

Illinois Anti-Predatory Lending Database Program

Doc#: 1817947121 Fee: \$110.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/28/2018 01:05 PM Pg: 1 of 32

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: PIN: 11-18-109-018-0000

Address:

Street: 811 EMERSON STREET

Street line 2:

City: EVANSTON

State: IL

ZIP Code: 60201

Lender: CITIZENS BANK, NATIONAL ASSOCIATION

Borrower: CA/FOCUS EVANSTON PROPERTY OWNER, LLC

Loan / Mortgage Amount: \$53,878,730.00

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: 371D0833-0050-499D-8CB6-DDEDFDDE8CBF

Execution date: 6/25/2018

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

Michael Savage, Esq.  
Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, Illinois 60661

**Cook County:**

Address: 811 Emerson Street, Evanston, IL

PINs: 11-18-109-018-0000

11-18-109-019-0000

11-18-109-020-0000

11-18-109-043-0000

11-18-109-052-0000

11-18-109-053-0000

11-18-109-062-0000

11-18-109-064-0000

*This space reserved for Recorders use only.*

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

by

**CA/FOCUS EVANSTON PROPERTY OWNER, LLC,  
a Delaware limited liability company,**

**to and for the benefit of**

**CITIZENS BANK, NATIONAL ASSOCIATION  
a national banking association,  
as Agent**

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THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING (this "**Security Instrument**") is made as of this 25<sup>th</sup> day of June, 2018, by CA/FOCUS EVANSTON PROPERTY OWNER, LLC, a Delaware limited liability company, having its principal place of business at 130 East Randolph Street, Suite 2100, Chicago, Illinois 60601, Attn: Katie Kazas and Jim Reiland, as mortgagor ("**Borrower**") for the benefit of CITIZENS BANK, NATIONAL ASSOCIATION, a national banking association, as grantee, having an address at 71 S. Wacker Drive, M/C: IH2915, Chicago, IL 60606, Attn: Michael Browne, as Agent (together with its successors and assigns, "**Agent**") for itself and such other co-lenders as may exist from time to time (collectively, the "**Lenders**").

## RECITALS:

A. This Security Instrument is given to secure a loan (the "**Loan**") in the principal sum of FIFTY-THREE MILLION EIGHT HUNDRED SEVENTY-EIGHT THOUSAND SEVEN HUNDRED THIRTY AND NO/100 DOLLARS (\$53,878,730.00) or so much thereof as may be advanced pursuant to that certain Construction Loan Agreement dated as of the date hereof among Borrower, Agent and the Lenders (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") evidenced by that certain Promissory Note or those certain Promissory Notes each dated as of the date hereof made by Borrower to each Lender (such Promissory Notes, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to collectively as the "**Note**") and due on the date three (3) years and six (6) months from the date hereof, subject to two (2) extensions of one (1) year each under Section 4.3 of the Loan Agreement (the "**Maturity Date**"), or such earlier date on which the final payment of principal of the Note becomes due and payable as provided under the Loan Documents (as defined below), whether at such stated Maturity Date, by declaration of acceleration, or otherwise;

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

C. This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, and all other documents evidencing or securing the Debt or delivered in connection with the making of the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, are hereinafter referred to collectively as the "**Loan Documents**").

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

## Article 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, give, grant, bargain, sell, alien, pledge, assign, warrant, transfer, confirm, hypothecate and convey a security interest in and to Agent and its successors and assigns in the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property"):

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

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

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

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

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

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and the Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials

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intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**");

(g) **Personal Property.** All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, including, but not limited to, disposals, dishwashers, refrigerators and ranges, recreational equipment, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above:

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

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

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employees from any and all sources arising from or attributable to the Property (collectively, the "Rents").

(j) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property by reason of any taking or condemnation, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

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

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

(m) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Agent in the Property;

(n) Agreements. To the extent assignable, all agreements, contracts, certificates, instruments, franchises, permits, licenses, applications, entitlements, plans, specifications, drawings, and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any of the Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

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

(p) Accounts. All accounts receivable and all reserves, escrows and deposit accounts maintained by 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, dividends and/or substitutions thereon and thereof;

(q) Swap Contracts and Swap Transactions. All rights, claims, interests, proceeds or other benefits of Borrower under any agreement, device or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate swap, cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement

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pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars and forwards), including without limitation any such agreement between Borrower and any Lender, any Affiliate of a Lender, or any other Person, and any schedules, confirmations and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising and in each case, as amended, modified or supplemented from time to time;

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

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

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Agent, 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 Agent all of Borrower's right, title and interest in and to all current and future Leases and Rents, including all prepaid rents and security deposits; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement, Agent grants to Borrower a revocable license to collect, receive, use and enjoy the Rents (excluding however any Lease termination, cancellation, option or similar payments, which Borrower agrees shall be held in trust and turned over to Agent to be applied in accordance with the Loan Documents) so long as no Event of Default exists. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Agent, 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. By executing and delivering this Security Instrument, Borrower hereby grants to Agent, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). If an Event of Default shall occur and be continuing, Agent, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and

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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 Agent may deem reasonably necessary for the care, protection and preservation of the Collateral. Upon request or demand of Agent 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 Agent at a convenient place (at the Land if tangible property) reasonably acceptable to Agent. Borrower shall pay to Agent, within ten (10) Business Days after Agent's written request, any and all expenses, including reasonable attorneys' fees and actual costs, incurred or paid by Agent 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 Agent 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. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Agent to the payment of the Debt in such priority and proportions as Agent in its discretion shall deem proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Agent (Secured Party) is as set forth on page one hereof.

Section 1.4 FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. For purposes of this fixture filing, "Debtor" is Borrower and the "Secured Party" is Agent. Borrower is the record owner of the Land.

Section 1.5 PLEDGES OF MONIES HELD. Borrower hereby pledges to Agent any and all monies now or hereafter held by Agent or on behalf of Agent in connection with the Loan, including, without limitation, any sums deposited in the Accounts (as defined in Section 1.1(p) hereof) and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

## CONDITIONS TO GRANT

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

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Agent the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall perform the Other Obligations as set forth in this Security Instrument and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, Agent, at Borrower's expense, shall release the liens and security interests created by this



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Security Instrument; provided, however, that Borrower's obligation to indemnify, defend and hold harmless Agent pursuant to the provisions hereof and in the other Loan Documents shall survive any such payment or release.

## Article 2 - DEBT AND OBLIGATIONS SECURED

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

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "Other Obligations"):

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document;
- (c) the performance of each obligation of Borrower to Agent or any Lender or any Affiliate of Agent or any Lender, whether absolute, contingent or otherwise and howsoever and whensoever (whether now or hereafter) created, arising, evidenced or acquired (including renewals, extensions, amendments, modifications, substitutions and replacements thereof), under or in connection with (i) any and all Bank-Provided Swap Transactions, and (ii) any and all cancellations, buy-backs, reversals, terminations or assignments of any Bank-Provided Swap Transactions; and
- (d) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

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

## Article 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

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

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

Section 3.3 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform in all material respects each and every term, covenant and provision to be observed or

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performed by Borrower pursuant to the terms of the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

## Article 4 - OBLIGATIONS AND RELIANCES

Section 4.1 RELATIONSHIP OF BORROWER AND AGENT AND LENDERS. The relationship between Borrower, on the one hand, and Agent and Lenders, on the other, is solely that of debtor and creditor, and neither Agent nor any Lender has a fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower, on the one hand, and Agent and Lenders, on the other, to be other than that of debtor and creditor.

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

### Section 4.3 NO AGENT OR LENDER OBLIGATIONS.

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

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Agent or any Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Agent nor any 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 Agent or any Lender.

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

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Instrument in the absence of the warranties and representations as set forth in Article III of the Loan Agreement.

## Article 5 - FURTHER ASSURANCES

Section 5.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Agent in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, the other Loan Documents, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do. Notwithstanding the foregoing, after prior notice to Agent, Borrower, at its own expense, may contest by appropriate legal proceeding, conducted in good faith and with due diligence, any such federal, state, county and municipal taxes, duties, imposts, assessments or charges arising out of or in connection with the execution and delivery of this Security Instrument, provided that (a) no Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under and be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (d) Borrower shall promptly upon final determination thereof pay the amount of any such federal, state, county and municipal taxes, duties, imposts, assessments or charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) Borrower shall deposit with Agent cash, or other security as may be approved by Agent, in an amount equal to one hundred twenty-five percent (125%) of the contested amount, to insure the payment of any such contested amount, together with all interest and penalties thereon.

Section 5.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Agent, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Agent shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Agent the Property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Agent, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower, within ten (10) Business Days of receipt, will execute and deliver, and in the event it shall fail to

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so execute and deliver, hereby authorizes Agent to execute in the name of Borrower or without the signature of Borrower to the extent Agent may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) with or without the signature of Borrower as authorized by applicable law, to evidence more effectively the security interest of Agent in the Property. Borrower also ratifies its authorization for Agent to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower grants to Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Agent at law and in equity, including without limitation such rights and remedies available to Agent pursuant to this Section 5.2. To the extent not prohibited by applicable law, Borrower hereby ratifies all acts Agent has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

## Section 5.3 CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Agent's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Agent or any Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Agent or such Lender or unenforceable or provide the basis for a defense of usury then Agent shall have the option, exercisable by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Agent shall have the option, exercisable by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

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

Section 5.4 SPLITTING OF MORTGAGE. This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Agent, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Agent, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Agent and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and

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clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Agent.

Section 5.5 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of a Lender or Agent as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, at such Lender's or Agent's sole cost and expense, 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/ENCUMBRANCE

Section 6.1 AGENT AND LENDER RELIANCE. Borrower acknowledges that Agent and Lenders have examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Agent and Lenders have 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, Agent, on behalf of itself and the Lenders, can recover the Debt by a sale of the Property.

Section 6.2 NO TRANSFER. Borrower shall not permit or suffer any Transfer to occur, unless specifically permitted by Article 17 of the Loan Agreement or unless Agent shall consent thereto in writing.

Section 6.3 AGENT'S RIGHTS. Without obligating Agent to grant any consent under Section 6.2 hereof which Agent may grant or withhold in its sole discretion, Agent reserves the right to condition the consent required hereunder as set forth in Article 17 of the Loan Agreement. Agent shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Agent's consent. This provision shall apply to every Transfer, other than any Transfer permitted pursuant to the Loan Agreement, regardless of whether voluntary or not, or whether or not Agent has consented to any previous Transfer.

## 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 Agent may take such action, without notice or demand to the extent not prohibited by applicable 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 Agent may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Agent:

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

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(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

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

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

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

(h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Agent 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 the Property and all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Agent upon demand, and thereupon Agent may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Agent deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without 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 Agent, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Agent or to such receiver and, in default thereof, Borrower may be evicted by

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summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Agent shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) actually incurred and due and payable in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Agent, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and the Personal Property, or any part thereof, and to take such other measures as Agent may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Agent at a convenient place acceptable to Agent. Any notice of sale, disposition or other intended action by Agent with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

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

- (i) Taxes and other charges;
- (ii) Insurance premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;

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

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

(l) apply the undisbursed balance of any other deposit made pursuant to the Loan Agreement, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Agent shall deem to be appropriate in its discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of 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. Upon the occurrence of an Event of Default, the purchase money, proceeds and avails of any disposition of the Property, and or any part

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

Section 7.3 RIGHT TO CURE DEFAULTS. Upon the occurrence and during the continuance of any Event of Default or if Borrower fails to make any payment when due or to do any act as herein provided and such failure continues beyond any applicable notice and cure period (or if an emergency or exigent circumstance exists), Agent may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Agent may deem necessary to protect the security hereof. Agent is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Agent within ten (10) Business Days of Borrower's receipt of a written request from Agent. All such costs and expenses incurred by Agent in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Agent that such cost or expense was incurred to the date of payment to Agent. All such costs and expenses incurred by Agent together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Agent therefor.

Section 7.4 ACTIONS AND PROCEEDINGS. Agent has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Agent, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Agent shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Agent thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Borrower existing at the time such earlier action was commenced.

Section 7.6 OTHER RIGHTS, ETC.

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



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

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

Section 7.7 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Agent may release any portion of the Property for such consideration as Agent may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Agent for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Agent may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.8 VIOLATION OF LAWS. If the Property is not in material compliance with Laws, Agent may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 7.9 RIGHT OF ENTRY. Upon reasonable notice to Borrower, Agent and its agents shall have the right to enter and inspect the Property at all reasonable times and upon reasonable prior notice.

## Article 8 -INDEMNIFICATION

Section 8.1 GENERAL INDEMNIFICATION. The provisions of Section 15.1(r) 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.

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

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

Section 8.3 ERISA INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Agent's sole discretion) that Agent may incur, directly or indirectly, as a result of a default under Section 17.2 of the Loan Agreement. The liability of Borrower pursuant to this Section 8.3 is not limited to the original principal amount of the Note.

Section 8.4 DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and any Indemnified Party and Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Borrower, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

## Article 9 - WAIVERS

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

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

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

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

Section 9.5 SURVIVAL. The indemnifications made pursuant to Section 8.3 herein and the representations and warranties, covenants, and other obligations arising under the Environmental Indemnity shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Agent's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Agent's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Agent following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

## Article 10 - EXCULPATION

The provisions of Article 26 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 Article 22 of the Loan Agreement.

## Article 12 - APPLICABLE LAW

Section 12.1 GOVERNING LAW. The creation, perfection and enforcement of the lien of this Security Instrument shall be governed by the laws of the State in which the Property is located. Subject to the foregoing, in all other respects, this Security Instrument shall be governed by the substantive laws of the State of Illinois.

Section 12.2 USURY LAWS. Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Agent or any Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the

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interest contracted for, charged or received by Agent shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Agent or any Lender, and (c) if through any contingency or event, Agent or any Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Agent or such Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

Section 12.3 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

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

Section 12.5 CONSENT TO JURISDICTION. **TO THE GREATEST EXTENT PERMITTED BY LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY AGENT. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (EACH, A "PROCEEDING"), BORROWER IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN CHICAGO, ILLINOIS, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT SHALL PRECLUDE AGENT FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. BORROWER FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY STATE OR**

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UNITED STATES COURT SITTING IN CHICAGO, ILLINOIS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF BORROWER SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

## Article 13 - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Agent**" shall mean "**Agent**" and any successor Agent under the Loan Agreement, the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all attorneys', 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 Agent in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

## Article 14 - MISCELLANEOUS PROVISIONS

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

Section 14.2 SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Agent and their respective successors and assigns forever.

Section 14.3 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 14.4 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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

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Section 14.6 ENTIRE AGREEMENT. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement among Borrower, Agent and Lenders with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements among Borrower, Agent and Lenders 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 Agent or any Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 14.7 LIMITATION ON AGENT'S AND LENDERS' RESPONSIBILITY. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Agent or any Lender, nor shall it operate to make Agent or any Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Agent a mortgagee in possession."

## Article 15 - STATE-SPECIFIC PROVISIONS

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

### Section 15.2 ILLINOIS MORTGAGE FORECLOSURE

(a) It is the express intention of Borrower and Agent that the rights, remedies, powers and authorities conferred upon the Agent pursuant to this Security Instrument shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5/15-1101 et seq.) (herein called the "**IMFL**") and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Security Instrument shall be inconsistent with any provision in the IMFL, the provisions of the IMFL shall take precedent over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the IMFL.

(b) Without limiting the generality of the foregoing, all expenses incurred by Agent to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether provided for in this Security Instrument, shall be added to the Indebtedness secured by this Security Instrument or by the judgment of foreclosure.

(c) The powers, authorities and duties conferred upon the Agent, in the event that the Agent takes possession of the Property, and upon a receiver hereunder, shall also include all such powers, authority and duties as may be conferred upon an Agent in possession or receiver under

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and pursuant to the IMFL. To the extent the IMFL may limit the powers, authorities and duties purportedly conferred hereby, such power, authorities and duties shall include those allowed, and be limited as proscribed by IMFL at the time of their exercise or discharge.

(d) BORROWER KNOWINGLY AND VOLUNTARILY RELEASES AND WAIVES, ON BEHALF OF ITSELF AND ALL PERSONS OR ENTITIES NOW OR HEREAFTER INTERESTED IN THE PROPERTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW INCLUDING IMFL, (I) ALL RIGHTS UNDER ALL APPRAISEMENT, HOMESTEAD, MORATORIUM, VALUATION, EXEMPTION, STAY, EXTENSION, REDEMPTION, SINGLE ACTION, ELECTION OF REMEDIES AND MARSHALING STATUTES, LAWS OR EQUITIES NOW OR HEREAFTER EXISTING, (II) ANY AND ALL REQUIREMENTS THAT AT ANY TIME ANY ACTION MAY BE TAKEN AGAINST ANY OTHER PERSON OR ENTITY AND BORROWER AGREES THAT NO DEFENSE BASED ON ANY THEREOF WILL BE ASSERTED IN ANY ACTION ENFORCING THIS INSTRUMENT, AND (III) ANY AND ALL RIGHTS TO REINSTATEMENT AND REDEMPTION AS ALLOWED UNDER SECTION 15-1601(B) AND SECTION 1602 OF THE IMFL OR TO CURE ANY DEFAULTS, EXCEPT SUCH RIGHTS OF REINSTATEMENT AND CURE AS MAY BE EXPRESSLY PROVIDED BY THE TERMS OF THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS.

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

## Section 15.3 PROTECTIVE ADVANCES.

(a) All advances, disbursements and expenditures made by Agent before and during a foreclosure, and before and after 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 the Loan Documents or by the IMFL (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the IMFL, including those provisions of the IMFL hereinbelow referred to:

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

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

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

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

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

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

(vii) expenses incurred and expenditures made by Agent for any one or more of the following: (A) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (B) if Borrower's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Agent whether or not Agent or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or agent takes possession of the Property imposed by subsection (c)(l) of Section 5/15-1704 of the IMFL; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Agent to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (G) if the Loan is a construction loan, costs incurred by Agent for demolition, preparation for and completion of construction, as may be authorized by the applicable



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commitment, loan agreement or other agreement; and (H) pursuant to any lease or other agreement for occupancy of the Property for amounts required to be paid by Borrower;

(viii) all Protective Advances shall be so much additional indebtedness secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Loan Documents;

(ix) this Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to subsection (b)(1) of Section 5/15-1302 of the IMFL; and

(x) all Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMFL, apply to and be included in:

- A. determination of the amount of indebtedness secured by this Security Instrument at any time;
- B. the indebtedness found due and owing to the Agent in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- C. determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the IMFL;
- D. application of income in the hands of any receiver or Agent in possession; and
- E. computation of any deficiency judgment pursuant to Section 5/15-1511 of the IMFL.

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

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

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Section 15.6 MAXIMUM PRINCIPAL AMOUNT. The maximum indebtedness secured by this Security Instrument shall include advances made hereafter but shall not exceed two hundred percent (200%) of the aggregate, original principal amount of the Loan.

Section 15.7 RECEIVERSHIP. Upon, or at any time after the filing of a complaint to foreclose this Security Instrument, the court in which such complaint is filed shall appoint a receiver of the Property whenever Agent, when entitled to possession, so requests pursuant to Section 15-1702(a) of the IMFL, 735 ILCS 5/15-1101 et seq., as amended from time to time or when such appointment is otherwise authorized by operation of law. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the IMFL, including the power to make leases to be binding upon all parties; including the Borrower after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Property after entry of a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the IMFL. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing Leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by or included in any judgment of foreclosure or supplemental judgment or other item for which Agent is authorized to make a protective advance; and (b) the deficiency in case of a sale and deficiency.

Section 15.8 POSSESSION. In any case in which under the provisions of this Security Instrument Agent has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after judgment thereunder, and at all times until confirmation of sale, Borrower shall forthwith, upon demand of Agent, surrender to Agent and Agent shall be entitled to take and upon Agent's request to the court to be placed in actual possession of, Agent shall be placed in possession of the Property or any part thereof, personally, or by its agent or attorneys as provided in Subsections (b)(2) and (c) of Section 1701 of the IMFL. In such event Agent in its reasonable discretion may enter upon and take and maintain or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of said Property, together with all documents, books, records, papers and accounts of Borrower or then owner of the Property relating thereto, and may exclude Borrower, its agents or servants, wholly therefrom and may, as attorney in fact or agent of Borrower, or in its own name as Agent and under the powers herein granted, hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its reasonable discretion or in the reasonable discretion of its successors or assigns may be

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deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any Lease or sublease for any cause or on any ground that would entitle Borrower to cancel the same; (b) to elect to disaffirm any Lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing Leases and to make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to Lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Security Instrument indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to enter into any management, leasing or brokerage agreements covering the Property; (e) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as to it may deem judicious; (f) to insure and reinsure the same and all risks incidental to Agent's possession, operation and management thereof, and (g) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter. Without limiting the generality of the foregoing provisions of this Section, Agent shall also have all power, authority and duties as provided in Section 15-1703 of the IMFL.

Section 15.9 INSURANCE. If at any time Agent is not in receipt of written evidence that all insurance required under the Loan Documents is in full force and effect, Agent shall have the right, without notice to Borrower, to take such action as Agent deems necessary to protect its interest in the Property, including, without limitation, pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Agent may purchase insurance at Borrower's expense to protect Agent's interests in the Property and to maintain the insurance required by the Loan Documents. This insurance may, but need not, protect Borrower's interests. The coverage purchased by Agent may not pay any claim made by Borrower or any claim that is made against Borrower in connection with the Property or any required insurance policy. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained insurance as required by the Loan Documents. If Agent purchases insurance for the Property or insurance otherwise required by the Loan Documents, Borrower will be responsible for the costs of that insurance, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be paid by Borrower to Agent within five (5) days after written notice requesting payment thereof, and until paid shall be secured by this Security Instrument, shall bear interest at the Default Rate and shall be added to the Debt. The cost of the insurance may be more than the cost of insurance Borrower is able to obtain on its own.

[NO FURTHER TEXT ON THIS PAGE]

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

**BORROWER:**

**CA/FOCUS EVANSTON PROPERTY OWNER, LLC,**  
a Delaware limited liability company

By: **CA/FOCUS EVANSTON JV, LLC,** a Delaware  
limited liability company, its Manager

By: **CA STUDENT LIVING EVANSTON,**  
**LLC,** a Delaware limited liability company,  
its Co-Manager

By: *Katie Kayes*  
Name: *Katie Kayes*  
Title: Authorized Signatory

By: **FOCUS EMERSON PARTNERS LLC,**  
an Illinois limited liability company,  
its Co-Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

# UNOFFICIAL COPY

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

**BORROWER:**

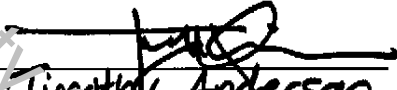
**CA/FOCUS EVANSTON PROPERTY OWNER, LLC,**  
a Delaware limited liability company

By: **CA/FOCUS EVANSTON JV, LLC,** a Delaware limited liability company, its Manager

By: **CA STUDENT LIVING EVANSTON, LLC,** a Delaware limited liability company, its Co-Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

By: **FOCUS EMERSON PARTNERS LLC,** an Illinois limited liability company, its Co-Manager

By:   
Name: Timothy Anderson  
Title: Authorized Signatory

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENT

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, ALISSA SIRON, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT KATIE KAZAS, as Authorized Signatory of CA Student Living Evanston, LLC, a Delaware limited liability company, as the Co-Manager of CA/Focus Evanston JV, LLC, a Delaware limited liability company, as Manager of CA/Focus Evanston Property Owner, LLC, a Delaware limited liability company, personally known to me, or proved to me on the basis of satisfactory evidence, to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free voluntary act and deed and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

Given my hand and notarial seal this 14<sup>th</sup> day of JUNE, 2018.

Alissa Siron  
Notary Public

My Commission Expires:



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## ACKNOWLEDGMENT

STATE OF ILLINOIS

§

COUNTY OF COOK

§

§

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared Timothy Anderson as Authorized Signatory of Focus Evanston Partners LLC, an Illinois limited liability company, as the Co-Manager of CA/Focus Evanston JV, LLC, a Delaware limited liability company, as Manager of CA/Focus Evanston Property Owner, LLC, a Delaware limited liability company, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said entity and that he or she executed the same as the act of such entity for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13 day of JUNE, 2018.

Jessica Stelzer  
(Notary signature)

(seal)

Jessica Stelzer  
(typed or printed name)

My commission expires: 10/24/18



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## EXHIBIT A

### LEGAL DESCRIPTION

The Land is described as follows:

Parcel 1:

Lot 11 in Paul Pratt's Addition to Evanston, said Addition being a subdivision of the Southwest 8 1/2 Acres of the South 1/2 of the Northeast 1/4 of the Northwest 1/4 of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Lot 10 (except the West 40.0 feet thereof) in Paul Pratt's Addition to Evanston, being a subdivision of the Southwest 8 1/2 acres of the South 1/2 of the Northeast 1/4 of the Northwest 1/4 of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3:

The South 25.30 feet of lot 14 in Huse and Power's Addition to Evanston in Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 4A:

That part of the North 24.70 feet of Lot 14 in Huse and Power's Addition to Evanston in Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, described as follows:

Commencing at the Southeast corner of the North 24.70 feet of Lot 14 of Huse and Power's Addition; thence West parallel with the North Line of said Lot 14, 30.09 feet to the East Line of Lot 12 in Paul Pratt's Addition; thence South 0.77 feet to the Southeast corner of said Lot 12 in Paul Pratt's Addition; thence West on the South line of Lots 12 and 13 of Paul Pratt's Addition to a point 15.0 feet East of the Southwest corner of Lot 13; thence Northwesterly 19.12 feet to a point 13.34 feet East of the West Line of said Lot 13 and 19.05 feet North of the South Line of said Lot 13; thence Easterly in a straight line to a point on the East line of Lot 14 in Huse and Power's Addition, which point is 19.04 feet North of the South line of the North 24.70 feet of lot 14 of said Huse and Power's Addition; thence South on the East Line of said Lot 14 of Huse and Power's Addition, 19.04 feet to the place of beginning, in Cook County, Illinois.

Parcel 4B:

That part of Lots 12 and 13 in Paul Pratt's addition to Evanston, a subdivision of the southwest 8 1/2 acres of the South 1/2 of the Northeast 1/4 of the Northwest 1/4 of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian described as follows:

Commencing at the Southeast corner of the North 24.70 feet of Lot 14 of Huse and Power's addition; thence West parallel with the North line of said Lot 14, 30.09 feet to the East line of Lot 12 in Paul Pratt's Addition; thence South 0.77 feet to the Southeast corner of said Lot 12 in Paul Pratt's Addition; thence West on the South line of Lots 12 and 13 of Paul Pratt's Addition to a point 15.0 feet East of the Southwest corner of Lot 13; thence Northwesterly 19.12 feet to a point 13.34 feet East of the West line of said Lot 13 and 19.05 feet North of the South Line of said Lot 13; thence Easterly in a straight line to a point on the East line of Lot 14 of Huse and Power's Addition which point is 19.04 feet North of the South line of the North 24.70 feet of Lot 14 of said Huse and Power's Addition; thence South on the East line of said Lot 14 of Huse and Power's Addition, 19.04 feet to the place of beginning, in Cook County, Illinois.

Parcel 5:

Lot 13 in Huse and Power's Addition to Evanston, a subdivision of Lot 7 of Assessor's Division of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Pins: 11-18-109-018, 11-18-109-019, 11-18-109-020, 11-18-109-043,  
11-18-109-052, 11-18-109-053, 11-18-109-062 and 11-18-109-064

Address: 811 Emerson Street, Evanston, IL 60201