or by reason of such obligations or their creation. Agent and Lenders shall have no recourse against any Non-Liable Party for failure to pay principal and interest evidenced by the Notes or other fees, indemnities, costs or expenses under the Credit Agreement or the other Financing Documents or for Borrowers' or Affiliated Borrowers' failure to perform their respective obligations hereunder and under the other Financing Documents. Agent and Lenders shall never demand, claim or institute any suit, claim, proceeding or demand at law or in equity against any or all of the Non-Liable Parties in violation or contravention of this Section. Notwithstanding the foregoing, nothing contained in this Section shall be construed to (a) release, affect or impair the obligations of Borrowers, Affiliated Borrowers or any Credit Party (including a Non-Liable Party to the extent a party) under the Credit Agreement and the other Financing Document, (b) prevent any rights of Agent or any Lender from enforcing its remedies under the Credit Agreement and the other Financing Documents, (c) prevent the Agent or any Lender from commencing any action, suit or proceeding with respect to, or causing legal papers to be served upon, any Non-Liable Party for the purpose of (a) obtaining jurisdiction over a Borrower or other Credit Party, (b) obtaining judgment, order or execution against a Non-Liable Party arising out of any fraud or intentional misrepresentation by a Non-Liable Party in connection with the Financing Documents or (c) the recovery of moneys received by a Non-Liable Party in violation of the Credit Agreement or any other Financing Document.

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## ARTICLE SIX STATE SPECIFIC PROVISIONS

6.1. Principles of Construction. In the event of any inconsistencies between the terms and conditions of this ARTICLE SIX and the terms and conditions of this Security Document, the terms and conditions of this ARTICLE SIX shall control and be binding.

6.2. Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor 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 Document or the absolute sale of the Mortgaged Property, or the final and absolute delivery of possession thereof, immediately after such foreclosure sale, of the purchaser thereat. Mortgagor, 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 laws, and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof, and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Security Document is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.; the "Foreclosure Act") or residential real estate (as defined in Section 15-1219 of the Foreclosure Act). On behalf of Mortgagor, and each and every person acquiring any interest in, or title to, the Mortgaged Property subsequent to the date of this Security Document, and on behalf of all other persons, to the maximum extent permitted by applicable law, Mortgagor hereby waives any and all rights: (a) of redemption from any foreclosure, or other disposition of any kind or nature, of the Mortgaged Property, or any part thereof, or interest therein, under or pursuant to rights herein granted to Lender; and (b) to reinstatement of the Indebtedness, including, without limitation, any right to reverse any acceleration of the Indebtedness pursuant to 735 ILCS 5/15-1602. All waivers by Mortgagor in this Security Document have been made voluntarily, intelligently and knowingly by Mortgagor, after Mortgagor has been afforded an opportunity to be informed by counsel of Mortgagor's choice as to possible alternative rights. Borrower's execution of this Security Document shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

6.3. 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 Indebtedness, or the insolvency of any party bound for its payment, to the appointment of a receiver to take possession of, and to operate, the Mortgaged Property, and to collect and apply the rents and profits and other benefits thereof. The receiver shall have all rights and powers to the fullest extent permitted by law. Mortgagor shall pay to Lender, upon demand, all of Lender's costs and expenses, including, without limitation, receiver's fees and expenses and attorneys' fees and expenses, incurred pursuant to this Section, plus interest thereon at the Default Rate, and all such amounts shall be additional Indebtedness.

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6.4. Use of Proceeds. Mortgagor hereby represents and agrees that the proceeds of the Notes secured by this Security Document will be used for the purposes specified in the Illinois Interest Act, 815 ILCS §205/4(l), and the Indebtedness constitutes a business loan which comes within the purview of said Section 205/4(c).

6.5. Illinois Mortgage Foreclosure Law.

(a) In the event any provision in this Security Document shall be inconsistent with any provision of the Foreclosure Act, the provisions of the Foreclosure Act shall take precedence over the provisions of this Security Document, but shall not invalidate or render unenforceable any other provision of this Security Document that can be construed in a manner consistent with the Foreclosure Act.

(b) If any provision of this Security Document shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Foreclosure Act in the absence of said provision, Lender shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

(c) 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 Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Security Document, shall be added to the debt secured by this Security Document or by the judgment of foreclosure.

6.6. Illinois Collateral Protection Act. Unless Mortgagor provides Lender with evidence of the insurance coverage required by this Security Document, if any, Lender may purchase insurance at Borrower's expense to protect Lender's interests in the Mortgaged Property. This insurance may, but need not, protect Borrower's interest. The coverage that Lender purchases may not pay any claim that Mortgagor may make or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required by this Security Document. If Lender purchases insurance for the Mortgaged Property, Mortgagor 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 Document or any other Loan Document, the cost of such insurance shall be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

6.7. Subordination. Notwithstanding anything to the contrary, this Security Document shall be and hereby is subordinate to that certain Mortgage, Assignment of Leases and Rents and Fixture Filing (as may be amended, restated, extended, renewed or modified in any way without Agent's consent, the "**Prior Mortgage**") of even date herewith made by Mortgagor in favor of MidCap Financial, LLC, as agent, its successors and assigns ("**Term Agent**"), for its benefit and the benefit of other lenders, regarding that certain term loan in the original principal amount of \$42,000,000.00 subject in all respects to the provisions of that certain Intercreditor and Lien Subordination Agreement ("**Intercreditor Agreement**") between Agent and Term Agent. The

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exercise of any right or remedy by the Agent hereunder is subject in all respects to the provisions of the Intercreditor Agreement.

## ARTICLE SEVEN LAND TRUST PROVISIONS

7.1. Land Trust Exculpation. This Security Document is made and entered into by the Land Trust, duly authorized to accept and execute trusts within the State of Illinois, not in its individual capacity, but solely in its capacity as trustee under the provisions of Trust Agreement dated March 15, 1988 and known as Trust Number 8076, pursuant to the power and authority conferred upon it under and by virtue of the terms and provisions of said trust agreement, and the covenants and undertakings herein made and entered into by it are made and entered into solely for the purposes of binding the trust estate, and it is expressly agreed by the parties hereto and by all persons claiming by, through and under them that no personal liability is assumed by or shall, at any time, arise or be asserted or enforced against West Suburban Bank, in its individual capacity, on account of this Mortgage or on account of the covenants herein contained, either expressed or implied, such liability, if any, being expressly waived and released by Agent and by any persons claiming by, through or under Agent and that recourse hereunder, if any, by Agent, its successors or assigns, shall be limited to the assets of the trust estate which from time to time are subject to the provisions of said trust agreement, including but not limited to the Mortgaged Property and the rents, income and profits derived therefrom.

7.2. NON-RECOURSE GUARANTY. THE LAND TRUST HEREBY GUARANTEES TO AGENT, ON A NON-RECOURSE BASIS, PROMPT PAYMENT (WHETHER AT STATED MATURITY, BY ACCELERATION OR OTHERWISE) AND PERFORMANCE OF THE SECURED OBLIGATIONS, IT BEING UNDERSTOOD THAT AGENT'S SOLE RIGHT TO RECOVER FROM THE LAND TRUST PURSUANT TO THIS SECURITY DOCUMENT SHALL BE LIMITED TO THE COLLATERAL AND AGENT SHALL NOT HAVE ANY RIGHT OF RECOURSE AGAINST ANY OTHER ASSETS OF THE LAND TRUST PURSUANT TO THIS SECURITY DOCUMENT.

[NO FURTHER TEXT ON THIS PAGE]



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*Signature Page to Term Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (2nd Lien) – Schaumburg, IL*

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

**WEST SUBURBAN BANK**, not personally but as Trustee under Trust Agreement dated as of March 15, 1988 and known as Trust Number 8076

**SAMBELL OF SCHAUMBURG LIMITED PARTNERSHIP**, an Illinois limited partnership

By: Sambell of Schaumburg, Inc., an Illinois corporation, its General Partner

WEST SUBURBAN BANK  
NOT PERSONALLY BUT AS  
By: \_\_\_\_\_  
Name: TRUSTEE TR. NO. 8076  
By: [Signature]  
Title: TRUST OFFICER

By: \_\_\_\_\_  
Name: Cynthia Thiem  
Title: Treasurer

THIS INSTRUMENT is executed by West Suburban Bank ("WSB") not personally or individually, but solely as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such trustee. All of the statements, warranties, and representations set forth herein are made solely on information and belief without any independent inquiry or investigation by WSB and should be construed accordingly. Notwithstanding any provision to the contrary set forth in this instrument, any recourse against WSB shall be limited to the assets comprising the trust estate and no personal liability shall be asserted or be enforceable against WSB by reason of the terms, promises, agreements, covenants, warranties, representations, indemnifications, or other matters herein set forth, all such personal liability of WSB being expressly waived.

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*Signature Page to Term Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (2nd Lien) – Schaumburg, IL*

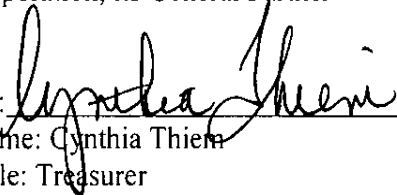
**IN WITNESS WHEREOF**, this Security Document has been executed by Mortgagor as of the day and year first above written.

**WEST SUBURBAN BANK**, not personally but as Trustee under Trust Agreement dated as of March 15, 1988 and known as Trust Number 8076

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SAMBELL OF SCHAUMBURG LIMITED PARTNERSHIP**, an Illinois limited partnership

By: Sambell of Schaumburg, Inc., an Illinois corporation, its General Partner

By:  \_\_\_\_\_  
Name: Cynthia Thiem  
Title: Treasurer

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Notary Page to Term Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (2nd Lien) – Schaumburg, IL

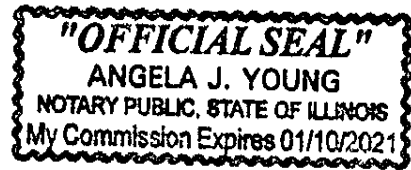
STATE OF Illinois )  
 )  
 ) SS:  
COUNTY OF Schaumburg )

I, the undersigned, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Christian Paskal, the Trust Officer of West Suburban Bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as such trust officer, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23 day of May, 2018.

Angela J. Young  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
1-10-21



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*Notary Page to Term Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (2nd Lien) – Schaumburg, IL*

STATE OF Illinois )  
 ) SS:  
COUNTY OF DuPage )

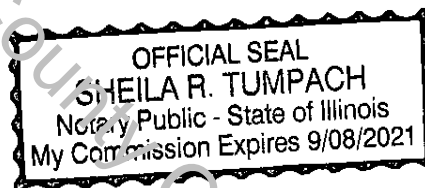
I, Sheila R. Tumpach, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Cynthia Thiem, the Treasurer of Sambell of Schaumburg, Inc., an Illinois corporation, the General Partner of Sambell of Schaumburg Limited Partnership, an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that she signed and delivered said instrument as her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24<sup>th</sup> day of MAY, 2018.

Sheila R. Tumpach  
Notary Public

My Commission Expires:

09-08-2021



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## EXHIBIT A

### (Legal Description)

Lot 16 in Lexington Square Subdivision, being a subdivision in the Northeast 1/4 of Section 27, Township 41 North, Range 10, east of the third principal meridian, according to the Plat thereof recorded August 23, 1990 as document 90411700 and certificate of correction thereof recorded December 10, 1990 as document 90598723, in Cook County, Illinois.

0727 201039

975 Roselle Rd

Schaumburg Ill 60193

Property of Cook County Clerk's Office