

# UNOFFICIAL COPY

## Illinois Anti-Predatory Lending Database Program

Doc#: 1819912011 Fee: \$102.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 07/18/2018 09:20 AM Pg: 1 of 28

### Certificate of Exemption



Report Mortgage Fraud

844-768-1713

180297357506

The property identified as: PIN: 16-23-203-081-0000

#### Address:

Street: 1251 S. Saint Louis Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60623

Lender: Iron Bridge Mortgage Fund, LLC

Borrower: AREP INC.

Loan / Mortgage Amount: \$90,200.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is not owner-occupied.

Attorney's Title Guaranty Fund, Inc.  
1 S. Wacker Dr. Ste 2400  
Chicago, IL. 60606-4650  
Recording Department

Certificate number: 0F79CFAB-49BB-4AED-8BCA-ACF6935448EC

Execution date: 7/13/2018

RECORD AND RETURN TO

**UNOFFICIAL COPY**

Iron Bridge Mortgage Fund, LLC  
9755 SW Barnes Road, Suite 420  
Portland, OR 97225

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

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

**AREP INC.**  
a(n) Illinois Corporation

"Grantor" or "Borrower"

Address: 2411 W Madison St, Chicago, IL 60612

**Iron Bridge Mortgage Fund, LLC**

"Lender"

Address: 9755 SW Barnes Road, Suite 420, Portland, OR 97225

Loan Name: SaintLouis-1251-AREP-IL  
Loan Number: 12720

This MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (sometimes referred to as this "Security Instrument") is dated as of 2-13-18, 2018, FROM BORROWER TO LENDER.

**RECITALS**

WHEREAS, the Grantor is the owner of a certain tract or parcel of land described in **Exhibit A**, together with the improvements now or hereafter erected thereon; and

WHEREAS, the Grantor is executing and delivering this Security Instrument as collateral security for a loan from Lender, in an amount not to exceed **Ten Million Dollars (\$10,000,000.00)** (as the same may be amended, supplemented or replaced from time to time, the "Loan"), which Loan is evidenced by that certain Master Loan and Security Agreement between Lender and Grantor dated as of **5/1/2017** (the "Loan Agreement"), and includes, but is not limited to the advance evidenced by that certain promissory note dated the date hereof in the amount of **\$ 90,200.00** made payable by Grantor in favor of Lender (and any and all extensions, renewals, modifications or replacements thereof, collectively, the "Note").

NOW, THEREFORE, for the purpose of securing the payment and performance of the following obligations and in consideration of the agreements in this Security Instrument, Borrower and Lender agree as follows:

1. **GRANT.** Borrower, in consideration of the Loan, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the obligations described in Section 2 (including all subsections) below, hereby irrevocably grants, bargains, sells, assigns, transfers and conveys to Lender and its successors and assigns, all of Borrower's estate, right, title, interest, claim and demand in and to the property, whether now existing or hereafter acquired, described in all parts and subsections of this Section 1 (collectively, the "Property"):

1.1 **Land and Appurtenances.** The land described on **Exhibit A** hereto (the "Land"), and all tenements, hereditaments, rights of way, easements, appendages and appurtenances thereto belonging or in any way appertaining, including without limitation all of the right, title and interest of Borrower in and to any avenues, streets, ways, alleys, vaults, strips or gores of land adjoining the Land, all water, water courses and water rights (whether or not appurtenant) and shares of stock pertaining to such water or water rights, ownership of which affects the Land, all drains, drainage and air rights relating to the Land, all shrubs, trees, crops, and plants, all adjacent lands included in enclosures or occupied by buildings located partly on the Land, and all claims or demands of Borrower either in law or in equity in possession or expectancy of, in and to the Land. The street address of the Land is **1251 S. Saint Louis Ave., Chicago, IL 60623**; this address is provided for

reference only and shall in no way limit the description of the real and personal property otherwise described throughout this Section 1 (including all subsections); and

**1.2 Improvements and Fixtures.** All buildings, structures and other improvements now or hereafter erected on the property described in Section 1.1 above, and all facilities, fixtures, machinery, appliances, apparatus, installations, goods, equipment, inventory, furniture, building materials and supplies and other articles of real or personal property of every kind and nature, whether or not physically attached or affixed to the Land and now or hereafter installed or placed thereon, now or hereafter located in or used or procured for use in connection with that property (including, but not limited to, all apparatus and equipment used to provide or supply air-cooling, air-conditioning, heat, gas, water, light, power, laundry, garbage disposal, fire prevention and extinguishing equipment, elevators, antennas, pool equipment, window coverings, floor coverings, ranges, ovens, dishwashers, and water heaters), it being the intention of the parties that all property of the character described above that is now owned or hereafter acquired by Borrower and that is affixed or attached to, stored upon or used in connection with the property described in Section 1.1 above shall be covered by and subject to the lien of this Security Instrument, and shall be conclusively deemed to be affixed to and to be part of the Property that is conveyed hereby (all of the herein above described property called the "Improvements"); and

**1.3 Contracts and Intangibles.** All contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the construction of the existing or any future Improvements on the Property, any and all rights of Borrower in, to or under any architect's contracts or construction contracts relating to the construction of the existing or any future Improvements on the Property, and any performance and/or payment bonds issued in connection therewith, together with all trademarks, trade names, copyrights, computer software and other intellectual property used by Borrower in connection with the Property. Nothing herein shall be deemed to be an assumption by Lender of any obligation of Borrower with respect to such plans and specifications or under any such construction or other agreement, nor shall Lender otherwise incur any liability with respect thereto unless and until Lender, in its sole and absolute discretion, shall hereafter expressly agree in writing; and

**1.4 Leases, Rents and Profits.** All of Borrower's right, title and interest now existing and hereafter arising in and to all leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, whether written or oral and whether for a definite term or month to month or otherwise, now existing and hereafter arising which affect the Land or any portion thereof, Borrower's interest therein or any improvements located thereon, including all renewals and extensions thereof, together with any and all security deposits, guaranties of the lessees' or tenants' obligations (including any and all security therefor), and other security under any such leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, and all supporting obligations, letters of credit (whether tangible or electronic) and letter of credit rights guaranteeing or supporting any of the foregoing (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "Leases"), and all the income, rents, issues, profits, royalties and proceeds from the Land or the Leases, or any business conducted on the Land, and any and all prepaid rent and security deposits thereunder shall be collectively referred to as the "Rents and Profits." The term "Rents and Profits" includes, but is not limited to all minimum rents, additional rents, percentage rents, deficiency rents, common area maintenance charges, lease termination payments, purchase option payments, refunds of any type, prepayment of rents, settlements of litigation, settlements of past due rents, and liquidated damages following default, refunds from taxing authorities, utilities and insurers, and all proceeds payable under any policy of insurance covering loss of rents, together with any and all rights and claims of any kind that Borrower may have against any tenant under the Leases or any other occupant of the Property, including but not limited to any and all rights of Borrower in or to make claim for, collect, receive and receipt for any of the foregoing, and all mineral, oil and gas rights and profits. The Property shall include the Rents and Profits and the Leases. The immediately foregoing provision shall constitute an assignment of the Rents and Profits, subject to the provisions of Section 15 hereof. In accepting this Security Instrument Lender assumes no liability for the performance of any Lease; and

**1.5 Claims, Insurance and Condemnation Proceeds and other Choses in Action.** All claims, demands and causes of action of every kind (including proceeds of settlements of any such claim, demand, or cause of action of any kind and which are subject to Section 8 below) which Borrower now has or may hereafter acquire arising out of acquisition or ownership of the Land, including insurance proceeds of any kind (whether or not Lender requires such insurance and whether or not Lender is named as an additional insured or loss payee of such insurance), and any condemnation awards and other moneys, payable or receivable from or on account of any of the Property, including interest thereon (whether or not eminent domain proceedings have been instituted), and all rights to enforce all provisions of any other agreement (including those described in Section 1.3 above) affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for the collection of such moneys or for the specific or other enforcement of any such agreement, award or judgment, in the name of Borrower or otherwise, and to do any and all things that Borrower is or may be or become entitled to do with respect thereto, provided, however, that no obligation of Borrower under the provisions of any such agreements, awards or judgments shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon Lender; and

**1.6 Accounts, Income and Intangibles.** Any and all rights of Borrower in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts,

installments of money payable pursuant to any agreement for sale of the Land or any part thereof or interest therein and any release, termination or "buy-out" consideration now or hereafter payable to Borrower with respect to any lease, rental, tenancy, occupancy or other agreement, and all other agreements and general intangibles relating to any of the Property of any nature whatsoever, including, without limitation, income and profits derived from the operation of any business on the Property or attributable to services that occur or are provided on the Property or generated from the use and operation of the Property; and

1.7 **Books and Records.** All books and records of Borrower relating to the foregoing, of any nature and in any form whatsoever.

1.8 **Security Agreement.** To the extent any of the property described anywhere in Section 1 is personal property, Borrower, as debtor, grants to Lender, as secured party, a security interest therein together with a security interest in all other personal property of whatsoever nature that is located on or used or to be used in connection with any of the property described in Section 1 (including all subsections), and any products or proceeds of any thereof, pursuant to the Article 9 of the Illinois Uniform Commercial Code 810 ILCS 5/1-101, et seq. (the "**Uniform Commercial Code**"), on the terms and conditions contained herein. Borrower hereby authorizes Lender to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Security Instrument without Borrower's signature.

2. **OBIGATIONS SECURED.** This Security Instrument is given for the purpose of securing all of the following to the full extent permitted by applicable law, which shall be collectively referred to as the "**Indebtedness**":

2.1 **Performance and Payment.** The performance of the obligations contained herein and the timely performance of the following:

a. The timely payment of all amounts owing (including but not limited to principal, interest, costs and attorney fees) pursuant to the following Secured Promissory Notes payable to Lender (collectively, the "**Note**"), according to the terms thereof, and any and all extensions, renewals, modifications or replacements thereof, whether the same be in greater or lesser amounts:

Loan Name: **SaintLouis-1251-AREP-IL** Loan Amount: **\$90,200.00**  
Funding Date: **7/13/2018** Maturity Date: **1/16/2019**

Loan Name: **Quincy-4917-AREP-IL** Loan Amount: **\$87,300.00**  
Funding Date: **3/30/2018** Maturity Date: **10/2/2018**

and

b. The timely performance of all obligations pursuant to a **Master Loan and Security Agreement dated 5/1/2017** (the "**Loan Agreement**").

The latest of the Maturity Dates set out above shall be referred to as the "**Maturity Date**." All of the Borrower's obligations to Lender pursuant to the Note, and each of them or any of the Loan Documents (as defined in Section 2.3 of this Security Instrument) shall be collectively referred to as the "**Loan**."

The Note and the Loan Agreement may provide for one or more of the following: (a) a variable rate of interest; or (b) a balloon payment at maturity. Borrower acknowledges that the terms of the Note may provide that the interest rate is subject to adjustment, both upward and downward, which may increase or decrease the amount of periodic payments or may extend or shorten the term of this Security Instrument, or both. The priority of this Mortgage shall not be affected by such terms.

2.2 **Future Advances.** The repayment of any and all sums advanced or expenditures made by Lender subsequent to the execution of this Security Instrument for the maintenance or preservation of the Property or advanced or expended by Lender pursuant to any provision of this Security Instrument or any of the other Loan Documents (as hereinafter defined) subsequent to execution thereof, together with interest thereon. Borrower acknowledges and agrees that this Security Instrument secures the entire principal amount of the Loan and interest accrued thereon, regardless of whether any or all of the Loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or in part and future advances made at a later date, as well as any amounts owed to the Lender pursuant to this Security Instrument, any and all litigation and other expenses incurred by the Lender pursuant to the terms hereof and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by the Lender in connection with the Loan, and in accordance with the Loan Documents; provided nothing in this Section shall be deemed an obligation on the part of the Lender to make any future advances of any sort. Under no circumstances, however, shall the total amount of the indebtedness secured hereby plus such additional amounts exceed an amount equal to two times the original principal amount of the Loan.

2.3 **Other Amounts.** All other obligations and amounts now or hereafter owing by Borrower to Lender under this Security Instrument, the Note, the Loan Agreement or any other document, instrument or agreement evidencing, securing or otherwise relating to the loan evidenced by the Loan Agreement and any and all extensions, renewals, modifications or replacements of any thereof (collectively, the "**Loan Documents**"). In limitation of the foregoing, this Security Instrument does not and shall not in any event be deemed to secure the obligations owing to Lender under any guaranty of such loan. Notwithstanding the foregoing, this Security

Instrument shall not be construed to secure any agreement or obligation of Borrower contained in any documents or agreements which expressly provide that the same either are unsecured or are not secured by this Security Instrument.

**2.4 Other Obligations; Cross-Collateralization.** Payment of such additional sums with interest thereon as may be hereafter borrowed from Lender by Borrower or by the then record owner of the Property, which are evidenced by a promissory note or notes reciting it is or they are secured by this Security Instrument, and all modifications, extensions, renewals and/or replacements thereof.

**2.5 Covenants, Conditions and Restrictions.** Payment by Borrower of each and every monetary provision to be performed by Borrower under any declaration of covenants, conditions, and restrictions pertaining to the Property, and upon written request of Lender, the enforcement by Borrower of any covenant to pay maintenance or other charges, which enforcement shall include, if the same have not been paid within 30 days after such written request is made, valid legal steps to enforce such payment.

**BORROWER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:**

**1. PERFORMANCE OF NOTE AND OTHER LOAN DOCUMENTS.** Borrower shall perform, observe and comply with all provisions hereof, of the Note, the Loan Agreement and every other Loan Document and will promptly pay to Lender the principal with interest thereon and all other sums required to be paid by Borrower under the Note and pursuant to the provisions of this Security Instrument and of every other Loan Document when payment shall become due, provided that nothing herein shall be construed to cause this Security Instrument to secure any covenant or other obligation of Borrower under any Loan Document which is expressly stated to be an unsecured obligation of Borrower or to be an obligation of Borrower which is not secured by this Security Instrument.

**2. GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES; INDEMNIFICATION.** Borrower represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof: (a) Borrower is the lawful owner of good and marketable fee simple title to the Property, free and clear of all liens and encumbrances other than those set forth on the attached **Exhibit B** (collectively, the "**Permitted Exceptions**"), and has good right and authority to grant, bargain, sell, convey, transfer, and assign the Property, and is the owner of the Improvements hereby secured, and has good right to grant, bargain, sell, convey, transfer, and assign the same as security under this Security Instrument. (b) Borrower will warrant and forever defend the title to the Property against the claims of all persons whomsoever claiming the same or any part thereof, and this warranty of title shall survive the foreclosure of this Security Instrument and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to foreclosure. (c) Borrower is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities, no bankruptcy or insolvency proceedings are pending or contemplated by or against Borrower, no assignment to creditors has been made by Borrower and no portion of Borrower's assets are presently subject to any attachment, execution or judicial seizure, and Borrower covenants immediately to provide notice to Lender in the event that any change in any of the circumstances described in this sentence should occur. (d) All reports, statements and other data furnished by or on behalf of Borrower, or any partner, officer, employee or agent of Borrower or any guarantor in connection with the Loan are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. (e) Borrower is duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified and authorized to do business in the state where the Property is located, and has full power and authority to own its property, to carry on its business as presently being conducted and as contemplated to be conducted hereunder and to execute, deliver and perform its obligations under this Security Instrument, the Note and the other Loan Documents. The person(s) executing this Security Instrument, the Note and the other Loan Documents on behalf of Borrower have been duly authorized to execute and deliver this Security Instrument, the Note and other Loan Documents on behalf of Borrower. This Security Instrument, the Note and the other Loan Documents constitute legally valid and binding obligations of Borrower enforceable in accordance with their terms; and the execution, delivery and performance of this Security Instrument, the Note and the other Loan Documents by Borrower will not conflict with, or constitute a breach of, or default under, Borrower's governing instruments or any indenture, mortgage, deed of trust, note, lease, commitment, agreement or other instrument or obligation to which Borrower is a party or by which Borrower or its properties is bound. The Loan is primarily for commercial, industrial or business purposes and is not primarily for personal, family or household purposes. (f) There are no actions, suits or proceedings pending, or to the knowledge of Borrower threatened, against or affecting Borrower, the Property or Borrower's title to or rights in the Property, of any nature whatsoever. (g) Borrower is not in default under the terms of any instrument evidencing or securing any indebtedness of Borrower and there has occurred no event which would, if uncured or uncorrected, constitute a default under any such instrument with the giving of notice, passage of time or both. (h) Electric, gas, sewer, water facilities, and any other necessary utilities, are available and shall continue to be available in sufficient capacity to service the Property satisfactorily for its intended uses. (i) The Property, including without limitation the Improvements thereon, comply with and will continue throughout the term hereof to comply with all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health, disability and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations, including permits, licenses and/or certificates that may be necessary from time to time to comply with any of these requirements. The Property is free from damage and no matter has come to Borrower's attention (including, but not limited to, knowledge of any construction defects or nonconforming work) that would

materially impair the value of the Property as security. (j) Borrower will preserve and protect the priority of this Security Instrument as a first lien on the Property. (k) The Property is not currently or primarily used for agricultural, farming, timber or grazing purposes. If Borrower fails to do so, Lender may take any and all actions necessary or appropriate to do so and all sums expended by Lender in so doing shall be treated as part of the obligations secured by this Security Instrument, shall be paid by Borrower upon demand by Lender and shall bear interest at the highest rate borne by any of the obligations secured by this Security Instrument. (l) Borrower is not a "foreign person" with the meaning of § 1445 or § 7701 of the Internal Revenue Code. Additionally, Borrower hereby acknowledges, represents, warrants and covenants that (w) the proceeds of the Loan are being used for the acquisition of an investment property and not for personal, family or household use, (x) the Property represents a commercial purchase, for profit venture, (y) Borrower shall not occupy the Property as a primary or secondary personal residence and (z) Borrower will not use the proceeds of the Loan for personal, family or household use. 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 Illinois Mortgage Foreclosure Law, as amended (Illinois Code Ann. 735 ILCS 5/15-1101, et seq.) (hereinafter referred to as the "IMFL")) or residential real estate (as defined in Section 5/15-1219 of the IMFL). Borrower acknowledges and agrees that (a) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(1)); (b) the indebtedness secured hereby has been incurred by the Borrower solely for business purposes of the Borrower and for the Borrower's investment or profit, as contemplated by said Section 4; and (c) the indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4.

**BORROWER SHALL HOLD LENDER AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND ATTORNEYS ("LENDER PARTIES") HARMLESS FROM AND INDEMNIFY THEM FOR ANY AND ALL CLAIMS, DEMANDS, DAMAGES, LIABILITIES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES AND COURT COSTS, ARISING OUT OF OR IN CONNECTION WITH LENDER'S INTEREST UNDER THIS SECURITY INSTRUMENT (INCLUDING, WITHOUT LIMITATION, ANY SUCH CLAIMS, DEMANDS, DAMAGES, LIABILITIES OR EXPENSES THAT ARISE OR ARE ALLEGED TO HAVE RISEN FROM THE SOLE OR CONCURRENT NEGLIGENCE OF LENDER), EXCEPT BORROWER SHALL NOT BE LIABLE FOR ACTS PERFORMED BY LENDER IN VIOLATION OF APPLICABLE LAW.**

3. **SECURITY AGREEMENT AND FINANCING STATEMENTS.** Borrower (as Debtor) hereby grants to Lender (as Creditor and Secured Party) a security interest in all of the Property which is tangible or intangible personal property, including without limitation, fixtures, goods, accounts, deposit accounts, instruments, chattel paper, documents, letters of credit, letter of credit rights, supporting obligations, and general intangibles described hereinabove and all additions, substitutions and proceeds (cash and noncash) of the foregoing.

Borrower shall execute any and all such documents as Lender may request, including without limitation, financing statements pursuant to the Uniform Commercial Code, to preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to Lender on demand any expenses incurred by Lender in connection with the preparation, execution and filing of any such documents. Said financing statements shall be filed or recorded in the office of the recorder of the county in which the Property is located and such other offices as Lender deems advisable under the Uniform Commercial Code. Borrower hereby authorizes Lender to file or record all financing statements, refilings, continuations and amendments thereof as Lender deems necessary or advisable to create, preserve and protect said lien and security interest. Borrower shall cooperate with Lender in obtaining control of deposit accounts, letter of credit rights and any other collateral for which control is necessary for perfection under the Uniform Commercial Code. This Security Instrument constitutes a security agreement for any and all items of Property which are personal property and fixtures and which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code and which are not herein effectively made part of the Land. Borrower hereby grants Lender a security interest in said property, and in all additions, substitutions and proceeds (cash and noncash) thereof, for the purpose of securing all Indebtedness and obligations of Borrower now or hereafter secured by this Security Instrument. The remedies available to Lender for violations of the covenants, terms and conditions set forth in this security agreement shall be (i) as set forth in this Security Instrument and (ii) as permitted under applicable law, including the Uniform Commercial Code. Each of these remedies shall be distinct and cumulative as to all other rights or other remedies and may be exercised concurrently, independently or successively, as Lender may elect.

This Security Instrument covers goods which are or are to become fixtures, is effective as a financing statement filed as a fixture filing and is to be filed in the real estate records. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. **THIS SECURITY INSTRUMENT CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, THE LENDER IS THE "SECURED PARTY" AND THE GRANTOR OR BORROWER IS THE "DEBTOR." THE NAME OF THE LENDER IS Iron Bridge Mortgage Fund, LLC, AND THE ADDRESS OF THE LENDER IS 9755 SW Barnes Road, Suite 420, Portland, OR 97225. THE NAME OF THE GRANTOR OR BORROWER IS AREP INC., AND**

THE ADDRESS OF THE GRANTOR OR BORROWER IS 2411 W Madison St Chicago, IL 60612.

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Borrower and Lender agree that neither the filing of a financing statement in the public records normally having to do with personal property nor the taking of any other action described in this Section 3 shall be construed in any way as derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Security Instrument is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded, to the extent permitted by applicable law, as part of the real estate encumbered by this Security Instrument irrespective of whether (i) any such item is physically attached to the Improvements, (ii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease, rental agreement, tenancy agreement or occupancy agreement or right to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender as determined by this Security Instrument or impugning the priority of Lender's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Lender in the event any court or judge shall at any time hold with respect to clauses (1), (2), and (3) of this Section 3 that notice of Lender's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in such public records. Serial numbers in any such financing statement or other document or in any list filed with Lender are used for the better identification of certain equipment or other items capable of being thus identified shall not be deemed to limit the generality of the security interest in equipment or other personal property granted hereby.

Borrower represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof as follows: Borrower's full, correct and exact legal name is set forth at the end of this Security Instrument. Borrower is an organization of the type and is incorporated in, organized or formed under the laws of the state specified in the introductory paragraph to this Security Instrument. In the event of any change in name or identity of Borrower, Borrower shall notify Lender in writing of such change at least 30 days prior to the effective date of such change and hereby authorizes Lender to file such Uniform Commercial Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Property which may be deemed personal property or fixtures, including future replacement thereof, which serves as collateral under this Security Instrument, and shall pay all expenses in connection with the filing and recording of such forms. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recording data of any kind and nature including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding five (5) years (or, if less, the entire period of existence of Borrower) been and will continue to be (unless Borrower notifies Lender of any change in writing at least 30 days prior to the date of such change) the address of Borrower set forth at the end of this Security Instrument.

**4. REPAIR AND MAINTENANCE OF PROPERTY.** Borrower covenants and agrees with Lender to cause the Property to be managed in a first class manner satisfactory to Lender; to keep the Property in good condition and repair, including, without limitation, maintaining all structures on the Property free of any liquid water and/or water vapor intrusion into the structures in amounts that could support the growth of fungus and/or mold inside or on the structures and free of any sites of growing fungus and/or mold inside or on the structures; not substantially to alter, remove or demolish any buildings or other Improvements except when incident to the replacement of fixtures, machinery or appliances with items of like kind and of at least equivalent value; to restore promptly and in a good and workmanlike manner to no less than the equivalent of its condition on origination of the Loan any buildings or other Improvements which may be damaged or destroyed, including, without restricting the generality of the foregoing, damage from termites and earth movement, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair; to pay when due all claims for labor performed and materials furnished in connection with the Property and not to permit any mechanic's or materialman's lien to be filed or remain against the Property; to comply with all laws affecting the Property or the operation or leasing thereof or requiring any alterations or improvements to be made thereon, including, without limitation, the Americans with Disabilities Act of 1990; to fully remedy in a manner acceptable to Lender any notice of violation or any other notice issued by any governmental entity having jurisdiction over the Property within thirty (30) days of the date of such notice; not to commit or permit waste thereon; not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate and prune all landscaping on the Property; and to do all other acts that from the character or use of the Property may be reasonably necessary to keep the Property in the same or better condition (reasonable wear and tear excepted) as at the date of this Security Instrument. Without the prior written consent of Lender, Borrower shall not (i) initiate or acquiesce in a change in the zoning classification of and/or restrictive covenants affecting the Property or seek any variance under existing zoning ordinances, (ii) use or permit the use of the Property in a manner which may result in the use of the Property becoming a non-conforming use under applicable zoning ordinances or restrictive covenants, or (iii) subject the Property to restrictive covenants.

**5. INSURANCE.** At all times, Borrower is to provide, and maintain in force, and pay the cost of property, commercial general liability, and other types and forms of insurance coverage with respect to such Property or the Loan as may be required by Lender in accordance with Lender's insurance requirements as

delivered to Borrower from time to time, including but not limited to the following:

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**PROPERTY ALL-RISK INSURANCE.** Each policy of insurance shall be in an amount, for a term and in a form and content, shall insure against such risks of loss or damage as are commonly covered by all risk extended coverage policies of insurance and such other risks as Lender may from time to time designate for coverage under Borrower's policies, and shall be provided through such insurance companies, as may be satisfactory to Lender, with loss payable to Lender and shall, if required by Lender, be delivered to and remain in the possession of Lender as further security for the performance by Borrower under this Security Instrument. Such policy of insurance shall include a Lender's Loss Payable Endorsement or Mortgagee Clause in favor of and in form acceptable to Lender.

The amount of such insurance shall in no event be less than (i) the original amount of the Note and be in compliance with any co-insurance requirements of such insurance, or (ii) an amount equal to the highest insurable value of the Property, whichever is the lesser.

Borrower hereby assigns to Lender all unearned premiums on any such policy, and agrees that any and all unexpired insurance shall inure to the benefit of, and pass to, Lender upon acquisition by Lender of the Property through foreclosure proceedings or any purchaser of the Property pursuant to such foreclosure proceedings. Pursuant to its rights granted hereunder in all proceeds from any insurance policies, Lender is hereby authorized and empowered at its option to adjust or compromise any loss under any insurance policies on the Property and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender alone and not to Borrower and Lender jointly. So long as Borrower is not in default under the Loan Documents, Borrower shall be entitled to participate in the adjustment or compromise of any insurance loss.

**COMMERCIAL GENERAL LIABILITY INSURANCE AND LOSS OF INCOME INSURANCE.** Borrower shall, at its sole expense, purchase and maintain commercial general liability insurance coverage for the ownership, maintenance and use of the Property. Lender may require such policies to: (a) be no less than a certain minimum amount; (b) insure against such risks of liability as are commonly covered by broad form commercial liability policies in general use for owners of properties similar to the Property and such other risks as Lender may from time to time designate for coverage under Borrower's policies; (c) be provided through such insurance companies as may be satisfactory to Lender; and (d) include Lender and its successors and assigns, as additional insured or additional loss payees.

Lender may further require that Borrower provide, and maintain in force, at Borrower's sole expense, loss of rental income insurance, loss of earnings insurance, business interruption insurance or other forms of coverage to protect the income or earnings of the Property, in form, coverage and liability amount acceptable to Lender.

**OTHER INSURANCE.** Borrower shall, at its sole expense, obtain and maintain such additional insurance coverages as Lender may from time to time require against other insurable hazards or risks, including but not limited to, environmental impairment liability coverage; provided that Lender may only require coverage for risks not required by Lender at origination of the Loan if such hazards or risks are commonly insured against, and provided such insurance is reasonably available, for property similarly situated, due regard being given to the height and type of any buildings, their construction, use and occupancy.

Borrower shall promptly pay all premiums when due on any such policies and renewals thereof and shall furnish Lender with written evidence of such payment. At least 30 days prior to the expiration of any such policies required by Lender, a policy form renewing or extending such expiring insurance shall be delivered to Lender if Lender requests delivery of such policies to it.

In the event Borrower fails to provide insurance complying with the provisions hereof, Lender may, but without obligation so to do, without notice to Borrower, without demand upon Borrower, without releasing Borrower from any obligation hereof, and without curing any default of Borrower, obtain insurance, in any amounts determined by Lender, through or from any insurance agency or insurer or insurance underwriter acceptable to Lender, and pay the premium therefor, and Lender by doing so shall not be chargeable with obtaining or maintaining such insurance or for the collection of any insurance monies or for any insolvency of any insurer or insurance company.

Lender, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Lender pursuant hereto and any information concerning the Loan, Borrower, or the Property.

Borrower hereby assigns to Lender all insurance proceeds from each and every kind of insurance obtained by Borrower related to the Property, including without limitation, all proceeds from insurance not specifically required by Lender at the origination of the Loan or thereafter but which may be carried by Borrower from time to time with respect to the Property or the ownership, operation or income thereof, including, without limitation, earthquake insurance. If at any time Borrower obtains insurance related to the Property or the ownership, operation or income thereof, which is not specifically required by Lender, including, without limitation, earthquake insurance, then Borrower shall nevertheless include Lender and its successors and assigns as



additional insureds or additional loss payees thereon.

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Pursuant to the requirements of the Illinois Collateral Protection Act, the Borrower is hereby notified as follows:

Unless the Borrower provides the Lender with evidence of the insurance coverage required by this Security Instrument or any of the other Loan Documents, the Lender may purchase insurance at the Borrower's expense to protect the Lender's interest in the Property or any other collateral for the Indebtedness. This insurance may, but need not protect the Borrower's interests. The coverage the Lender purchases may not pay any claim that the Borrower makes or any claim that is made against the Borrower in connection with the Property or any other collateral for the Indebtedness. The Borrower may later cancel any insurance purchased by the Lender but only after providing the Lender with evidence that the Borrower has obtained insurance as required by this Security Instrument or any of the other Loan Documents. If the Lender purchases insurance for the Property or any other collateral for the Indebtedness, the Borrower will be responsible for the costs of that insurance, including interest in any other charges that the Lender may lawfully impose 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 may be more than the cost of insurance that the Borrower may be able to obtain on its own.

6. **DISPOSITION OF THE PROCEEDS OF ANY INSURANCE POLICY, CONDEMNATION OR OTHER RECOVERY.** The amount received by Lender pursuant to this Security Instrument under any insurance policy, or in connection with any condemnation for public use of the Property, or for injury or damage to the Property, or in connection with the transaction financed by the Loan secured hereby (collectively, the "Proceeds"), at the option and in the sole discretion of Lender, and without regard to the adequacy of Lender's security, may be (a) applied by Lender upon any Indebtedness secured hereby and in such order as Lender may determine, or (b) without reducing the Indebtedness secured hereby, used by Lender or, with Lender's express prior written consent, by Borrower to replace, restore, or reconstruct the Property to a condition satisfactory to Lender, or (c) released by Lender to Borrower, or (d) divided by Lender in any manner among any such application, use or release. No such application, use or release shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice (or alter the amount of any payment provided under the Note, this Security Instrument, or any other Loan Document or postpone or extend the due date of any payment due under the Note, this Security Instrument or any other Loan Document).

Notwithstanding the foregoing provisions of this Section 6, Lender shall permit Borrower to use the Proceeds to replace, restore or reconstruct the Property (herein "**Restoration**") following any injury or damage to the Property or condemnation of a portion of the Property for public use on the following terms and conditions, each of which must be satisfied as determined by Lender in its reasonable judgment:

6.1 the Proceeds shall first be applied to reimburse Lender for all costs and expenses incurred by Lender in recovering the Proceeds and Restoration of the Property, including without limitation, reasonable attorneys' fees, and the balance of the Proceeds (herein "**Net Claims Proceeds**") shall be used by Borrower only to pay the actual reasonable costs of Restoration;

6.2 the Improvements affected by such injury, damage or condemnation shall be replaced, restored or reconstructed to at least the same condition as the Improvements in existence on the Property immediately prior to the injury, damage or condemnation, in full compliance with all applicable zoning, building, health and safety, and other laws, ordinances and governmental requirements applicable to the Restoration;

6.3 the plans, specifications, cost breakdown, architect and engineering agreements, construction contracts, construction schedule, contractors, major subcontractors, and any payment and performance bonds required by Lender, shall be approved by Lender in its reasonable discretion;

6.4 if the Net Claims Proceeds are not sufficient, in the reasonable judgment of Lender, to fully pay for all costs of Restoration, Borrower shall deposit with Lender, within ten (10) days following written request, cash in such amount as Lender shall determine to be sufficient at such time for the full payment of all costs of Restoration, and Borrower shall make such additional cash deposits, within ten (10) days following written request, as Lender shall determine from time to time during the course of the Restoration are necessary to ensure that sufficient funds will be available at all times to pay for all costs of Restoration; all such sums deposited by Borrower with Lender shall be held by Lender in a non-interest bearing account at an office of Lender, and Lender shall be granted a first priority security interest therein to secure Borrower's obligation to pay for all costs of Restoration;

6.5 the Net Claims Proceeds and all funds deposited by Borrower to pay for the costs of Restoration as provided in clause 6.4 above shall be disbursed by Lender in progress payments (less a ten percent (10%) retention, which shall be disbursed only upon full and final completion of Restoration as determined by Lender in its reasonable judgment) in accordance with and subject to Lender's standard construction loan disbursement procedures and requirements and such additional construction-related requirements as Lender may reasonably impose in connection with the Restoration;

6.6 Lender shall receive satisfactory evidence that (a) the proceeds of existing rental insurance payable on account of the damage or destruction together with the net cash flow from the undamaged

portions of the Property will be sufficient to pay cost service on all indebtedness secured by the Property during the full period of Restoration, (b) the continued use of the Property upon completion of Restoration is economically feasible and will be in full compliance with all applicable laws and ordinances, (c) all leases of the Property which Lender may require to be and remain in place following completion of the Restoration will be in full force and effect after such completion, and (d) Restoration will be completed within a reasonable time and in any event no less than six (6) months prior to the Maturity Date; and

6.7 no default under the Note, this Security Instrument or any other Loan Document shall have occurred and be continuing.

Borrower agrees that in no event shall Lender's consent to or approval of any Restoration be deemed to extend the due date of any payments owing under the Note or any other Loan Document, or otherwise be construed to cure or waive any default of Borrower under the Note, this Security Instrument or any other Loan Document. In the event that, prior to completion of Restoration, Borrower is in default under the Note, this Security Instrument or any other Loan Document, then without limiting any other rights and remedies of Lender, Lender shall have the right to apply any funds of Borrower held on deposit with Lender as provided in clause 6.4 above against such obligations of Borrower under the Note, this Security Instrument or any other Loan Document as Lender may determine in its sole discretion.

Borrower hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under applicable law, which provides for allocation of condemnation proceeds between a property owner and a lienholder.

**7. TAXES, LIENS, AND OTHER SUMS DUE.** Borrower covenants and agrees with Lender to pay, satisfy and discharge: (a) at least 10 days before delinquency, all general and special city and county taxes, including without limitation, any special taxing districts and all assessments on water stock, affecting the Property, (b) when due, all special assessments or public improvement fees for public improvements on or benefiting the Property, (c) on demand of Lender but in no event later than the date such amounts and/or performance become due (1) all encumbrances, charges and liens (including, without limitation, income tax liens, or liens of a similar character, imposed or levied by the United States Government, the state in which the Property is located, any municipality or county, or an agency of any of them), with interest, on such Property, or any part thereof which are, may be or appear to Lender to be prior to or superior to this Security Instrument, (2) all costs, fees and expenses under this Security Instrument whether or not described herein, (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Lender not to exceed the maximum amount allowed by law therefor at the time when such request is made, (4) Lender's fees, charges and expenses for any other statement, information or services furnished by Lender in connection with the obligations secured hereby (said services may include, but shall not be limited to, the processing by Lender, or both, of assumptions, substitutions, modifications, extensions, renewals, subordinations, rescissions, changes of owners, recordation of maps, plats or records of survey, grants of easements, and full and partial reconveyances, and the obtaining by Lender of any policies of insurance pursuant to any of the provisions contained in this Security Instrument), and (5) any sums advanced or paid by Lender under any clause or provision of this Security Instrument. Should Borrower fail to make any such payment, Lender, without contesting the validity or amount, may elect, but without obligation to do so, to make or advance such payment together with any costs, expenses, fees, or charges relating thereto, including employing counsel and paying attorneys' fees. Any such sum, until so repaid, shall be secured hereby and bear interest from the date it was advanced or paid at the default rate as set out in the Note, and shall be secured by this Security Instrument. Borrower agrees to notify Lender immediately upon receipt by Borrower of notice of any increase in the assessed value of the Property and agrees that Lender, in the name of Borrower, may contest by appropriate proceedings such increase in assessment. Borrower will obtain the written consent of Lender prior to permitting any issuance of any improvement bond for unpaid special assessments. Borrower agrees to notify Lender and appropriate taxing authorities immediately upon the happening of any event which does or may affect the value of Property, the amount or basis of assessment of the Property, or the availability of any exemption to which Borrower is or may be entitled. If any state, federal, municipal or other governmental law, order, rule or regulation, passed subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of deeds of trust or debts secured by deeds of trust, or the manner of collecting taxes so as to materially and adversely affect the rights of Lender, the entire balance of the Indebtedness and other sums secured by this Security Instrument and all interest accrued thereon shall, without notice, become due and payable forthwith at the option of Lender.

Notwithstanding the foregoing, Borrower shall have the right to contest diligently and in good faith the validity or amount of any tax, assessment or charge affecting the Property or any part thereof, and, so long as the validity or amount thereof is being contested diligently and in good faith, Borrower may, to the extent permitted by law, defer payment of such tax, assessment or charge, provided Borrower protects the Property against any lien arising out of any such tax, assessment or charge or out of any such contest by either (a) depositing with Lender, in a non-interest bearing account, as additional security for the Loan, an amount equal to 120% of the amount of the tax, assessment or charge being contested, or (b) a surety bond in form and substance satisfactory to Lender and issued by a corporate surety satisfactory to Lender.

Borrower will pay when due and payable, all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorneys' fees, fees of inspecting architect(s)

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and engineer(s), fees of environmental engineers and consultants, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with the issuance of its commitment for the Loan, the preparation and execution of Loan Documents, the funding of the Loan, and the administration and enforcement of this Security Instrument, the Note and the other Loan Documents. During the term of the Loan, Borrower will, upon demand by Lender, reimburse Lender for all such expenses, together with accrued interest at the Default Rate, which have been incurred or which shall be incurred by Lender. **FURTHERMORE, BORROWER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER AND LENDER PARTIES (DEFINED BELOW) FROM AND AGAINST, AND REIMBURSE THEM FOR, ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, JUDGMENTS, PENALTIES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) WHICH MAY BE IMPOSED UPON, ASSERTED AGAINST, OR INCURRED OR PAID BY LENDER OR LENDER PARTIES BY REASON OF, ON ACCOUNT OF OR IN CONNECTION WITH ANY BODILY INJURY OR DEATH OR PROPERTY DAMAGE OCCURRING IN OR UPON OR IN THE VICINITY OF THE PROPERTY THROUGH ANY CAUSE WHATSOEVER OR ASSERTED AGAINST THEM ON ACCOUNT OF ANY ACT PERFORMED OR OMITTED TO BE PERFORMED HEREUNDER OR ON ACCOUNT OF ANY TRANSACTION ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROPERTY OR WITH THIS SECURITY INSTRUMENT OR ANY OF THE INDEBTEDNESS EVIDENCED BY THE NOTE OR THE LOAN AGREEMENT, IT BEING SPECIFICALLY AGREED, WITHOUT LIMITATION, THAT THE FOREGOING INDEMNITY SHALL INCLUDE AND PROTECT LENDER AND LENDER PARTIES FROM ANY SUCH CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, JUDGMENTS, PENALTIES, COSTS AND EXPENSES THAT ARISE OR ARE ALLEGED TO HAVE RISEN FROM THE SOLE OR CONCURRENT NEGLIGENCE OF LENDER OR LENDER PARTIES.**

8. **CLAIMS, DEMANDS AND ACTIONS.** Borrower covenants and agrees with Lender: (a) To give Lender immediate notice of any claim, demand, action or proceeding purporting to affect the Property (including, without limitation, loan funds, whether or not disbursed) or purporting to affect the security hereof (whether or not it affects the security hereof) or the condition and integrity of the Improvements constructed thereon or purporting to affect the rights or powers of Lender or which are Commercial Tort Claims (as defined in the Uniform Commercial Code) arising in favor of Borrower, (b) to defend any such action or proceeding; and (c) to file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Property, and enforce against others each and every obligation to be performed by them under any declaration of covenants, conditions, and restrictions, pertaining to the Property. Lender is hereby authorized, without obligation so to do, to commence, appear in, and defend any action or proceeding, whether or not brought by or against Borrower to exercise or enforce any other right, remedy, or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding. Lender may appear or intervene in any action or proceeding, and retain counsel therein, and take such action therein as either may deem advisable, and may settle, compromise or pay the same or any other claims and, for any of said purposes, may expend and advance such sums of money as either may deem necessary. Borrower covenants that, in addition to the present assignment of actions, claims, damages and awards set forth herein, Borrower will execute and deliver to Lender such assignments of actions, claims, damages, and awards as Lender may, from time to time, request, including but not limited to, assignments to Lender in such form as Lender may require of all such claims, demands and actions which are Commercial Tort Claims (as defined in the Uniform Commercial Code). Borrower hereby authorizes Lender to file all financing statements, refilings, continuations and amendments thereof as Lender deems necessary or advisable under the Uniform Commercial Code in connection with such assignments. Whether or not Borrower so appears or defends, Borrower shall pay on demand all costs and expenses of Lender, including without limitation, costs of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Lender may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Lender in the Property is directly questioned by such action including, but not limited to, any action for the condemnation or partition of the Property and any suit brought by Lender to foreclose this Security Instrument. Lender may apply, use or release such monies so received by it in the same manner as in Section 6 provided for the proceeds of insurance.

9. **ACCUMULATION ACCOUNT.** Borrower covenants and agrees with Lender that if Lender shall so require, Borrower at the time of making each installment payment, whether of principal or interest or both, on the Indebtedness, or at such other intervals as Lender reasonably may designate, shall deposit with Lender such sum as Lender reasonably may estimate to be necessary, for the purpose of establishing an account (the "**Accumulation Account**") for payment of any or all taxes, assessments, special assessments, fire, casualty, liability, loss of rental income, and other insurance premiums, encumbrances and leasehold payments, security deposits, or other obligations secured by this Security Instrument or required to be paid with respect to the Property (hereafter in this Section referred to as "**Impositions**"). Borrower shall deliver promptly to Lender all bills and notices of such Impositions. If the amounts paid to Lender under the provisions of this Section are not sufficient to pay such Impositions as they become due, Borrower shall pay to Lender promptly upon demand the amount of the deficiency. All monies paid to Lender under this Section shall not be held in trust and may be intermingled with other monies of Lender and such amounts held by Lender shall earn only such interest as prescribed by law, if any. Lender may pay such Impositions before or after they become due and payable, but before delinquency. In the event of a default in the payment of any note secured by this Security Instrument, default of any obligation secured hereby, or default in the performance of any of the covenants and obligations of this Security Instrument, then any balance remaining from monies paid Lender under the provisions of this Section may, at the option of Lender, be applied to the payment of principal, interest or obligations secured hereby in lieu of being applied to any of the purposes for which the Accumulation Account is established. At all times, any negative balance in the Accumulation Account shall constitute a secured advance made by Lender to protect its security under this Security Instrument and shall accrue interest at the Default Rate defined in the

Note. Lender will make such reports of the Accumulation Account as are required by law. Lender shall have no obligation with respect to such sums other than to account to Borrower for receipt and application thereof. Upon any transfer by Lender of its rights or interests in the Indebtedness or of this Security Instrument, Lender may turn over to such transferee such of those sums as Lender then holds, and Lender's responsibilities with respect thereto thereupon shall terminate. Upon any transfer by Borrower of the Land, Borrower's interest in any such sums shall be deemed automatically transferred to such transferee.

**10. SALES, TRANSFERS, FURTHER ENCUMBRANCES AND OTHER EVENTS.** Lender shall have the right, at its option, to declare all sums secured hereby immediately due and payable, if (a) Borrower or any successor in interest to Borrower conveys, transfers or assigns the Property or any part thereof, or interest therein, or agrees to do so, whether by deed, contract of sale, lease with option to buy, or otherwise, and whether such conveyance, transfer or assignment is to an unrelated third party or a related entity, including without limitation an entity that shares a common ownership with Borrower or an entity that is a subsidiary of Borrower; or (b) Borrower or any successor in interest to Borrower further encumbers or alienates the Property or any part thereof, or interest therein; or (c) Borrower or any successor in interest to Borrower leases the Property or any part thereof without the prior written consent of Lender; or (d) Borrower suffers its title or any interest therein to be divested, whether voluntarily or involuntarily; or (e) without the written consent of Lender, Borrower or any successor in interest to Borrower changes or permits to be changed the character or use of the Property from the character or use contemplated by Borrower and Lender upon execution of this Security Instrument, as specified in Borrower's application to Lender and other documents executed by Borrower in connection with the Loan, including, without limitation, drilling or extracting oil, gas, or other hydrocarbon substances, or any mineral of any kind or character; or (f) suit be commenced to condemn the Property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon (and Lender reasonably believes that its security under this Security Instrument may be impaired by such suit or the activities or conditions which are the subject of such suit) or for the partition or sale of the Property; or (g) except as otherwise permitted under clauses (h) and (i) below, any direct or indirect ownership interests in Borrower or any portion thereof (whether member interests, partnership interests or other ownership interests) are sold, transferred or assigned, whether voluntarily or involuntarily, other than to such owners' respective family revocable trusts; or (h) any limited partnership interests or any portion thereof consisting of more than twenty percent (20%) ownership interest in Borrower are sold, transferred or assigned, whether voluntarily or involuntarily, other than to such partners' respective family revocable trusts, or any of the general partners' general partnership interests or the general partners' limited partnership interests in Borrower or any portion thereof are sold, transferred or assigned, whether voluntarily or involuntarily, other than to such general partners' respective family revocable trusts or (i) more than twenty percent (20%) of the capital stock in Borrower is sold, transferred or assigned, whether voluntarily or involuntarily, other than to the shareholders' respective family revocable trusts; or (j) Borrower or any successor in interest to Borrower has made any oral or written material misrepresentations or failed to disclose any material fact, in order to induce Lender to enter into the transaction evidenced by the Note or any agreements which this Security Instrument secures; or (k) Borrower or any successor in interest to Borrower has disbursed funds collected from Rents and Profits to itself or its equity owners for personal use without first reserving sufficient funds to be used for the protection or preservation of the Property, for maintaining the Property in good condition, and for making such capital improvements and replacements to the Property as are reasonably foreseeable to be required within a period of twelve (12) months following the date of such distribution of funds.

If any of the events described in this Section 10 occur and if Lender consents to the same, then such consent must be in writing and signed by Lender to be effective. Lender, at its sole option, may condition such consent on an increase in the interest rate provided for with respect to the Indebtedness evidenced by the Note or by any other Loan Document, to such amount as may be set by Lender, in Lender's sole discretion. Such written consent shall not be deemed or construed as a waiver of any of Lender's rights or as a cure of any default by Borrower pertaining to any subsequent occurrences of any event described in this Section 10 and the written consent of Lender shall be required on all subsequent occurrences. Furthermore, if any event described in this Section 10 occurs and if Lender does not give its written consent to same but fails to exercise its right to declare all sums secured hereby due and payable, such failure shall not be deemed or construed as a waiver of any of Lender's rights or as a cure of any default of Borrower pertaining to the occurrence of such event or any subsequent occurrences of any event described in this Section 10. The right of Lender to declare all sums secured hereby immediately due and payable if any of the events described in this Section 10 occur shall not be construed or deemed to be exclusive of any other rights of Lender set forth in this Security Instrument or the Loan Documents, or any rights at law or in equity now or hereafter existing, to declare all sums secured hereby immediately due and payable, but all such rights shall be cumulative.

**11. PREPAYMENT FEE.** Should the Note or any other obligation secured hereby provide any fee for prepayment of any of the Indebtedness secured hereby, whether such prepayment is made prior to or following the occurrence of any default of Borrower or the institution of any foreclosure proceedings by Lender, Borrower covenants and agrees with Lender to promptly pay said fee notwithstanding Borrower shall have defaulted in any obligation secured hereby and Lender, by reason thereof, shall have declared all sums secured hereby immediately due and payable.

**12. WAIVERS AND CONSENTS PERTAINING TO NOTE.** Borrower waives presentment, demand, notice of intent to accelerate, notice of acceleration, protest and notice of nonpayment of the Note, and consents to delays, changes in time of payment, and the amount of installments due under the Note, and, to the extent

provided in the Note, to the reduction or increase of the interest rate thereon.

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**13. TIME OF THE ESSENCE; WAIVER OF STATUTE OF LIMITATIONS.** Time is of the essence in all Borrower's obligations hereunder, and to the fullest extent permitted by law, Borrower waives the right to assert any present or future statute of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this Security Instrument, the Note or any other Loan Document or any rights or remedies hereunder.

**14. INSPECTION AND BUSINESS RECORDS; APPRAISALS.** Lender or any authorized representative or agent of Lender (including, but not limited to, appraisers, environmental consultants and construction consultants) or any person or entity interested in acquiring all or any part of or any interest in the Loan may enter upon and inspect the Property at any reasonable time during the term of this Security Instrument. If the Property is now or hereafter used for commercial or residential income purposes, Borrower will promptly deliver to Lender within 60 days after the end of each calendar year, such financial statements, gross income and expense statements, and profit and loss statements of such types as may be required from time to time by Lender which will be certified and prepared according to generally accepted accounting principles or other principles and practices acceptable to Lender, which statements shall cover the financial operations relating to the Property (collectively, "Financial Statements") for the immediately preceding calendar year. Borrower shall also deliver to Lender such Financial Statements as may be requested by Lender from time to time, which shall be current as of 60 days prior to Lender's request and shall be delivered within 30 days of Lender's request. Borrower further agrees when requested by Lender promptly to deliver in writing such further additional information as may be required by Lender relating to any such Financial Statements or to Borrower's assets, liabilities, business, or financial condition.

Borrower shall furnish to Lender a rent schedule on or before January 30 of each year during the term of the Loan, which shall be current as of December 31 of the immediately preceding calendar year. Borrower shall also furnish to Lender a rent schedule as may be requested from time to time by Lender, which shall be current as of 30 days prior to the date of Lender's request and shall be delivered within 15 days of Lender's request. Such rent schedule shall be certified by Borrower, showing the name of each tenant and the space occupied, the lease expiration date, the rent and additional rent due and payable, prepaid rent, if any, security deposit paid, the last date to which rent was paid and whether or not such tenant was then in default under any of the terms of the lease. In the event Borrower fails to comply with the provisions of this Section, Lender shall have the right to have Borrower's books and records audited by an independent certified public accountant, and the cost of such audit shall be the obligation of Borrower secured by this Security Instrument. In addition, Borrower's failure to comply may, at the option of Lender, be deemed a default under this Security Instrument and Lender may exercise any and all of its remedies under this Security Instrument.

Borrower shall pay the cost of all appraisals which Lender, in its sole discretion, requires because: (i) Lender, in its sole discretion, believes there has been or may have been a material adverse change in the value of any of Lender's collateral; or (ii) Lender, in its sole discretion, determines that such appraisals are necessary or appropriate to comply with: (a) any applicable legal requirement including but not limited to the requirements of any statute or regulation; (b) any request or directive (whether or not having the force of law) of any regulatory authority with or claiming jurisdiction over Lender; or (c) any policy of Lender concerning appraisals of collateral (whether now existing, or hereafter adopted or amended). All such appraisal costs shall become a part of the Indebtedness secured by all security interests and collateral held by Lender, including this Security Instrument. Lender shall notify Borrower promptly of the amount of any appraisal costs. Such appraisal costs shall be payable on demand, but any appraisal costs not paid within ten days after demand shall bear interest thereon from the date of demand until paid, at the default rate in the Note.

**15. ASSIGNMENT OF TENANT LEASES AND RENTS.**

**15.1 Grant.** Borrower absolutely and unconditionally grants, bargains, sells, transfers, assigns and conveys to Lender, its successors and assigns, all right, title and interest that Borrower has or may hereafter have in and to: (a) all right, title and interest that Borrower has or may hereafter have in and to all Leases; (b) the right to the use and possession of the Property and all Rents and Profits from or in connection with the Property; (c) the right to the use and possession of any or all of the permits, licenses, entitlements, contracts and appurtenance related to the Property; and all security deposits in connection with any Leases; on the condition that Lender shall have no obligation to a lessee with respect to such security deposit unless and until Lender comes into actual possession and control of said deposit; reserving unto Borrower, however, a license to collect and retain such Rents and Profits prior to the occurrence of any Event of Default hereunder. Such license shall be revocable by Lender without notice to Borrower at any time after the occurrence of an Event of Default. Borrower represents that neither the Rents and Profits, nor the Leases have been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time during the life of this assignment be sold, assigned, transferred or set over by Borrower or by any person or persons whomsoever; and Borrower has good right to sell, assign, transfer and set over the same and to grant to and confer upon Lender the rights, interest, powers and authorities herein granted and conferred. Failure of Lender at any time or from time to time to enforce the assignment of Rents and Profits and the Leases under this Section shall not in any manner prevent its subsequent enforcement, and Lender is not obligated to collect anything hereunder, but is accountable only for sums actually collected.

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15.2 **Further Assignments.** Borrower shall give Lender at any time upon demand any further or additional forms of assignment or transfer of such Rents and Profits and Leases and security as may be reasonably requested by Lender, and shall deliver to Lender executed copies of all such Leases and security.

15.3 **Application of Rents.** Lender has the right to deduct and retain reimbursement of costs and expenses from monies received hereunder for its services or that of its agents in collecting such monies. Any monies received by Lender hereunder may be applied when received from time to time in payment of any taxes, assessments or other liens affecting the Property regardless of the delinquency, such application to be in such order as Lender may determine. The acceptance of this Security Instrument by Lender or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any Lease nor an assumption of any liability under any Lease.

15.4 **Collection of Rents.** Borrower further agrees with Lender as follows:

(a) Upon or at any time after the occurrence of any Event of Default, Lender shall at once become entitled to the possession, use and enjoyment of the Property and the Rents and Profits thereof, from the date of such occurrence and continuing during the pendency of any foreclosure proceedings. Lender may appoint a receiver for the Property, and of the Rents and Profits thereof, after any such default, including, without limitation, the time covered by any foreclosure proceedings and the period of redemption, if any. Lender shall be entitled to such receiver as a matter of right, without regard to the solvency or insolvency of Borrower, or of the then owner of the Property, and without regard to the value thereof, and such receiver may be appointed by any court of competent jurisdiction upon ex parte application, and without notice, notice being expressly waived by Borrower, and all Rents and Profits therefrom shall be applied by such receiver to the payment of the Indebtedness according to the orders and directions of the court, or in the absence of such orders or directions, in the manner set forth in (d) below.

(b) Upon or at any time after the occurrence of any Event of Default, Lender may, at its option, without notice, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, (i) enter upon, take possession of, manage and operate the Property, or any part thereof (including, without limitation, making necessary repairs, alterations and improvements to the Property); (ii) make, cancel, enforce or modify Leases; (iii) obtain and evict tenants; (iv) fix or modify Rents and Profits; (v) do any acts which Lender deems reasonably proper to protect the security hereof; and (vi) either with or without taking possession of the Property, in its own name sue for or otherwise take any and all actions Lender deems necessary or advisable to collect and receive such Rents and Profits, including, without limitation, those past due and unpaid. In connection with the foregoing, Lender shall be entitled and empowered to employ attorneys and their staff, and management, rental or other agents in and about the Property and to effect the matters which Lender is empowered to do, and if Lender shall itself effect such matters, Lender shall be entitled to charge and receive reasonable management, rental and other fees therefor as may be customary in the area in which the Property is located; and the fees, charges, costs and expenses of Lender or such persons shall be additional indebtedness secured by this Security Instrument and the Loan Documents. The entering upon and taking possession of the Property, the collection of such Rents and Profits and the application thereof as aforesaid will not cure or waive any default or waive, modify or affect notice of default under the Loan Documents or invalidate any act done pursuant to said notice.

(c) Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Lender under this Security Instrument without investigating the reason for any action taken by Lender, or the validity or the amount of indebtedness owing to Lender, or the existence of any default under the Loan Documents, or under or by reason of this Security Instrument, or the application to be made by Lender of any amounts to be paid to Lender. The sole signature of Lender shall be sufficient for the exercise of any rights under this Security Instrument and the sole receipt of Lender for any sums received shall be a full discharge and release therefor to any such tenant or occupant on the Property. Checks for all or any part of the rentals collected under this Security Instrument shall be drawn to the exclusive order of Lender.

(d) Any monies received by Lender or receiver may be applied when received from time to time in payment of (i) any fees or expenses due Lender under this Security Instrument or under any of the Loan Documents, (ii) costs of collections and all costs of renting, maintaining, altering, renovating, operating, repairing or managing the Property, (iii) any taxes, assessments or other liens affecting the Property regardless of the delinquency or priority, and (iv) all amounts due under the Loan Documents, such application to be in such order as Lender may determine. The acceptance of this Security Instrument by Lender or the exercise of any rights by it under this Security Instrument shall not be, or be construed to be, an affirmation by it of any tenancy or lease nor an assumption of any liability under any such tenancy or lease.

(e) Borrower hereby grants Lender a power of attorney and appoints Lender as Borrower's attorney-in-fact for the purpose of Lender carrying out the rights and remedies of Lender under this Security Instrument; provided, however, that Lender will not exercise such power unless and until an Event of Default has occurred. The appointment of Lender as Borrower's attorney-in-fact under this Security Instrument is coupled with an interest and is irrevocable, and Borrower expressly grants to Lender, among other things, the authority to sign the name of Borrower and to bind Borrower on all papers and documents relating to the operation, leasing and maintenance of the Property.

**15.5 Authority of Lender.** Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Lender hereunder without investigating the reason for any action taken by Lender, or the validity or the amount of indebtedness owing to Lender, or the existence of any default in the Loan or this Security Instrument. The sole signature of Lender shall be sufficient for the exercise of any rights under this assignment and the sole receipt of Lender for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Property. Checks for all or any part of the rentals collected under this assignment of Rents and Profits and Leases shall be drawn to the exclusive order of Lender.

**15.6 Indemnification of Lender.** Nothing herein contained shall be deemed to obligate Lender to perform or discharge any obligation, duty or liability of any lessor under any Lease of the Property, and Borrower shall and does hereby indemnify and hold Lender harmless from any and all liability, loss or damage which Lender may or might incur under any Lease of the Property or by reason of this assignment; and any and all such liability, loss or damage incurred by Lender, except to the extent such liability, loss or damage is due to the gross negligence or willful misconduct of Lender, together with the costs and expenses, including reasonable attorneys' fees, incurred by Lender in defense of any claims or demands therefor (whether successful or not), shall be additional Indebtedness, and Borrower shall reimburse Lender therefor on demand.

**16. LEASES AFFECTING THE PROPERTY.** Borrower warrants, represents and covenants as to each lease between Borrower and its tenant a ("Tenant Lease") now or hereafter covering all or any part of the Property, that (i) each Tenant Lease is in full force and effect, valid and enforceable in accordance with its terms and has not been modified, amended or altered, whether in writing or orally; (ii) no default exists on the part of the tenant under such Tenant Lease or Borrower thereunder and to the best of Borrower's knowledge, no event has occurred and is continuing which would result in default but for the requirement that notice be given in accordance with the terms of such Tenant Lease; (iii) no rent has been collected more than one (1) month in advance; (iv) no Tenant Lease, or any interest therein, nor Rents and Profits arising therefrom, has been previously assigned or pledged; (v) no tenant has any defense, setoff or counterclaim against Borrower under any Tenant Lease; (vi) all rent due under each Tenant Lease has been collected and no concession has been granted to any tenant under a Tenant Lease in the form of a waiver, release, reduction, discount or other alteration of rent due or to become due thereunder; (vii) no Tenant Lease grants to the tenant thereunder, or anyone else, an option to purchase, or a right of first refusal to purchase, any part of the Property; (viii) Borrower is the sole owner of the entire landlord's interest in all Tenant Leases and it has not and will not perform or fail to perform any acts or execute any other instruments which might prevent Lender from fully exercising its rights under the terms, covenants and conditions of this Security Instrument; (ix) Borrower has full right, power and authority/ to assign the Tenant Leases and the Rents and Profits to Lender and Borrower has not done any act which might prevent Lender from exercising its rights under this Security Instrument; (x) the premises demised under each Tenant Lease have been completed and the tenant under each Tenant Lease has accepted the same and have taken possession of the same on a rent-paying basis; and (xi) no person or entity has any possessory interest in, or right to occupy the Property, except under and pursuant to a valid Tenant Lease.

The assignment of leases set forth hereinabove shall not be deemed to impose upon Lender any of the obligations or duties of Borrower provided in any such lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease), and Borrower shall comply with and observe its obligations as landlord under all leases affecting the Property or any part thereof.

Without the prior written consent of Lender, Borrower shall not (i) amend, modify, cancel, terminate (except following a default by the tenant thereunder which has not been cured within the period, if any, expressly provided for such cure in the Tenant Lease) any Tenant Lease, (ii) waive, excuse, or in any manner release or discharge any tenant or guarantors from their obligations with respect to any Tenant Lease, (iii) extend the term of any Tenant Lease on the Property entered prior to the date hereof, or (iv) enter into any new Tenant Lease on the Property after the date hereof. Borrower shall not accept payment of rent more than one (1) month in advance without the prior written consent of Lender. Lender shall have the right to require at any time and from time to time that Borrower promptly furnish to Lender original or certified copies of all Tenant Leases now existing or hereafter created.

Borrower will immediately notify Lender when any release, termination or "buy-out" consideration is due and payable to Borrower by any tenants or guarantors with respect to any lease, rental, tenancy or occupancy agreement. Notwithstanding anything to the contrary set forth in this Security Instrument or any of the Loan Documents, Lender may, in its sole and absolute discretion, require that any such release, termination or "buy-out" consideration be paid immediately to Lender as proceeds of its collateral. In its absolute and sole discretion and without regard to the adequacy of Lender's security, Lender may apply such payments to reduce the unpaid principal balance of the Loan or deposit such payments in a non-interest bearing account established with Lender which account shall be held as additional security for the Loan.

With respect to the assignment of leases hereinabove set forth, Borrower shall, from time to time upon request of Lender, execute one or more separate specific lease assignment or assignments in such form as may be approved by Lender, assigning to Lender all right, title and interest of Borrower in and to any and all leases now or hereafter on or affecting the Property, together with all security therefor and all monies payable. Borrower shall also execute and deliver to Lender any notification, financing statement or other document reasonably required by Lender to perfect the foregoing assignment as to any such leases. Lender shall have the right, at any time and from time to time, to notify any tenant of the rights of Lender as provided in the assignment by

Borrower to Lender of all leases relating to the Property and to the Rents and Profits.

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In the event of the occurrence of any default by Borrower under any Loan Document and the institution by Lender of any foreclosure, receivership or other proceeding for the enforcement of Lender's rights or remedies under this Security Instrument, Lender may elect at any time prior to consummation of a foreclosure sale of the Property, and the purchaser at such foreclosure sale (including Lender) may elect at any time within thirty (30) days following the consummation of such foreclosure sale, to declare any or all Tenant Leases to be prior and superior to the lien of this Security Instrument and to recognize the rights of the tenant(s) thereunder, in which event such Tenant Lease(s) shall survive such foreclosure sale and shall be and remain in full force and effect, and the tenant(s) thereunder shall be obligated to attorn to Lender or such purchaser and to execute and deliver such instruments of attornment as Lender or such purchaser shall require. Any such election shall be in the sole discretion of Lender or such purchaser, and shall be evidenced by written notice from Lender to Borrower and/or to the applicable tenant(s) delivered either prior to or within thirty (30) days following such foreclosure sale, by a statement of such election contained in the notice of the foreclosure sale, and/or by announcement at such foreclosure sale.

**17. DEFAULT.** Any Event of Default, as defined in the Loan Agreement, shall constitute an "Event of Default" as that term is used in this Security Instrument (and the term "Default" shall mean any event which, with any required lapse of time or notice, may constitute an Event of Default, whether or not any such requirement for notice or lapse of time has been satisfied).

**17.1 Lender's Right to Perform.** After the occurrence and during the continuance of any Event of Default, Lender, but without the obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligations hereunder, may: make any payments or do any acts required of Borrower hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof, Lender being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; pay, purchase, contest or compromise any encumbrance, charge or lien in accordance with the following paragraph; and in exercising any such powers, pay necessary expenses, employ counsel and pay a reasonable fee therefor. All sums so expended shall be payable on demand by Borrower, be secured hereby and bear interest at the default rate of interest specified in the Note from the date advanced or expended until repaid.

Lender, in making any payment herein, is hereby authorized, in the place and stead of Borrower, in the case of a payment of taxes, assessments, water rates, sewer rentals and other governmental or municipal charges, fines, impositions or liens asserted against the Property, to make such payment in reliance on any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; in the case of any apparent or threatened adverse claim of title, lien, statement of lien, encumbrance, deed of trust, mortgage, claim or charge Lender shall be the sole judge of the legality or validity of same; and in the case of a payment for any other purpose herein and hereby authorized, but not enumerated in this paragraph, such payment may be made whenever, in the sole judgment and discretion of Lender, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this Security Instrument, provided further, that in connection with any such advance, Lender at its option may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the cost and expenses of which shall be repayable by Borrower without demand and shall be secured hereby.

**17.2 Remedies on Default.** Upon the occurrence of any Event of Default, at the option of Lender, all sums secured hereby shall become immediately due and payable, without notice or demand, and Lender shall have the following rights and remedies:

**17.2.1** Lender may, in person, by agent or by court-appointed receiver, enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Grantor sue for or otherwise collect any and all Rents and Profits, including those that are past due, and may also do any and all other things in connection with those actions that Lender may in its sole discretion consider necessary and appropriate to protect the security of this Security Instrument. Such other things may include: entering into, enforcing, modifying, or canceling leases on such terms and conditions as Lender may consider proper; obtaining and evicting tenants; fixing or modifying Rents and Profits; completing any unfinished construction; contracting for and making repairs and alterations; performing such acts of cultivation or irrigation as necessary to conserve the value of the Property; and preparing for harvest, harvesting and selling any crops that may be growing on the property. Grantor hereby irrevocably constitutes and appoints Lender as its attorney in fact with full power of substitution to perform such acts and execute such documents as Lender in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Grantor's name on any instruments which power of attorney shall be deemed to be a power coupled with an interest and therefore irrevocable. Grantor agrees to deliver to Lender all books and records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Lender in order to enable Lender to exercise its rights under this Paragraph. The power of attorney given herein is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Indebtedness.

**17.2.2** To the extent not prohibited by applicable law, Lender may have a receiver



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appointed as a matter of right on an ex parte basis without notice to Borrower and without regard to the sufficiency of the Property or any other security for the Indebtedness secured hereby and, without the necessity of posting any bond or other security. Such receiver shall take possession and control of the Property and shall collect and receive the Rents and Profits. If Lender elects to seek the appointment of a receiver for the Property, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Borrower hereby further agrees to the extent permitted by law that the pendency of any action brought by Lender for the appointment of a receiver shall not prevent the foreclosure of this Security Instrument. The receiver shall be entitled to receive a reasonable fee for managing the Property, which fee may be deducted from the Rents and Profits or may be paid by Lender and added to the Indebtedness secured by this Security Instrument. Immediately upon appointment of a receiver, Borrower shall surrender possession of the Property to the receiver and shall deliver to the receiver all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits. If the Rents and Profits are not sufficient to pay the costs of taking control of and managing the Property and collecting the Rents and Profits, any funds expended by Lender, or advanced by Lender to the receiver, for such purposes shall become an additional part of the Indebtedness secured by this Security Instrument. The receiver may exclude Borrower and its representatives from the Property. Borrower hereby agrees that the receiver may be granted the power to market and sell the Property, subject to such rights to notice and opportunity for hearing as may be required by generally applicable law or by the court. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 17.2 (including any subsection) shall not be construed to make Lender a mortgagee in possession of the Property so long as Lender has not itself entered into actual possession of the Property.

17.2.3 During the continuance of an Event of Default, Lender may accelerate the maturity date of the Note and declare any or all of the Indebtedness immediately due and payable without any presentment, demand, protest, notice or action of any kind whatsoever (each of which is hereby expressly waived by Grantor) whereupon the same shall become immediately and automatically due and payable (including without limitation unpaid interest, default rate interest, late charges, and any prepayment fees or exit fees). Notwithstanding the foregoing, Lender may, from time to time, take legal action to recover any sums as the same become due, without regard to whether or not the Indebtedness shall be accelerated and without prejudice to Lender's right thereafter to accelerate the Indebtedness or exercise any other remedy, if such sums remains uncollected.

17.2.4 Lender may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the obligations of Borrower set forth in the Loan Documents in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Security Instrument as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Lender with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Lender.

17.2.5 With respect to all or any part of the Property which constitutes personal property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code. Any such sale of any personal property shall be conducted in the manner permitted by applicable law. Whether or not such personal property is located on or within the Land, Lender may elect in its discretion to exercise its rights and remedies against any or all of the Property (including but not limited to the Land) in such order and manner as is now or hereafter permitted by applicable law. Borrower agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property.

17.2.6 Lender may avail itself of any other right or remedy available to it under the terms of this Security Instrument, the other Loan Documents or applicable law.

17.2.7 To the full extent Grantor may do so, Grantor, for Grantor and Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, presentment and demand of the whole of the secured indebtedness, notice of intention to mature or declare due the whole of the secured indebtedness, notice of intent to accelerate, acceleration, and all rights to a marshaling of the assets of Grantor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. To the fullest extent permitted by law, Borrower hereby covenants and agrees that it will not at any time (1) insist on, plead, or in any manner whatsoever claim or take any advantage of any stay, exemption, or extension law or any so-called "Moratorium Law" now or at any time hereafter in force; (2) claim, take, or insist on any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained or to any decree, judgment, or order of any court of competent jurisdiction; or (3) prior to or after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, upon foreclosure, sale, or other enforcement thereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption from sale or prior to sale under any order or decree of foreclosure of this Security Instrument, on its own behalf, on behalf of all persons claiming or

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having an interest (direct or indirect) by, through, or under Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any persons are and shall be deemed to have hereby waived any such rights to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not hinder, delay, or impede, by invoking or utilizing any applicable law or laws or otherwise, the exercise of any right, power, or remedy herein or otherwise granted or delegated to Lender but will suffer and permit the exercise of every such right, power, and remedy as though no such law or laws have been or will have been made or enacted.

17.2.8 In consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby agrees that, in the event Grantor or (if applicable) any partner of Grantor shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under title 11 of the U.S. Code, as amended; (ii) be the subject of any order for relief issued under such Title 11 of the U.S. Code, as amended; (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors; (iv) have sought or consented to or acquiesced in the appointment of any receiver, conservator, or liquidator; or (v) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, then and in any of such events Lender shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided in the Note, this Security Instrument, and all associated Loan Documents, and as otherwise provided by law. Grantor hereby agrees not to object to Lender immediately seeking relief from the automatic stay, to allow Lender to proceed immediately to obtain a final judgment of foreclosure of this Security Instrument, to complete a foreclosure sale and/or to proceed against and realize upon the collateral for the indebtedness secured hereby and to otherwise allow Lender to take all such actions as Lender may elect in its sole discretion in pursuance of the other rights and remedies available in the event of a default by Grantor under this Security Agreement and all associated Loan Documents. Grantor hereby waives any protection afforded under 11 U.S.C., Section 362(a).

17.2.9 Additional Rights upon Event of Default. Without limiting the generality of the foregoing, Lender shall have the following additional rights during the continuance of any Event of Default:

(a) Upon the filing of a complaint to foreclose this Security Instrument or at any other time thereafter, the court in which such complaint is filed may appoint a receiver of the Property, and Borrower hereby irrevocably consents to such appointment. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Borrower at the time of application for such receiver, and without regard to the then value of the Property or whether the Property shall be then occupied as a homestead, and Lender or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues, and profits of the Property during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption whether prior to or after sale, if any, whether there be a redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collection of such rents, issues, and profits, and such receiver shall have all other powers that may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the premises during the whole of that period. The court, from time to time, may authorize the receiver to apply the net income from the Property in payment in whole or in part of (1) the indebtedness hereby secured or the indebtedness secured by a decree foreclosing this Security Instrument or any tax, special assessment, or other lien that may be or become superior to the lien hereof or of such decree, provided that such application is made prior to the foreclosure sale, or (2) the deficiency in case of a sale and deficiency.

(b) Lender shall have the immediate right to collect, as the same become due, any and all unearned insurance premiums or refunds of insurance premiums, due or to become due, and all proceeds and other benefits to be received under insurance policies of every nature affecting or covering the Property, any and all refunds of taxes, assessments, and other charges heretofore or hereafter paid on or with respect to the Property, together with all rents and profits of the Property, all of which have been hereby assigned to Lender. In addition, Lender shall have the right, but shall not be obligated, without notice or demand, to enter immediately upon and take possession of the Property, together with all documents, books, records, papers, and accounts of Borrower relating to the Property or any portion thereof without further consent or assignment by Borrower; to cause environmental investigations and analyses to be conducted; to operate, manage, lease, and control the Property and conduct the business thereof, if any, either personally or by its agents; to terminate any management agreements, contracts, agents, or managers responsible for the management of the Property; and to use such measures, legal or equitable, as Lender may deem proper or necessary to enforce the payment or security of the rents, issues, and profits of the Property.

(c) Borrower hereby grants full power and authority to Lender as follows: to exercise each and every one of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to Borrower; to make all alterations, additions, improvements, renovations, replacements, and repairs as Lender may deem proper; to demolish any part or all of the Improvements which, in the judgment of

Lender, may be in unsafe condition and dangerous to life or property; to remodel any or all of the Improvements so as to make the same available in whole or in part for business, commercial, retail, multiple dwelling, or other purposes; to lease the Property, or any part thereof, to Borrower or any other person or persons, on such terms and for such periods of time as Lender may deem proper, and the provisions of any lease made by Lender pursuant hereto shall be valid and binding upon Borrower, notwithstanding the fact that Lender's right of possession may terminate or this Security Instrument may be satisfied of record prior to the expiration of the term of such lease; and to collect and receive all of the rents, issues, profits, and all other amounts past due or to become due to Borrower and to apply the same in such order of priority as Lender may determine to all necessary charges and expenses in connection with the Property, or for interest, principal, whether matured or not, taxes, water charges and assessments, insurance premiums, and any advances made by Lender for improvements, alterations, or repairs for the account of Borrower or on account of the indebtedness hereby secured. Neither the taking of possession nor the collection of rents by Lender as described above shall be construed to be an affirmation of any lease of the Property or any part thereof, and Lender or any other purchaser at any foreclosure sale shall have the right to exercise the right to terminate any such lease as though such taking of possession and collection of rents had not occurred, subject to the terms of any subordination, non-disturbance, and attornment agreement that may be in effect from time to time with respect to any part of the Property.

(d) Without limiting the foregoing, Borrower hereby irrevocably appoints Lender its attorney-in-fact, coupled with an interest, upon an Event of Default, to institute summary proceedings against any lessee of the Property that fails to comply with the provisions of its lease. If Borrower is occupying all or any part of the Property upon an Event of Default, Borrower agrees to either (a) immediately surrender possession of the Property to Mortgagee and vacate the Property so occupied by Borrower or (b) pay a reasonable rent, determined by Lender, for the use thereof, monthly in advance, to Lender, and, in default of so doing, may be dispossessed by summary proceedings or otherwise.

**17.3 Remedies Cumulative; Deficiency; Subrogation.** The rights and remedies accorded by this Security Instrument shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising applicable law. All rights and remedies provided for in this Security Instrument or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. Without limiting the generality of any provision of this Section 17.3, Lender may elect to proceed against any or all of the Property, in any manner permitted under applicable law. No sale or other disposition of all or any part of the Property pursuant to this Section 17 shall be deemed to relieve Borrower of any of Borrower's obligations pursuant to the Note or any Loan Document, except to the extent that the proceeds are applied to the payment of such obligations. If the proceeds of a sale, a collection, or other realization of or upon the Property are insufficient to cover the costs and expenses of such realization and the payment in full of the obligations secured hereby, Borrower shall remain liable for any deficiency to the fullest extent permitted by law. The failure on the part of Lender to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver of any Default or Event of Default shall not constitute a waiver of any subsequent or other Default or Event of Default. Lender shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the loan proceeds hereof. All persons dealing with the Property through or under Borrower and their successors and assigns, including, without limitation all subsequent purchasers of all or any portion of the Property and all persons holding or obtaining an interest in the Property which is junior and subordinate to this Security Instrument, by taking and accepting their respective conveyances, encumbrances, security interests, deeds of trust, or liens do hereby acknowledge, covenant and agree with Lender that (a) in the event of any default in the repayment of the Indebtedness secured hereby, or in the event of any default under the terms of this Security Instrument, or under any other deed of trust or security agreement securing the same Indebtedness as is secured by this Security Instrument, whether directly or by virtue of a cross-collateralization agreement or under any other Loan Document, Lender may proceed to seek foreclosure or any other relief available at law or in equity in any order which Lender may determine, in Lender's sole discretion, and Lender may proceed against any property or collateral securing said Indebtedness in any order which Lender elects without regard to any matters which could or might be raised by any subsequent purchaser or by any junior lien or encumbrancer under those certain equitable doctrines known as the doctrine of "marshalling of assets" and the doctrine of "inverse order of alienation", (b) they will not assert, and they do hereby waive any right to assert, the doctrine of marshalling of assets or any similar equitable doctrines, and (c) they will not assert, and they do hereby waive any right to assert, the doctrine of inverse order of alienation or any similar equitable doctrines.

## 18. Environmental Covenants; Warranties and Compliance.

### 18.1 Definitions. For purposes of this Section:

18.1.1 "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §§ 9601-9675, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §§ 6901-6992, and any other federal, state or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or environmental conditions, and any applicable state or Federal rules or regulations

adopted pursuant to any of the foregoing.

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18.1.2 "Hazardous Substance" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The terms "Hazardous Waste" and "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

18.1.3 "Remedial Work" means any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature which may at any time be required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Security Instrument) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property. Remedial Work shall not be completed until all applicable courts or governmental agencies have made a final determination to that effect, such as, by way of example, the issuance of a "No Further Action" letter.

18.1.4 "Use" of a Hazardous Substance shall include, without limitation, the presence of such Hazardous Substance on, under or about the Property or the Property's groundwater, and any action or activity which uses generates, manufactures, produces, stores, releases, discharges, or disposes of such Hazardous Substance on, under or about the Property or the Property's groundwater, or transportation of such Hazardous Substance to or from the Property.

18.2 Borrower shall use any Hazardous Substance and will permit any tenant, contractor, agent or any other authorized user or person to use any Hazardous Substance, only: (a) in the ordinary course of Borrower's business; and (b) in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and recordkeeping.

18.3 Except for existing violations of Environmental Laws heretofore disclosed to Lender in writing, Borrower will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.

18.4 Except to the extent heretofore disclosed to Lender in writing, Borrower shall give prompt written notice to Lender of the following, whether presently existing or known, or hereafter arising or discovered:

18.4.1 Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law, or the presence or possible presence of any Hazardous Substance on the Property, or the migration or possible migration of any Hazardous Substance between the Property and other premises (regardless of whether such migration is from or to the Property);

18.4.2 All known claims made or threatened by any person against Borrower or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;

18.4.3 The existence of any Hazardous Substance on or about all or any portion of the Property; or

18.4.4 Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Borrower's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.

18.5 Borrower shall promptly provide to Lender copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. Lender shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by Borrower, if Lender determines that such participation is reasonably necessary to protect its interest in the Property.

18.6 Borrower authorizes Lender or its agents, acting by themselves or through a court-appointed receiver, to enter upon the Property to make such inspections and tests, at Borrower's expense, as Lender may deem appropriate to determine compliance of the Property with this Section of the Security Instrument. Lender may obtain a court order to enforce Lender's right to enter and inspect the Property, or have a receiver appointed pursuant to applicable law, to enforce Lender's right to enter and inspect the Property for Hazardous Substances. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person.

At any time (regardless of whether or not Lender has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements has occurred or is threatened, or that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements), Lender may require Borrower to obtain or may itself obtain, at Borrower's expense, an environmental assessment of the Property (including but not limited to an assessment of such a condition or threatened condition), by a qualified environmental consultant. Borrower shall promptly provide to Lender a complete copy of any environmental assessment obtained by Borrower.

18.7 In the event that Remedial Work is required with respect to any portion of the Property or in any manner relating to the Property, (whether required now or after the date of this Security Instrument), Borrower shall, within such period of time as may be required under any applicable Environmental Law, other applicable law, regulation, order, or agreement, (or within 30 days after written demand by Lender for Borrower's performance under this provision), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Borrower, including, without limitation, Lender's reasonable attorney fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, such Remedial Work, Lender may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall be referred to as "**Environmental Costs**" and shall become part of the Obligations secured by this Security Instrument and shall bear interest until paid at the default rate provided in the Note. Lender, acting by itself or through a court-appointed receiver, may negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures; and take any action necessary to enforce compliance with environmental provisions, including but not limited to spending Rents and Profits to abate the problem. Lender shall be entitled to bid, at the sale of all or any portion of the Property held pursuant to this Security Instrument, the amount of any Environmental Costs, including interest thereon, in addition to the amount of the other Indebtedness hereby secured.

18.8 Borrower releases and waives any present or future claims against Lender, including but not limited to any claims for indemnity or contribution, in the event Borrower becomes liable for cleanup or other costs under any Environmental Laws. **BORROWER SHALL HOLD LENDER AND LENDER PARTIES, HARMLESS FROM, INDEMNIFY THEM FOR, AND DEFEND THEM AGAINST ANY AND ALL LOSSES, DAMAGES, LIENS, COSTS, EXPENSES, AND LIABILITIES DIRECTLY OR INDIRECTLY ARISING OUT OF OR ATTRIBUTABLE TO ANY VIOLATION OF ANY ENVIRONMENTAL LAW, ANY BREACH OF BORROWER'S WARRANTIES IN THIS SECTION 18 OR ANY OF ITS SUBSECTIONS, OR ANY ACTUAL OR THREATENED USE OF A HAZARDOUS SUBSTANCE ON, UNDER, OR ABOUT THE PROPERTY, INCLUDING WITHOUT LIMITATION THE COSTS OF ANY REQUIRED REMEDIAL WORK OR ANY REQUIRED REPAIR, CLEANUP, CONTAINMENT, OR DETOXIFICATION OF THE PROPERTY, THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL OR OTHER REQUIRED PLANS, ATTORNEY FEES AND COSTS (INCLUDING BUT NOT LIMITED TO THOSE INCURRED IN ANY PROCEEDING AND IN ANY REVIEW OR APPEAL), FEES, PENALTIES, AND FINES. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, IT IS SPECIFICALLY AGREED THAT THE FOREGOING INDEMNITY SHALL INCLUDE AND PROTECT LENDER FROM ANY LOSSES, DAMAGES, LIENS, COSTS, EXPENSES, AND LIABILITIES THAT ARISE OR ARE ALLEGED TO HAVE RISEN FROM THE SOLE OR CONCURRENT NEGLIGENCE OF LENDER.**

18.9 Borrower represents and warrants to Lender that:

18.9.1 Neither the Property nor Borrower is in violation of or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.

18.9.2 Borrower has not and is not required by any Environmental Law to obtain any permit or license other than those it has heretofore obtained to construct or use the Improvements.

18.9.3 To the best of Borrower's knowledge, except as heretofore disclosed to Lender in writing, no Hazardous Substance has ever been used on, under, or about the Property in violation of any Environmental Law.

18.10 All representations, warranties, and covenants in this Section 18 (including all subsections): (a) shall survive: (i) the satisfaction of the Obligations; and (ii) any termination, satisfaction, reconveyance, assignment, or judicial or non-judicial foreclosure of the lien of this Security Instrument; and (b) shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or delivery of a deed in lieu of foreclosure or otherwise. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Property for Hazardous Substances.

19. **NO WAIVER OR MODIFICATION UNLESS IN WRITING.** No modification or waiver by Lender of any right under this Security Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Security Instrument or under any provision of this Security Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Borrower that Borrower was obligated hereunder but failed to make or perform, or by adding any payment so made by Lender to the Indebtedness secured hereby, or by exercising Lender's rights to receive

and collect the rents, issues, profits, security deposits, royalties, tolls, earnings, income and other benefits therefrom, Lender does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all acts required hereunder, or to declare a default for failure so to pay or perform.

**20. REMEDIES.** No remedy herein provided shall be exclusive of any other remedy herein, or now or hereafter existing by law or in equity, but shall be cumulative. Every power or remedy hereby given to Lender or to which Lender may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue separate remedies. If Lender now or hereafter holds any additional security for any obligation secured hereby, it may enforce any and all remedies with respect thereto at its option, either before, contemporaneously with, or after any sale or other exercise of remedies is made hereunder. In order to assure the definiteness and certainty of the rights and obligations herein provided, Borrower waives any and all rights of offset of claims and no offset shall relieve Borrower from paying installments on the obligations secured hereby as they become due. In the event that Lender fails to grant any consent or approval under this Security Instrument that Borrower believes Lender is legally required to grant to Borrower, the sole and exclusive remedy for any claim against Lender that Lender has wrongfully withheld or delayed such consent or approval shall be an action for injunctive or declaratory relief, and in no event shall Borrower be entitled to recover damages from Lender by reason of such claim.

**21. GENERAL PROVISIONS.** (a) As and when used herein, the term "**Borrower**" shall mean and include Borrower above-named and its successors and permitted assigns, and the term "**Lender**" shall mean and include Lender hereinabove named and its successors and assigns; (b) wherever the context so requires, any gender shall include the masculine, feminine and neuter, the singular number shall include the plural and vice-versa; (c) captions and Section headings used herein are for convenience only, are not a part of this Security Instrument, and shall not be used in construing it; (d) Lender shall have the right at any time and from time to time to provide any information it has in its possession relating to Borrower, or any guarantor of the Loan, or any other person or entity now or hereafter liable with respect to the Loan, or the Property, to any party interested in acquiring all or any part of the Loan or any interest therein; (e) in exercising any right or remedy or taking any action provided herein, Lender may act through its employees, agents, counsel, or independent contractors, as authorized by Lender; (f) as and when used herein, the word "**including**" shall be deemed to mean "**including without limitation**"; and (g) if more than one person is named as Borrower, each obligation of Borrower hereunder shall be the joint and several obligation of each such person. Without limiting the foregoing, each general partner of Borrower shall be deemed to have agreed, by its execution of this Security Instrument, (i) that such partner is jointly and severally liable with Borrower for the performance of each and every obligation of Borrower under this Security Instrument and the other Loan Documents, (ii) that Lender shall not be required to obtain any judgment against Borrower or exhaust the assets of Borrower in enforcing any monetary obligation of Borrower to Lender prior to proceeding against the assets of such general partner, and (iii) that such general partner hereby waives the benefit of any statute or law requiring Lender to obtain a judgment against Borrower or exhaust the assets of Borrower before proceeding against the assets of such general partner and any other laws, rules or regulations now or hereafter in effect which may limit the rights and remedies of a creditor to pursue partners of a partnership prior to the pursuit of such creditor's rights and remedies against such partnership. The foregoing agreement shall constitute a separate obligation of each general partner.

**22. FURTHER ASSURANCES.** At any time and from time to time, upon Lender's request, Borrower shall make, execute and deliver, or cause to be made, executed and delivered, to Lender and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such further deeds of trust, security agreements, instruments of further assurance, certificates, agreements and other documents as Lender may consider necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve the obligations of Borrower under the Note, this Security Instrument or any other Loan Document, and the lien of this Security Instrument or any other lien upon or security interest in all of the Property or any other property securing the Indebtedness evidenced by the Note or the Loan Agreement, whether now owned or hereafter acquired by Borrower and unto all and every person or persons deriving any estate, right, title or interest under this Security Instrument. Upon any failure by Borrower to do so, Borrower hereby authorizes Lender to make, execute, record, file, re-record or refile any and all such deeds of trust, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower to do so.

**23. GOVERNING LAW; SEVERABILITY.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Security Instrument (including specifically, without limitation, the manner of establishing the amount of any deficiency for which Borrower is liable after foreclosure of the Property), this Security Instrument shall be governed by, and construed in accordance with, the laws of the State of Illinois (without regard to conflict of law provisions thereof). In the event that any provision or clause of this Security Instrument, the Note or any other Loan Document is construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall not affect other provisions of this Security Instrument or the Note or the other Loan Documents which can be given effect without the void, invalid or unenforceable provision, and to this end the provisions of this Security Instrument, the Note and all other Loan Documents are declared to be severable.

**24. NOTICES.** Except for any notice required by applicable law to be given in another manner, all

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notices provided pursuant to the Note, this Security Instrument or any other Loan Document shall be in writing and shall be deemed to have been duly given, if sent by United States certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or other comparable overnight courier service to the parties at the address set forth herein or such other address as the recipient party may have designated by notice given in the manner specified above. Each such notice shall be effective upon the earlier of (i) when given or received in the manner prescribed by applicable law, (ii) when actually received in person by the recipient party or (iii) two calendar days following the mailing of such notice, certified mail, postage prepaid, return receipt requested to the address set forth herein.

Borrower: AREP INC.  
2411 W Madison St  
Chicago, IL 60612

Lender: Iron Bridge Mortgage Fund, LLC  
9755 SW Barnes Road, Suite 420  
Portland, OR 97225

25. **LOST INSTRUMENTS.** In the event that following execution, the Note, this Security Instrument, or any other Loan Document should be lost, destroyed or mutilated, Borrower agrees to execute another original of such Note, Security Instrument or Loan Document.

26. **RELEASE.** If the Indebtedness is paid in full in accordance with the terms of this Security Instrument, the Note, and the other Loan Documents, and if Borrower shall well and truly perform each and every one of the obligations to be performed and discharged in accordance with the terms of this Security Instrument, the Note and the other Loan Documents, then this conveyance shall become null and void and be released at Borrower's request and expense, and Lender shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents.

27. **WAIVER OF JURY TRIAL.** To the fullest extent permitted by law, Borrower and Lender HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, the Note, this Security Instrument or any of the Loan Documents, or the enforcement of any remedy under any law, statute, or regulation. Neither party will seek to consolidate any such action in which a jury has been waived, with any other action in which a jury trial cannot or has not been waived. Each party acknowledges that it has received the advice of counsel with respect to this waiver.

28. **FINAL AGREEMENT.** The Note, the Loan Agreement, this Security Instrument and the other Loan Documents collectively represent the final agreements between Lender and Borrower and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten agreements between Lender and Borrower.

29. **ATTORNEYS' FEES AND LEGAL EXPENSES.** In the event of any Event of Default under this Security Instrument, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any obligation secured by this Security Instrument, Lender shall collect from Borrower on demand all fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Borrower shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of Borrower, any guarantor or other party liable for any of the obligations secured by this Security Instrument or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Security Instrument; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing.

30. **NOTICE OF INDEMNIFICATION.** IT IS THE EXPRESS INTENTION OF GRANTOR AND GRANTOR HEREBY AGREES THAT THE INDEMNITIES SET FORTH IN THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS WILL APPLY TO AND FULLY PROTECT EACH INDEMNIFIED PARTY EVEN THOUGH ANY CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS FEES) THEN THE SUBJECT OF INDEMNIFICATION MAY HAVE BEEN CAUSED BY, ARISE OUT OF, OR ARE OTHERWISE ATTRIBUTABLE TO, DIRECTLY OR INDIRECTLY, THE NEGLIGENCE IN WHOLE OR IN PART OF SUCH INDEMNIFIED PARTY AND/OR ANY OTHER PARTY.

31. **COMMERCIAL PURPOSE.** EACH GRANTOR ACKNOWLEDGES THAT THIS TRANSACTION IS NOT PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

32. **FOR THE PURPOSE OF ANY ACTION OR PROCEEDING INVOLVING THIS SECURITY INSTRUMENT, THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ALL FEDERAL AND STATE COURTS LOCATED IN THE STATE OF ILLINOIS AND CONSENTS THAT IT MAY BE SERVED WITH ANY PROCESS OR PAPER BY REGISTERED MAIL OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS IN ACCORDANCE WITH APPLICABLE LAW, PROVIDED A REASONABLE TIME FOR APPEARANCE IS ALLOWED. THE BORROWER EXPRESSLY WAIVES, TO THE EXTENT IT MAY LAWFULLY DO SO, ANY OBJECTION, CLAIM OR DEFENSE WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS SECURITY INSTRUMENT IN ANY SUCH COURT,**

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IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER IRREVOCABLY WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO ANY SUCH CLAIM, SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER THE PERSON OF BORROWER.

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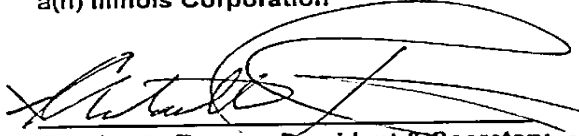


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IN WITNESS WHEREOF, Borrower has executed this Security Instrument on the day in the year first above written.

BORROWER:

**AREP INC.**  
a(n) Illinois Corporation

  
Antoinette Rogers, President & Secretary

Date: 7-13-18

WITNESSED:

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

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ACKNOWLEDGEMENT

STATE OF Illinois )  
County of Cook ) ss  
 )

On July 13, 2018 before me Shana J. Ritter, a Notary Public / Commissioner of the Superior Court, personally appeared **Antoinette Rogers, President & Secretary of AREP INC.**; who provided to me the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature *Shana J. Ritter* (SEAL)



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EXHIBIT A

**LEGAL DESCRIPTION OF PROPERTY**

The Land is located in the City of **Chicago**, County of **Cook**, State of **Illinois**, and is described as follows:

**Legal Description:**

THAT PART OF LOTS 21 TO 24, BOTH INCLUSIVE, TOGETHER WITH PART OF THE EAST-WEST VACATED ALLEY ADJOINING SAID LOTS IN BLOCK 4 IN GOODWIN'S SUBDIVISION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 24 AFORESAID; THENCE SOUTH 00 DEGREES 20 MINUTES 03 SECONDS EAST ALONG THE WEST LINE OF SAID LOT FOR A DISTANCE OF 110.30 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 20 MINUTES 03 SECONDS EAST ALONG THE WEST LINE OF SAID LOT FOR A DISTANCE OF 19.03 FEET; THENCE NORTH 90 DEGREES EAST 89.57 FEET; THENCE NORTH 00 DEGREES 20 MINUTES 03 SECONDS WEST PARALLEL WITH THE WEST LINE OF LOT 24 AFORESAID 19.03 FEET; THENCE SOUTH 90 DEGREES, WEST 89.57 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**FOR INFORMATIONAL PURPOSES ONLY:**

**Common Address:** 1251 S. Saint Louis Avenue, Chicago, IL 60623  
**PIN#** 16-23-203-081-0000

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EXHIBIT

## PERMITTED EXCEPTIONS

None Permitted

Property of Cook County Clerk's Office