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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1827622040

Doc# 1827622040 Fee \$96.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 10/03/2018 03:41 PM PG: 1 OF 30

The property identified as: PIN: 17-09-322-017-0000

Address:

Street: 165 NORTH DESPLAINES STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60661

Lender: PGIM REAL ESTATE U.S. DEBT FUND REIT, LLC

Borrower: 165 NORTH DESPLAINES, LLC, A DELAWARE LIMITED LIABILITY COMPANY

Loan / Mortgage Amount: \$41,250,000.00

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

Certificate number: FA30ECBF-CF68-485F-B22E-48DCE4B420C4

Execution date: 9/28/2018

A handwritten signature in black ink, appearing to be the name "A".

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This instrument was prepared by
and, after recording, return to:

Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112
Attention: Marla R. Bell, Esq.

Loan No. 301 000 026

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

165 NORTH DESPLAINES, LLC,
a Delaware limited liability company,
as mortgagor and debtor

To

PGIM REAL ESTATE U.S. DEBT FUND REIT, LLC,
a Delaware limited liability company,
as mortgagee and secured party

Dated: September 28, 2018

Address: 165 North Desplaines Street, Chicago, Illinois 60661

PIN(s): 17-09-322-017-0000
17-09-322-019-0000
17-09-322-009-0000

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as amended, restated, supplemented or otherwise modified from time to time, this “**Security Instrument**”) is made as of September 28, 2018, by 165 NORTH DESPLAINES, LLC, a Delaware limited liability company, having its principal place of business at 1477 NW Everett St, Portland, Oregon 97209, as mortgagor (“**Borrower**”), to PGIM REAL ESTATE U.S. DEBT FUND REIT, LLC, a Delaware limited liability company, as mortgagee (together with its successors and assigns, “**Lender**”), having an address at 1540 Broadway, 36th Floor, New York, New York 10036.

WITNESSETH:

WHEREAS, this Security Instrument secures the full and timely payment of a loan (the “**Loan**”) in the principal sum of FORTY-ONE MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$41,250,000.00) made pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), with a maturity date of October 9, 2022 (as the same may be extended pursuant to the Loan Agreement) and bearing a variable interest rate as described in the Loan Agreement. The Loan is evidenced by the Note (as defined in the Loan Agreement) which includes, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest to the extent provided in the Note; and

WHEREAS, to induce Lender to make the Loan to Borrower, Borrower desires to further secure the payment of the Debt and the performance of all of Borrower’s obligations under the Loan Documents by executing this Security Instrument.

NOW THEREFORE, in consideration of the making of the Loan by Lender to Borrower and the covenants, agreements, representations and warranties set forth in this Security Instrument, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

ARTICLE I

GRANTS OF SECURITY

Section 1.1 The Property. Borrower does hereby irrevocably mortgage, pledge, assign, warrant, transfer and convey to Lender and its successors and assigns, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the “**Property**”):

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

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

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

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

(e) Equipment. All “equipment,” as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include any property belonging to Manager or tenants under Leases (as hereinafter defined) except to the extent that Borrower shall have any right or interest therein;

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

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character

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whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the “**Personal Property**”), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the “**Uniform Commercial Code**”), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases, lettings, licenses, concessions, and other agreements pursuant to which any Person is granted by Borrower a possessory interest in, or right to use or occupy all or any portion of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments and modifications thereto, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”) (individually, a “**Lease**”, collectively, the “**Leases**”) and all income, rents and right, title and interest of Borrower, its successors and assigns in and under the Leases, including, without limitation, any guaranties of the lessees’ obligations thereunder, cash or securities deposited under the Leases to secure the performance by the lessees of their obligations under the Leases and all rents, additional rents, early termination fees and payments and other termination fees and payments, revenues, issues and profits (including, without limitation, and all cash or securities deposited to secure the performance by the lessees of their obligations under the Leases), issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt and the performance of all of the other obligations due and owing by Borrower to Lender pursuant to the terms of the Loan Documents;

(i) Condemnation Awards. All compensation, proceeds, and/or awards in respect of a Condemnation which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All insurance proceeds in respect of the Property under any Required Policies (or any other insurance policies) covering the Property, including, without limitation, the right to receive and apply the proceeds of any Required Policies, judgments, or settlements made in lieu thereof, in connection with a Casualty to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Property Taxes or other amounts charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction;

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, insurance proceeds and condemnation awards, into cash or liquidation claims;

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

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(n) Agreements. All agreements, contracts, certificates, instruments, franchises, franchise agreements, permits, licenses, and all licenses, permits, approvals and consents which are required for the sale and service of alcoholic beverages on the Property heretofore or hereafter obtained from applicable state and local authorities (if any), plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Improvements and/or the Land and any part thereof, respecting any business or activity conducted in the Improvements and/or on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon and during the continuance of an Event of Default, to receive and collect any sums payable to Borrower thereunder;

(o) Trademarks. To the extent assignable and owned by Borrower, all trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property, other than the trade name "Gerding Edlen" and logos and derivations thereof;

(p) Accounts/Intangibles. All accounts, accounts receivable, escrows (including, without limitation, all escrows, deposits, reserves and impounds established pursuant to the Loan Agreement and the Loan Documents), documents, instruments, chattel paper, claims, reserves (including deposits) representations, warranties and general intangibles, as one or more of the foregoing terms may be defined in the Uniform Commercial Code, and all contract rights, franchises, books, records, plans, specifications, permits, licenses (to extent assignable), approvals, actions, choses, claims, suits, proofs of claims in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, including, without limitation, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or any operator or manager of the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance, or arising from the sale of any Property or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with any Property returned by or reclaimed from customers wherever such Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon and all other deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof (collectively called the "Intangibles");

(q) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property;

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

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warranty contained in the Interest Rate Cap Agreement; and all products and proceeds of any of the foregoing;

- (s) Proceeds. All products and proceeds of any of the foregoing; and
- (t) Other Rights. Any and all other rights of Borrower in and to the items set forth in Sections (a) through (s) above.

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

Section 1.2 Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower’s right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement, the Assignment of Leases and Section 7.2(h) of this Security Instrument, Lender grants to Borrower a revocable license (which shall be automatically revoked during the continuance of an Event of Default) to collect, receive, use and enjoy the Rents; provided, however, that so long as an Event of Default or Cash Management Event is not then occurring, Borrower may make distributions and/or pay dividends to its partners, members and/or shareholders, and its partners, members and/or shareholders may receive the same, and once such distributions or dividends are so made, they shall be free and clear of any interest of Lender; provided, however, that so long as no Event of Default (under the Loan or the Mezzanine Loan) or Cash Management Event is then occurring, Borrower may make distributions and/or pay dividends to its members in the ordinary course and in accordance with the Amended and Restated Limited Liability Company Agreement of Borrower approved by Lender, and its members may receive the same, and once such distributions or dividends are so made, they shall be free and clear of any interest of Lender unless made in violation of this provision.

Section 1.3 Security Agreement. This Security Instrument is a real property mortgage, a “security agreement,” a “financing statement,” and a “fixture filing” within the meaning of the Uniform Commercial Code in effect in the State where the Land is located. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand (except as specifically provided in the Loan Documents), any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender

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at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender within ten (10) days of Lender's written request, any and all third party, out of pocket costs and expenses, including, without limitation, reasonable, actual attorneys' fees and costs, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall (except as otherwise provided by Applicable Law) constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral by or on behalf of Lender, or any part thereof, may, except as otherwise required by Applicable Law, be applied by Lender to the repayment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper. Borrower's (debtor's) principal place of business is as set forth on the first page hereof and the address of Lender (secured party) is as set forth on the first page hereof. Borrower and Lender agree that the foregoing is intended to grant in favor of Lender a first priority continuing lien and security interest in the Property. The Borrower authorizes the Lender and its counsel to file Uniform Commercial Code financing statements in form and substance satisfactory to the Lender describing the Property and the Collateral. Such financing statements may describe as the collateral covered thereby "all assets of the debtor, whether now owned or hereafter acquired" or words to that effect, notwithstanding that such collateral description may be broader in scope than the collateral described in this Security Instrument.

Section 1.4 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures and the proceeds thereof. For purposes of such financing statement, Borrower is the "debtor" and Lender is the "secured party", and their respective mailing addresses are those set out in this Security Instrument. Borrower covenants and agrees that the filing of this Security Instrument in the real estate records of the city or county wherein such fixtures are situated shall also operate from the date of such filing as a fixture filing in accordance with 810 ILCS 5/9-501 and 810 ILCS 5/9-502(c). Borrower hereby authorizes, within the meaning of 810 ILCS 5/9-509, Lender to file such financing statements in such jurisdictions as it deems necessary or desirable to perfect the security interest granted hereunder. For this purpose, the following information is set forth:

Name and Address of Debtor:

165 NORTH DESPLAINES, LLC
1477 NW Everett St.
Portland, Oregon 97209

Name and Address of Secured Party:

PGIM REAL ESTATE U.S. DEBT FUND REIT, LLC
1540 Broadway, 36th Floor
New York, New York 10036

This document covers goods which are or are to become fixtures.

Debtor's state of formation is Delaware.

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Debtor's organizational identification number is 5872310.

Section 1.5 Pledges of Monies Held. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender, including, without limitation, any sums deposited in the Clearing Account, the Reserve Accounts, the Reserve Funds, and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument or the Loan Documents.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above mortgaged and described Property unto and to Lender for the use and benefit of Lender and its successors and assigns, forever, and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto Lender against every Person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Borrower for the purposes and uses herein set forth;

WITH POWER OF SALE, to secure the payment to Lender of the Debt secured hereby and performance of the Other Obligations (defined herein) at the time and in the manner provided for in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall perform the Other Obligations as set forth in this Security Instrument and the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE II

DEBT AND OBLIGATIONS SECURED

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

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

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document, including, in each case, any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Loan Agreement or any other Loan Document; and
- (c) all other and any additional debts, obligations and liabilities of every kind and character of Borrower, whether now or hereafter existing, in favor of Lender, pursuant to the Loan Documents, regardless of whether such debts, obligations and liabilities be direct or indirect, primary, secondary, joint, several, joint and several, fixed or contingent, unsecured or secured by additional or different securities, it being contemplated by Borrower and Lender that Borrower may hereafter become indebted to Lender in further sum or sums under the Loan Documents (but subject to and in accordance with the Loan Documents).

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Borrower, and each party at any time claiming an interest in or lien or encumbrance against the Property, agrees that all advances (if any) made by Lender from time to time under any of the Loan Documents, and all other portions of the Obligations herein referred to, shall be secured by this Security Instrument with priority as if all of the same had been advanced, had arisen or become owing or performable on the date of this Security Instrument. No reduction of the outstanding principal balance under the Note shall extinguish, release or subordinate any rights, titles, interests, liens, security interests, powers or privileges intended, created or arising hereunder or under any other Loan Document, and this Security Instrument shall remain in full force and effect as to any subsequent advances or subsequently arising portions of the Obligations without loss of priority until the Obligations are fully paid, performed and satisfied, all agreements and obligations, if any, of Lender for further advances have been terminated and this Security Instrument has been released of record by Lender.

ARTICLE III

BORROWER COVENANTS

Borrower covenants and agrees that:

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

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

ARTICLE IV

OBLIGATIONS AND RELIANCES

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

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

Section 4.3 No Lender Obligations. (a) Notwithstanding the provisions of Sections 1.1(h) and (n) or Section 1.2 hereof, Lender is not undertaking the performance of (i) any obligations under the Leases or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any Officer's Certificate, balance sheet,

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statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 Reliance. Borrower recognizes and acknowledges that (a) in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 of the Loan Agreement as the same may be qualified, supplemented or excepted pursuant to the terms thereof (including any schedule made part thereof) without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; (b) such reliance existed on the part of Lender prior to the date hereof; (c) the warranties and representations are a material inducement to Lender in making the Loan; and (d) Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement as the same may be qualified, supplemented or excepted pursuant to the terms thereof (including any schedule made part thereof).

ARTICLE V

FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, etc. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will, subject to the terms of and to the extent provided in the Loan Agreement, pay all Other Taxes and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and, subject to the terms of and to the extent provided in the Loan Agreement, Other Taxes arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by Applicable Law so to do.

Section 5.2 Further Acts, etc. Borrower will, at the sole cost and expense of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all appropriate acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements, *provided* that any such act or document does not increase any obligation of Borrower or diminish any right of Borrower. Borrower, within ten (10) Business Days of request by Lender, will execute and deliver, and in the event Borrower shall fail to so execute and deliver within such ten (10)

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Business Day period, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) to evidence the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of, during the occurrence of an Event of Default, exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section 5.2. Borrower hereby ratifies any such acts Lender shall lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 5.3 Changes in Laws.

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

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Property Taxes or other charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for property tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, then Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable (and any failure to repay the Debt by the end of such 120-day period shall be an Event of Default).

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

(d) If Lender declares the Debt due and payable pursuant to this Section 5.3, provided that such payment is made within such one hundred and twenty (120) day period, such payment of the Debt shall be without any Prepayment Premium or other charge, notwithstanding any provision to the contrary in the Loan Documents.

Section 5.4 Severing of Security Instrument. Subject to and in accordance with the terms of the Loan Agreement, this Security Instrument and the Note may, at any time (whether prior to or after any sale, participation or Securitization of all or any portion of the Loan) until the same shall be fully paid and satisfied, at the sole election of Lender, be severed into two or more notes and two or more security instruments in such denominations as Lender shall determine in accordance with the Loan Agreement, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, to the extent provided in the Loan Agreement, Borrower, upon written request of Lender, shall execute, acknowledge and deliver to Lender and/or its designee or designees, substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses no less favorable to those

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contained herein and in the Note, and such other documents and instruments as may be reasonably required by Lender.

Section 5.5 Replacement Documents. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise in the same form as such lost, stolen, destroyed or mutilated document. In the event that Borrower is required to pay a third party for any payments made to Lender under such duplicate note or other Loan Document, Lender shall indemnify and hold Borrower harmless in an amount not to exceed the sum of such payments made to Lender under such duplicate note or other Loan Document, provided that in connection with any litigation, arbitration, or other proceeding pertaining to any such claim of such third party, Borrower shall vigorously defend against such claim and not confess judgment pertaining thereto without Lender's prior written consent and at Lender's option, permit Lender to assume and control such defense with counsel acceptable to Lender, the cost of which shall be borne by Lender.

ARTICLE VI

DUE ON SALE/ENCUMBRANCE

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

Section 6.2 No Sale/Encumbrance. Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred except in accordance with the terms of the Loan Agreement.

ARTICLE VII

RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Events of Default. The occurrence of an "Event of Default" under the Loan Agreement shall be an "Event of Default" under this Security Instrument.

Section 7.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand (except as set forth below or as required under Applicable Law), as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

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(a) accelerate the Maturity Date of the Debt and declare any or all of the indebtedness secured hereby or by any other Loan Document to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable;

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

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

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by Applicable Law and, without limiting the foregoing:

(i) in connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) which is property that can be severed from the Land covered hereby, or (z) any Improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with Applicable Law, separate and apart from the sale of the Land. Where the Property consists of Land, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Land, Lender shall be entitled to elect to exercise its rights and remedies against any or all of the Land, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by Applicable Law;

(ii) Lender shall be entitled to elect to proceed against any or all of the Land, the Personal Property, the Equipment and the Fixtures in any manner permitted under applicable law; and if Lender so elects pursuant to Applicable Law, the power of sale herein granted shall be exercisable with respect to all or any of the Land, the Personal Property, the Equipment and the Fixtures covered hereby, as designated by Lender, upon the direction of Lender, is hereby authorized and empowered to conduct any such sale of any Land, Personal Property, Equipment and Fixtures;

(iii) should Lender elect to sell any portion of the Property which is Land or which is Personal Property, Equipment or Fixtures that Lender has elected under applicable law to sell together with the Land (in accordance with the Applicable Laws governing a sale of the Land) Lender shall give notice of the occurrence of an Event of Default, if any, and its election to sell such Property as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale and the expiration of any required time period as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Borrower or Lender at the time and place specified in the notice of sale, Lender shall

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sell such Land or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender may from time to time postpone any sale hereunder to make public announcement thereof at the time and place noticed for any such sale;

(iv) If the Property consists of several lots, parcels, condominium units or items of property, Lender shall subject to Applicable Law, (A) designate the order in which such lots, parcels, condominium units or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels, condominium units or items through a single sale, or through two or more successive sales, or in any other manner Lender designates. Any Person, including Borrower or Lender, may purchase at any sale hereunder. Should Lender desire that more than one sale or other disposition of the Property be conducted, Lender shall, subject to Applicable Law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Lender may designate, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Property not sold until all the Obligations have been satisfied in full (exclusive of any indemnification or other obligations which are expressly stated in any of the Loan Documents to survive repayment of the Debt). In the event Lender elects to dispose of the Property through more than one sale, except as otherwise provided by Applicable Law, Borrower agrees to pay the third-party, out of pocket costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made; and

(v) upon any such foreclosure sale, Lender may, after allowing for the proportion of the total purchase price required to be paid in cash and to the third party, out of pocket costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Lender under the obligations secured by this Security Instrument, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon;

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

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

(g) seek and obtain the appointment of a receiver, trustee, liquidator or conservator of the Property ("**Receiver**"), without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor, or any indemnitor with respect to the Loan or of any Person liable for the payment of the Debt or whether the Property is then occupied as a homestead or not;

(h) subject to applicable laws, the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Lender may, subject to the rights of parties in possession thereof, enter into or upon the Property, either personally or by its agents, nominees or attorneys, and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise, and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise

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deal with all and every part of the Property and conduct the business thereat, (ii) complete any construction on the Property in such manner and form as Lender deems advisable, (iii) make alterations, additions, renewals, replacements and improvements to or on the Property, (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof, (v) require Borrower to pay monthly in advance to Lender, or any Receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower or its Affiliates, (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such Receiver and, in default thereof: Borrower may be evicted by summary proceedings or otherwise, and (vii) apply the receipts from the Property to the payment of the Debt and the performance of the Other Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all third-party, out of pocket costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by Lender in connection with the aforesaid operations and all amounts necessary to pay the Property Taxes, other charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; provided that so long as such Event of Default is no longer continuing and no other Event of Default shall have occurred and be continuing, the license granted to Borrower under Section 1.2 hereof shall automatically be reinstated without any further action of the parties;

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

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

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

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

(k) subject to the Loan Agreement, including Section 6.3 thereof, pursue such other remedies as Lender may have under applicable law; and/or

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(l) apply the undisbursed balance of any deficiency in Net Proceeds deposited with Lender, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its sole and absolute discretion.

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

Section 7.3 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property (after deducting all costs, fees and expenses of Lender), and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, subject to the terms of the Loan Agreement, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 7.4 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower (except as expressly required pursuant to the Loan Documents) and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including, without limitation, reasonable, third-party actual attorneys' fees and expenses) with interest as provided in this Section 7.4, shall constitute a portion of the Debt and shall be due and payable to Lender ten (10) days after written demand. All such third party, out of pocket costs and expenses incurred by Lender in remedying any Event of Default or in appearing in, defending, or bringing any such action or proceeding, as hereinafter provided, shall bear interest at the Default Rate, for the period beginning on the first day after notice from Lender that such cost or expense was incurred and continuing until the date of payment to Lender. All such third party, out of pocket costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and to be secured by this Security Instrument and the other Loan Documents and shall be due and payable ten (10) days after written demand by Lender therefor.

Section 7.5 Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring an action or proceeding, which Lender, in its sole and absolute discretion, decides should be brought to protect its interest in the Property.

Section 7.6 Recovery of Sums Required To Be Paid. Lender shall have the right from time to time to take any action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default by Borrower existing at the time such earlier action was commenced.

Section 7.7 Other Rights, etc. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument and Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration,

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of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof (except in connection with the payment of the Debt in full), or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents except as expressly set forth therein.

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

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

Section 7.8 Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.9 Recourse and Choice of Remedies. Notwithstanding any other provision of this Security Instrument or the Loan Agreement (but in all cases subject to the exculpation provisions set forth in Section 6.3 of the Loan Agreement, which terms are incorporated herein by reference), to the extent permitted by Applicable Law, during the continuance of an Event of Default, Lender and other Indemnified Parties are entitled to enforce the obligations of Borrower, any guarantor and indemnitor contained in any other Loan Document without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower and any guarantor or indemnitor with respect to the Loan. Except as expressly set forth in the Loan Documents (including, without limitation, Section 6.3 of the Loan Agreement), the Environmental Indemnity and the Guaranty, the liability of Borrower and any guarantor or indemnitor with respect to the Loan pursuant to any other Loan Document is not limited to the original principal amount of the Note. Notwithstanding the foregoing, to the extent permitted by Applicable Law and during the continuance of an Event of Default, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence.

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Section 7.10 Right of Entry. Subject to and solely to the extent permitted by the Loan Documents, upon reasonable advance written notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

ARTICLE VIII

WAIVERS

Section 8.1 Waiver of Counterclaim. To the extent permitted by Applicable Law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations. Notwithstanding the foregoing, Borrower does not waive its right to assert (i) in good faith, a defense that any obligation in question has been performed and (ii) any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding.

Section 8.2 Marshalling and Other Matters. To the extent permitted by Applicable Law, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further to the extent permitted by Applicable Law, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons.

Section 8.3 Waiver of Notice. To the extent permitted by Applicable Law, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 8.4 Waiver of Statute of Limitations. To the extent permitted by Applicable Law, Borrower hereby expressly waives and releases its right to plead any statute of limitations as a defense to payment of the Debt or performance of the Other Obligations.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1 Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 8.6 of the Loan Agreement.

Section 9.2 Governing Law; Jurisdiction; Service of Process. THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT TO THE LOAN AGREEMENT WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT

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LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW)) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THIS SECURITY INSTRUMENT AND THE ASSIGNMENT OF LEASES SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS SECURITY INSTRUMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

Section 9.3 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid, illegal, or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Section 9.4 Definitions. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate

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levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 9.5 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 9.6 Successors and Assigns. This Security Instrument shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and assigns. Lender shall have the right to assign or transfer its rights under this Security Instrument in connection with any assignment of the Loan and the Loan Documents pursuant to and in accordance with the terms and conditions of the Loan Agreement. Any such assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Security Instrument. Borrower shall not have the right to assign or transfer its rights or obligations under this Security Instrument without the prior written consent of Lender, except as otherwise provided in the Loan Agreement, and any attempted assignment in violation of the Loan Agreement shall be null and void.

Section 9.7 Inapplicable Provisions. If any term, covenant or condition of this Security Instrument is held to be invalid, illegal or unenforceable in any respect, this Security Instrument shall be construed without such provision.

Section 9.8 Headings, etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 9.9 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the payment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 9.10 Entire Agreement. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents. In the event of a conflict between the terms hereof (other than with respect to Article X) and the terms of the Loan Agreement, the terms of the Loan Agreement shall govern and control.

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Section 9.11 Limitation on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender as a "mortgagee in possession" unless Lender actually elects in writing to become a "mortgagee in possession."

Section 9.12 After-Acquired Property. To the extent permitted by Applicable Law, all property acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further amendment, modification, supplement, conveyance or assignment become subject to the lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further amendments, modifications, supplements, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument.

Section 9.13 Counterparts. This Security Instrument may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Security Instrument may be detached from any counterpart of this instrument without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this instrument identical in form hereto but having attached to it one or more additional signature pages.

Section 9.14 Exculpation. The provisions of Section 6.3 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

ARTICLE X

STATE-SPECIFIC PROVISIONS

Section 10.1 Principles of Construction. Notwithstanding Section 9.10 hereof, in the event of any inconsistencies between the terms and conditions of this Article X and the other terms and conditions of this Security Instrument, the terms and conditions of this Article X shall control and be binding.

Section 10.2 Non-Disturbance of Tenants. Solely with respect to each Lease in effect as of the date hereof, which by its terms conditions its subordination to this Security Instrument to the receipt of an acknowledgment of the recognition and nondisturbance of its Lease, Lender or its successor agrees that so long as such tenant is not in default under such Lease beyond any applicable cure or grace period and attorns to Lender or its successor, Lender shall recognize such Lease and not disturb such tenant's right of possession of its portion of the Property leased by a tenant under such Lease (such Lease a "**Recognized Lease**"). Lender shall not, by virtue of its agreement to recognize any tenant, under this Security Instrument or any other instrument to which Lender may be party, be or become subject to any liability or obligation to any tenant under any Lease or otherwise, unless and until Lender takes title to the

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Property. Without limiting any other provisions of this Security Instrument, with respect to any Recognized Lease, Lender or its successor shall not be:

- (i) liable for any prior act or omission of Borrower or any prior landlord, or for consequential damages arising therefrom; or
- (ii) subject to any offsets or defenses which a tenant might have as to Borrower or any prior landlord; or
- (iii) bound by any amendments or modifications of the Lease made without Lender's or its successor's prior written consent where such consent is expressly required by the terms of the Loan Agreement; or
- (iv) required or obligated to credit a tenant with any rent or additional rent for any rental period after Lender or its successor's acquisition of the Property if a tenant paid such rent to Borrower; or
- (v) liable for refund of all or any part of any security deposit (unless the same is transferred to Lender in accordance with the terms of the Loan Documents).

Section 10.3 Compliance With Illinois Mortgage Foreclosure Law. If any provision of this Security Instrument shall be inconsistent with any provision of the statutes or common law of the State of Illinois governing the foreclosure of this Security Instrument, including Illinois Mortgage Foreclosure Law, 735 ILCS §5/15-101, et. seq, the "Act"; together with the foregoing statutes and laws, (collectively, "**Foreclosure Laws**"), the provisions of the Foreclosure Laws shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Foreclosure Laws. If any provision of this Security Instrument shall grant to Lender any rights or remedies during an Event of Default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Foreclosure Laws in the absence of said provision, Lender shall be vested with rights granted in the Foreclosure Laws to the full extent permitted by law.

Section 10.4 Advances. During the continuance of an Event of Default, Lender may, but need not, make any payment or perform any act herein required of Borrower in any form and manner deemed expedient. By way of illustration and not in limitation of the foregoing, Lender may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any part of the Property; complete construction; make repairs; collect rents; prosecute collection of any sums due with respect to the Property; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Property. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Lender to protect the Property and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice (unless notice is required under applicable law) and with interest thereon at Default Rate. In making any payment or securing any performance relating to any obligation of Borrower hereunder, Lender shall (as long as it acts in good faith) be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of Lender, and no inaction of Lender hereunder, shall ever be considered as a waiver of any right accruing to it on account of any default on the part of Borrower. All sums paid by Lender for the purposes herein authorized, or authorized by any Loan Document shall be considered additional advances

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made under the Note and pursuant to this Security Instrument and shall be secured by this Security Instrument.

Section 10.5 Insurance and Illinois Collateral Protection Act. BORROWER IS HEREBY NOTIFIED PURSUANT TO 815 ILCS 180/1 ET. SEQ. AS FOLLOWS:

UNLESS YOU (BORROWER) PROVIDE US (LENDER) WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY YOUR AGREEMENT WITH US, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTERESTS IN YOUR COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT YOUR INTERESTS. THE COVERAGE THAT WE PURCHASE MAY NOT PAY ANY CLAIM THAT YOU MAKE OR ANY CLAIM THAT IS MADE AGAINST YOU IN CONNECTION WITH THE COLLATERAL. YOU MAY LATER CANCEL ANY INSURANCE PURCHASED BY US, BUT ONLY AFTER PROVIDING US WITH EVIDENCE THAT YOU HAVE OBTAINED INSURANCE AS REQUIRED BY OUR AGREEMENT. IF WE PURCHASE INSURANCE FOR THE COLLATERAL, YOU WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES WE MAY 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 ADDED TO YOUR TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE YOU MAY BE ABLE TO OBTAIN ON YOUR OWN.

Section 10.6 Marshalling and Other Matters. Borrower covenants and agrees that it will not at any time insist upon or 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, or claim, take or insist upon 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 decree, judgment or order of any court of competent jurisdiction, or after such sale or sales claim exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. Borrower hereby expressly waives any and all rights of reinstatement or redemption in connection with any foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of reinstatement or redemption of Borrower and of all other persons are and shall be deemed to be hereby waived to the extent permitted by law. Borrower will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power and remedy as though no such law or laws have been made or enacted. Specifically, but not by way of limitation, Borrower waives all rights of redemption pursuant to 735 ILCS 5/15-1601 and all rights of reinstatement pursuant to 735 ILCS 5/15-1602, and Borrower releases and waives all rights under and by virtue of the homestead exemption of the State of Illinois, all to the fullest extent permitted by law.

Section 10.7 Expenses. Without limiting any provision set forth herein, all expenses incurred by Lender, to the extent reimbursable under Sections 5/15-1510, 5/15-1512 of the Act (as hereinafter defined), or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Security Instrument, shall be added to the indebtedness secure by this Security Instrument and by the judgment of foreclosure. For purposes herein, the "Act" shall mean the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes Chapter 735, Section 5/15 – 1101 et seq.

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Section 10.8 Business Loan; Loan Not For Residential or Agricultural Purposes. Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (l) of Section 4(1) of the Illinois Interest Act (815 ILCS 205/0.01, et seq.); (B) the Indebtedness secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said subparagraph (l) of Section 4(1); (C) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said subparagraph (l) of Section 4(1); and (D) the secured Indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* and has been entered into solely for business purposes of Borrower and Borrower's investment or profit, as contemplated by said section. Without limiting the generality of anything contained herein, Borrower acknowledges and agrees that the transaction of which this Security Instrument is part is a transaction which does not include either agricultural real estate (as defined in 15-1201 of the Act) or residential real estate (as defined in 15-1219 of the Act).

Section 10.9 Waiver. Borrower waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Property, (b) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties, (c) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce the secured obligations, and (d) any rights, legal or equitable to require marshaling of assets or to require foreclosure sales in a particular order. Without limiting the generality of the preceding sentence, Borrower, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument, hereby irrevocably waives any and all rights of reinstatement or redemption from sale or from or under any order, judgment or decree of foreclosure of this Security Instrument or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Borrower, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Security Instrument, hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Property and/or any other property now or hereafter constituting security for any of the Debt marshaled upon any foreclosure of this Security Instrument or of any other security for any of said indebtedness. Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the secured obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, on behalf of itself and all persons now or hereafter interested in the Property, voluntarily and knowingly hereby 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 the Act) or residential real estate (as defined in the Act).

Section 10.10 No Property Manager Lien. Any management agreement for or relating to all or any part of the Property, whether now in effect or entered into hereafter by Borrower or on behalf of Borrower, shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Security Instrument and the Loan Documents any and all mechanic's lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law, including, without limitation, Illinois Compiled Statutes, Chapter 770, Section 60/1.

Section 10.11 Maximum Indebtedness. The present amount of the Loan secured hereby is \$41,250,000.00; the maximum amount, including present and future Obligations, which may be secured hereby at any one time is \$82,500,000.00, plus interest, plus any disbursements and taxes and

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insurance on the Property, plus interest thereon at the rate set forth in the Loan Agreement, and any other sums advanced subject to and in accordance with the terms hereof or any of the other Loan Documents to protect the security of this Security Instrument or any of the Loan Documents.

Section 10.12 Powers of Receiver. The Receiver shall have the power to collect the rents, issues and profits of the Property (i) during the pendency of any foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Borrower, but for the intervention of such Receiver, would be entitled to collect such rents, issues and profits. Such Receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Property for a term that extends beyond the time of such Receiver's possession without obtaining prior court approval of such lease. The Receiver also shall have the power to market, sell and convey the Property.

Section 10.13 Mortgagee-in-Possession. Nothing shall be construed as constituting Lender a mortgagee-in-possession in the absence of actual taking of possession of the Property by Lender.

Section 10.14 Lender's Right of Possession. In addition to any provision of this Security Interest authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15 1701 and 15 1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Interest, all powers, immunities, and duties as provided for in Sections 15 1701 and 15 1703 of the Act. Upon or at any time after filing a complaint to foreclose this Security Instrument, the court may appoint Lender as mortgagee-in-possession of the Property. Borrower hereby waives any rights it may have to object to such appointment. Such appointment may be made before or after sale, without notice, without regard to the solvency or insolvency of Borrower and without regard to the then value of the Property. Upon such appointment, Lender shall be entitled to take actual possession of the Property, or any part thereof, personally or by its agents or attorneys, and Borrower shall surrender such possession to Lender, together with all documents, books, records, papers and accounts of Borrower as may be necessary or desirable in connection with the management and operation of the Property. Lender may exclude Borrower, its agents and servants wholly therefrom and may act as attorney-in-fact or agent of Borrower, or in its own name as Lender, and under the powers herein granted, hold, operate, manage and control the Property and conduct the business thereof in such manner as it deems proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power to the extent permitted by applicable law:

- (i) to cancel or terminate any lease or sublease for any cause or on any grounds that would entitle Borrower to cancel the same;
- (ii) to elect or disaffirm any lease or sublease which is then subordinate to the lien hereof except to the extent proscribed by any non-disturbance agreement to which Lender is a party;
- (iii) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire or for options to lessees to extend or renew terms to expire beyond the maturity date of the Note and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being

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understood and agreed that any such leases, and the options or other such provisions to be contained therein shall be binding upon Borrower and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser;

(iv) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as to it may seem judicious;

(v) to insure and reinsure the same and all risks incidental of Lender's possession, operation and management thereof;

(vi) to receive all of such avails, rents, issues and profits hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Borrower. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Borrower shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand; and

(vii) to use and apply the avails, rents, issues, profits and proceeds of the Property in payment of or on account of the following, in such order as Lender may determine:

(1) to the payment of the operating expenses of the Property, including cost of management and leasing thereof (which shall include reasonable compensation to Lender and its agent or agents if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(2) to the payment of taxes and special assessments now due or which may hereafter become due on the Property; and, if this is a leasehold mortgage, of all rents due or which may become hereafter due under the underlying lease;

(3) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Property, including but not limited to the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing the Property in such condition as will, in the judgment of Lender, make it readily rentable; and

(4) to the payment of the Debt or any deficiency which may result from any foreclosure sale.

Section 10.15 Submission to Jurisdiction. BORROWER AND LENDER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT

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SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER AND LENDER HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER AND LENDER HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER AND LENDER IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO BORROWER OR LENDER AT ITS RESPECTIVE ADDRESS AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF LENDER. BORROWER AND LENDER AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

Section 10.16 Waiver of Jury Trial. BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER AND BORROWER IS EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 10.16 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

[NO FURTHER TEXT ON THIS PAGE]

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

BORROWER:

165 NORTH DESPLAINES, LLC,
a Delaware limited liability company

By: **165 North Desplaines Mezz, LLC,**
a Delaware limited liability company
Its: Member

By: **Jefferson Street Holding, LLC,**
a Delaware limited liability company
Its: Member

By: **Gerding Edlen Fund Management III, LLC,**
a Delaware limited liability company
Its: Manager

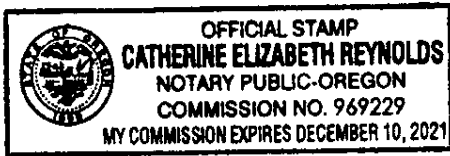
By: Molly Bordoaro
Name: Molly Bordoaro
Title: Manager

State of Oregon

County of Multnomah

On this 24th day of Sept., 2018, before me appeared Molly Bordoaro to me personally known, who, being by me duly sworn (or affirmed) did say that he/she is a Manager of Gerding Edlen Fund Management III, LLC, a Delaware limited liability company, the Manager of Jefferson Street Holding, LLC, a Delaware limited liability company, the Member of 165 North Desplaines Mezz, LLC, a Delaware limited liability company, the Member of 165 North Desplaines, LLC, a Delaware limited liability company, and acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.



Catherine Elizabeth Reynolds
Notary Public in and for Said County and State
Catherine Elizabeth Reynolds
(Type, print or stamp the Notary's name below his or her signature.)

My Commission Expires:

12/10/2021

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EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

PARCEL 1:

LOTS 5, 6 AND 8 AND THE NORTH 52.93 FEET OF LOT 7 TOGETHER WITH THE VACATED ALLEY LYING EAST OF THE EAST LINE OF LOT 6 AND THE NORTH 52.93 FEET OF LOT 7 AND LYING WEST OF THE WEST LINE OF LOT 5 AND THE NORTH 52.93 FEET OF LOT 8, ALL IN BLOCK 26 IN ORIGINAL TOWNSHIP OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT (EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 00°03'18" WEST ALONG THE EAST LINE OF LOTS 5 AND 8 A DISTANCE OF 154.56 FEET TO THE SOUTHEAST CORNER OF SAID LOT 8; THENCE NORTH 89°07'27" WEST ALONG THE SOUTH LINE OF SAID LOT 8 A DISTANCE OF 60.20 FEET; THENCE NORTH 00°01'40" WEST 154.57 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 5; THENCE SOUTH 89°06'57" EAST ALONG SAID NORTH LINE 60.42 FEET TO THE POINT OF BEGINNING), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST 57 FEET OF LOT 2 IN ASSESSOR'S DIVISION OF LOT 7 AND LOT 10 IN BLOCK 26 IN ORIGINAL TOWNSHIP OF CHICAGO AFORESAID, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

TOGETHER WITH AN EASEMENT FOR THE EXISTENCE OF ENCROACHMENTS AS GRANTED THEREIN BY THAT EASEMENT AGREEMENT RECORDED FEBRUARY 3, 2017, AS INSTRUMENT NO. 1703404006, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO EASEMENT AGREEMENT RECORDED APRIL 7, 2017, AS INSTRUMENT NO. 1709722059, AND AS FURTHER AMENDED BY THAT CERTAIN SECOND AMENDMENT TO EASEMENT AGREEMENT RECORDED JANUARY 2, 2018, AS INSTRUMENT NO. 1800204016; SAID EASEMENT AS MORE PARTICULARLY DESCRIBED IN PARAGRAPH 2 OF THE PROCEEDING INSTRUMENT NO. 1709722059.

Common Property Address: 165 North Desplaines Street, Chicago, IL 60661

Permanent Index Numbers: 17-09-322-017-0000
 17-09-322-019-0000
 17-09-322-009-0000