

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1830613028

Doc# 1830613028 Fee \$86.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 11/02/2018 02:59 PM PG: 1 OF 2

The property identified as: PIN: 17-03-207-017-0000

Address:

Street: 57-65 East Oak Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60611

Lender: ACM CRE Fund I-L, LP

Borrower: 65 Oak Street Owner, LLC

Loan / Mortgage Amount: \$60,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 17/70 et seq. because it is commercial property.

S Y
P 25
S N
SC Y
INT

Certificate number: 0ECF8622-B049-4DC1-8A29-78F94CAFDFB4

Execution date: 10/31/2018

UNOFFICIAL COPY

Prepared by and Record and Return to:

Justin Quinn, Esq.
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036

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

Dated as of October 31, 2018,

from

65 OAK STREET OWNER, LLC,
as Grantor.

to

ACM CRE FUND I-L, LP,
as agent for itself and the Lenders, and its successors and assigns

THIS SECURITY INSTRUMENT SECURES DEBT WHICH MAY INCLUDE
FUTURE ADVANCES TO GRANTOR

Property Location: 57-65 East Oak Street
Chicago, Cook County, Illinois

(Legal Description of the Property encumbered by this Security Instrument
is attached hereto as Exhibit A)

UNOFFICIAL COPY

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

This MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING, dated as of October 31, 2018 (as may be amended, restated, replaced, supplemented, or otherwise modified from time to time, this "Security Instrument"), is made by **65 OAK STREET OWNER, LLC**, a Delaware limited liability company ("Grantor"), having its principal office at: c/o Jenel Management Corp., 275 Madison Avenue, Suite 1100, New York, New York 10016, with respect to the real property located at 57-65 East Oak Street, Chicago, Cook County, Illinois (the "Land") and more particularly described on the parcel description on Exhibit A attached hereto and made a part hereof (the "Property Description"), to **ACM CRE FUND I-L, LP**, a Delaware limited partnership, having an address at: 444 Madison Avenue, 19th Floor, New York, New York, 10022, as agent for itself and the other Lenders (as defined below) (in such capacity, together with its successors and assigns, the "Agent"), for the benefit of Agent on behalf of Lenders.

RECITALS:

WHEREAS, Grantor is the owner of (i) the fee simple interests in and appurtenant to the Land (the "Fee Parcel"); and (ii) title to the Improvements (as defined below);

WHEREAS, simultaneously with the execution and delivery of this Security Instrument, (i) pursuant to that certain Loan Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), between Agent, the lenders party thereto from time to time (each a "Lender" and collectively, the "Lenders"), and Grantor, as "Borrower" thereunder, the Lenders have agreed to make a loan (the "Loan"), in the maximum principal amount of up to Sixty Million and No/100 Dollars (\$60,000,000.00), and (ii) Grantor is delivering to Lenders one or more promissory notes in the aggregate maximum principal amount of the Loan (as each of the same may be amended, restated, replaced, supplemented, split or otherwise modified from time to time, collectively, the "Notes") to evidence such Loan;

WHEREAS, Grantor acknowledges and agrees that it will materially benefit from Agent's and each Lender's agreeing to enter into the Loan Agreement and make the Loan and thus, in order to induce Agent and each Lender to enter into the Loan Agreement and make the Loan, Grantor has agreed to the execution and delivery of this Security Instrument, which Security Instrument (i) secures the Loan, the payment of the Notes, and the "Obligations" under and as defined in the Loan Agreement and (ii) encumbers, among other things, the Property (as hereinafter defined); and

WHEREAS, Grantor and Agent intend these Recitals to be a material part of this Security Instrument and to secure the Obligations (as defined below).

ARTICLE I. SECURED INDEBTEDNESS

NOW, THEREFORE, in consideration of the Loan to Grantor evidenced by the Notes and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby agrees as follows:

TO SECURE:

(a) payment and performance of all covenants, conditions, liabilities and obligations of Grantor to Agent and Lenders contained in the Loan Agreement and the other Loan Documents;

UNOFFICIAL COPY

(b) payment of the indebtedness evidenced by the Notes plus all interest and all fees (including the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Grantor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code), including, without limitation, any Prepayment Premium (as defined in the Loan Agreement) payable thereunder;

(c) payment and performance of all covenants, conditions, liabilities and obligations contained in this Security Instrument and any extensions, renewals or modifications hereof;

(d) payment and performance of all covenants, conditions, liabilities and obligations of Grantor contained in the Assignment of Leases and Rents, dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Assignment of Leases"), between Grantor, as assignor, and Agent, as assignee;

(e) payment and performance of all covenants, conditions, liabilities and obligations of Grantor contained in each of the other Loan Documents (as defined below); and

(f) without limiting the foregoing, payment of all indebtedness, liabilities, and amounts from time to time incurred by Grantor pursuant to the Notes, this Security Instrument, the Loan Agreement or such other Loan Documents, even if the aggregate amount of the monetary obligation outstanding at any one time exceeds the face amount of the Notes (all of the foregoing indebtedness and monetary liabilities set forth in clauses (a) through (e) above and this clause (f), collectively, the "Indebtedness;" payment of the Indebtedness together with the payment and performance of all other covenants, conditions, liabilities and obligations described and set forth in clauses (a) through (e) above and in this clause (f), collectively, the "Obligations").

ARTICLE II. GRANTING CLAUSES

NOW, THEREFORE, THIS SECURITY INSTRUMENT WITNESSETH: that Grantor, in consideration of the premises, the Indebtedness evidenced by the Notes, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby irrevocably grant and create a first priority Lien (as defined below) on and security interest in, subject to the Permitted Exceptions and the provisions hereof and of the other Loan Documents, and does hereby MORTGAGE, SELL, BARGAIN, CONVEY, WARRANT AND GRANT A SECURITY INTEREST IN AND PLEDGE to and in favor of Agent and its successors and assigns forever, all of Grantor's estate, right, title and interest now owned or hereafter acquired in, to and under the Land, together with any and all other property with respect to the Land or the Improvements described in the following Granting Clauses (collectively, the "Property"):

(A) the Fee Parcel;

(B) all additional lands, estates and development rights hereafter acquired by Grantor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage, deed to secure debt, deed of trust, or otherwise, be expressly made subject to the lien of this Security Instrument;

(C) all of Grantor's rights, title, and interests in and to the buildings, foundations, structures, improvements, and fixtures now or hereafter located or erected on or within the Land (the "Improvements;" and together with the Fee Parcel, the "Real Property");

UNOFFICIAL COPY

(D) all of Grantor's rights, title and interests in and to (1) all streets, avenues, roads, alleys, passages, places, sidewalks, strips and gores of land and ways, existing or proposed, public or private, adjacent to the Land, and all reversionary rights with respect to the vacation of said streets, avenues, roads, alleys, passages, places, sidewalks and ways in the land lying thereunder; (2) all air, light, lateral support, development, drainage, oil, gas and mineral rights, options to purchase or lease, waters, water courses and riparian rights now or hereafter pertaining to or used in connection with the Land, and/or the Improvements; (3) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or hereafter belonging or in any way appertaining to the Land, and/or the Improvements; and (4) all estate, right, title, claim or demand whatsoever, either at law or in equity, in possession or expectancy, of, in and to the Land, and/or the Improvements (collectively, the "Appurtenances");

(E) all of Grantor's rights, title and interests in and to all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Grantor now has or hereafter acquires an interest, including, without limitation: (1) all reserve, deposit and impound accounts including without limitation the Operating Account, the Lockbox Account and Reserves (as each is defined in the Loan Agreement) and any funds in such Operating Account, Lockbox Account and Reserves from time to time; (2) all contracts and agreements relating to the Property, including operating agreements and management agreements, and all other documents, books and records related to the ownership and operation of the Property (provided, that all of such agreements shall be subordinate to this Security Instrument, and Agent shall have no responsibility for the performance of Grantor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols); (3) to the extent permitted by law: all consents, Licenses (as defined below) (including any licenses held by Grantor permitting the sale of liquor at any of the Property the transfer and/or assignment of which is permitted by law without filing or other qualification), permits, certificates, government approvals, warranties, guaranties, bonds, letters of credit, causes of action, judgments, claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, taxes, assessments, charges or deposits paid to any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity, all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities; (4) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions; and (5) all "Cash proceeds", "Chattel paper", "Collateral", "Commercial tort claims", "Deposit accounts", "Documents", "Electronic chattel paper", "Equipment", "Fixtures", "General intangibles", "Goods", "Instruments", "Inventory", "Investment property", "Letter of credit rights", "Noncash proceeds", "Payment intangibles", "Proceeds", "Software", "Supporting Obligations", and "Tangible chattel paper", as defined in the Uniform Commercial Code (the "UCC") of the state in which the Land is located (the "State") (or, for any personal property, the State of Delaware), in which Grantor has any interest, wherever located, whether currently owned or hereafter acquired (including, without limitation, all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Grantor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) intentionally omitted; (b) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Security Instrument, and Agent shall have no responsibility for the performance of Grantor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (c) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real

UNOFFICIAL COPY

Property or the operation thereof; (d) all insurance policies held by Grantor with respect to the Property or Grantor's operation thereof and any advance payments of insurance premiums made by Grantor with respect to, and all claims or demands with respect to, such insurance; (e) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Grantor related to the Property; and (f) all "Cash proceeds", "Chattel paper", "Collateral", "Commercial tort claims", "Deposit accounts", "Documents", "Electronic chattel paper", "Equipment", "Fixtures", "General intangibles", "Goods", "Instruments", "Inventory", "Investment property", "Letter-of-credit rights", "Noncash proceeds", "Payment intangibles", "Proceeds", "Software", "Supporting Obligations", and "Tangible chattel paper", as defined in the UCC, in which Grantor has any interest, whether currently owned or hereafter acquired, to the extent such property is relating to, generated from, arising out of or incidental to the ownership, development, use or operation of the Property (whether or not subsequently removed from the Real Property, including, without limitation, all (i) machinery and tools; (ii) rugs, carpets and other floor coverings; (iii) draperies and drapery rods and brackets, awnings, window shades, venetian blinds and curtains; (iv) lamps, chandeliers and other lighting fixtures; (v) office maintenance and other supplies; (vi) apparatus, appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment; (vii) chairs, desks, mirrors, bookcases, tables, screens, paintings, hangings, pictures, objects of art, divans, couches, luggage carts, luggage racks, stools, sofas, keys or other entry systems, dictating equipment, private telephone systems, facsimile machines, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers; (viii) rights, royalties, Rents, security deposits, advance rentals, revenues, profits and benefits, parking charges, the rendering of services by Grantor or any operator or manager of the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms 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, food and beverage wholesale and retail sales, service charges, vending machine sales and any other items of revenue, receipts and/or income); (ix) Leases, lease guarantees, security deposits, contracts, contract rights, permits and certificates; (x) tenements, hereditaments and appurtenances; (xi) approvals and parcel maps (whether tentative or final), building permits and certificates of occupancy; (xii) names under or by which the Property or any of the Improvements may at any time be operated or known and rights to carry on business under any such names or any variant thereof; (xiii) tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Real Property; (xiv) management agreements, service contracts, supply contracts or other contracts or agreements; (xv) warranties; (xvi) water stock; (xvii) shares of stock or other evidence of ownership of any part of the Property or Improvements that is owned by Grantor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing, maintaining or operating any part of the Property or Improvements; (xviii) plans and specifications prepared for construction of improvements on the Real Property, or any part thereof, and studies, data and drawings related thereto, including, without limitation, studies, data or reports relating to toxic or hazardous wastes or materials located on the Real Property, all environmental audits, studies and reports, approvals and agreements, and/or Improvements, and contracts and agreements of Grantor relating to the aforesaid plans and specifications or to the aforesaid studies, data, reports and drawings or to the construction of improvements on the Real Property; (xix) sales agreements, marketing studies, feasibility studies, deposit receipts, escrow agreements and other ancillary documents and agreements entered into respecting the sale to any purchasers of any part of the Property, and other proceeds of the sale thereof; (xx) damages, royalties and revenue of every kind, nature and description whatsoever that

UNOFFICIAL COPY

Grantor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Land; (xxi) deposits made with or other security given to utility companies by Grantor with respect to the Land and/or Improvements; (xxii); negotiable certificates of deposit of Grantor in Agent's possession and all accounts of Grantor maintained with Agent and each deposit account of Grantor assigned to Agent pursuant to any agreement; (xxiii) insurance proceeds (including insurance proceeds for insurance not required under the terms of this Security Instrument); (xxiv) condemnation awards; (xxv) causes of action, claims, compensation, awards and recoveries for any damage or injury to the Property and/or Improvements or for any loss or diminution in value of the Property and/or Improvements; (xxvi) books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof; (xxvii) guaranties of and security for any of the foregoing; and (xxviii) all reserve, deposit and impound accounts including without limitation the Reserves (as defined in the Loan Agreement) and all Loan accounts established pursuant to the Loan Agreement either as reserves or accounts for the Loan (each of the foregoing items, collectively, the "Personalty"); together with all alterations, additions, accessions and improvements to the Property, substitutions therefor, and renewals and replacements thereof, and all proceeds of all of the foregoing;

(F) all of Grantor's right, title and interest in and to all proceeds, judgments, claims, compensation, awards or payments heretofore and hereafter made to Grantor for the taking, whether permanent or temporary, by condemnation, eminent domain, or for any conveyance made in lieu of such taking, of the whole or any part of the Property or any easement appurtenant thereto, including, without limitation, all proceeds, judgments, claims, compensation awards or payments for changes of grade of streets or any other injury to or decrease in the value of the Property, whether direct or consequential, which awards and payments are hereby assigned to Agent, who is hereby authorized, subject to the terms of the Loan Agreement, to collect and receive the proceeds thereof and to give proper receipts and acquittances therefore, and to apply the same toward the payment of the Indebtedness in such order as Agent may determine in accordance with the provisions of this Security Instrument without regard to the adequacy of Agent's security hereunder and notwithstanding the fact that the amount thereof may not then be due and payable, and toward the payment of reasonable counsel fees, costs and disbursements incurred by Agent in connection with the collection of such awards or payments; and Grantor hereby agrees, upon request, to make, execute and deliver any and all further assignments and other instruments sufficient for the purpose of confirming this assignment of said proceeds, judgments, claims, compensation awards or payments to Agent, free, clear and discharged of any encumbrances of any kind or nature whatsoever other than the Permitted Exceptions (as defined in the Loan Agreement);

(G) all of Grantor's right, title and interest in and to all unearned premiums paid under insurance policies obtained by Grantor now or hereafter obtained by Grantor to the extent the same insure the Property and any other insurance policies required to be maintained pursuant to Section 5.12 of the Loan Agreement to the extent the same insure the Property, including, without limitation, liability insurance policies and Grantor's interest in and to all proceeds of the conversion and the interest payable thereon, voluntary or involuntary, of the Property, or any part thereof, into cash or liquidated claims including, without limitation, proceeds of casualty insurance, title insurance or any other insurance maintained on or with respect to the Property (other than liability insurance);

(H) all right, title and interest of Grantor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and Appurtenances to, the Property, hereafter acquired by or released to Grantor or constructed, assembled or placed by Grantor on the Property, and all conversions of the security constituted thereby; immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, to the extent permitted by law, without any further mortgage, conveyance, assignment or other act by Grantor, all such extensions, improvements, betterments, renewals, substitutes and replacements shall become subject to

UNOFFICIAL COPY

the Lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein;

(I) all of Grantor's right, title and interest in, to and under, to the extent the same may be encumbered or assigned by Grantor pursuant to the terms thereof without occurrence of a breach or default thereunder and to the extent permitted by applicable law, and without impairment of the validity or enforceability thereof, the Interest Rate Protection Agreement (as defined in the Loan Agreement);

(J) all of Grantor's right, title and interest in all proceeds, both cash and noncash, of the foregoing which may be sold or otherwise be disposed of pursuant to the terms hereof; and

(K) all of Grantor's right, title and interest in any reciprocal easement agreement which may now or hereafter affect the Property.

UPON CONDITION that, until the occurrence of an Event of Default (as defined below), Grantor shall be permitted to possess and use the Property, and to use the rents, issues, profits, revenues and other income of the Property as provided in this Security Instrument, the Loan Agreement and the other Loan Documents (as defined below).

Should the Indebtedness be paid in full and the Obligations performed in full according to the terms and conditions hereof and of the other Loan Documents, then this Security Instrument shall be cancelled and surrendered.

ARTICLE III. HABENDUM

TO HAVE AND TO HOLD THE PROPERTY hereby conveyed, or mentioned and intended so to be, whether now owned or held or hereafter acquired, subject only to the Permitted Exceptions and the terms hereof, unto Agent, with respect to the Property, and its successors and assigns, forever, upon the terms and conditions set forth herein and to secure the performance of, and compliance with, the obligations, covenants and conditions of this Security Instrument and the other Loan Documents all as herein set forth.

3.1 Definitions. All capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement. Wherever used in this Security Instrument, the following terms, and the singular and plural thereof, shall have the following meanings:

"Agent" shall have the meaning provided in the Recitals.

"Appurtenances" shall have the meaning provided in Granting Clause (D).

"Events of Default" shall mean the occurrence of an "Event of Default" pursuant to the Loan Agreement or a default, beyond any applicable notice and cure periods in any other Loan Document.

"Fee Parcel" shall have the meaning provided in the Recitals.

"Grantor" shall have the meaning provided in the Introductory Paragraph.

"Improvements" shall have the meaning provided in Granting Clause (C).

"Land" shall have the meaning provided in the Introductory Paragraph.

UNOFFICIAL COPY

“Leases” means all leases, licenses, concessions, tenancies, occupancy agreements and other agreements entered into by or on behalf of Grantor (or any predecessor of Grantor, to the extent Grantor or the Property remain subject thereto), whether made before or after the filing by or against Grantor 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”), demising, leasing or granting rights of possession or use of all or any portion of the Property, together with all modifications, extensions or renewals thereof now existing or hereafter permitted under the Loan Documents.

“Licenses” shall mean all certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits required of Grantor for the legal use, occupancy and operation of the Property.

“Loan” shall have the meaning provided in the Recitals.

“Loan Agreement” shall have the meaning provided in the Recitals.

“Notes” shall have the meaning provided in the Recitals.

“Obligations” shall have the meaning provided in the Recitals.

“Personalty” shall have the meaning provided in Granting Clause (E).

“Property” shall have the meaning provided in the recitals to the Granting Clauses.

“Rents” means all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Grantor or any of its Affiliates, or any of their agents or employees, from any and all sources arising from or attributable to the Property, including all credit card receipts collected from tenants, parking charges, 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 the Property, service charges, vending machine sales, laundry charges and any other items of revenue, receipts and/or income and proceeds, if any, from business interruption or other loss of income insurance, whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code.

“UCC” shall have the meaning provided in Granting Clause (E).

(a) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision of this Security Instrument, and section, schedule and exhibit references are to this Security Instrument unless otherwise specified. The words “includes” and “including” are not limiting and mean “including without limitation.”

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto executed in writing by all of the parties thereto

UNOFFICIAL COPY

and, if Agent's consent was required for the original of any such document, consented to by Agent. All references in this Security Instrument to the plural of any document described herein shall mean all of such documents collectively.

(d) References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation.

(e) The captions and headings of this Security Instrument are for convenience of reference only and shall not affect the construction of this Security Instrument.

3.2 Warranty. Grantor represents and warrants as of the date hereof to, and covenants and agrees with, Agent as follows:

(a) **Title.** Grantor represents and warrants that Grantor has good, indefeasible and insurable fee title to the Fee Parcel, subject only to the Permitted Exceptions. This Security Instrument, upon its due execution and proper recordation, is and will remain a valid and enforceable (and, with respect to all personalty as to which security interests are governed by the UCC, upon proper recordation and the filing of a financing statement) perfected first Lien on and security interest in Grantor's right, title and interest in and to the Property subject to the Permitted Exceptions. Grantor will preserve such title to the Property and will forever warrant and defend same and the validity and priority of the lien hereof from and against any claims whatsoever.

(b) **All Property.** The Property constitutes all of the real property, personal property, equipment and fixtures currently (i) owned or leased by Grantor or (ii) used in the operation of the business located on the Real Property.

(c) **Enforceability of Security Instrument.** This Security Instrument is the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

3.3 Affirmative Covenants.

(a) **Payment of Obligations.** Grantor agrees to promptly pay and perform all of the Obligations, subject to and in accordance with the terms of the Loan Agreement and the other Loan Documents.

(b) **Performance and Observance of Loan Agreement Covenants.** Grantor will duly perform, observe and comply with all of the affirmative and negative covenants, agreements and obligations to be performed, observed and complied with by Grantor, and all of the other terms and conditions applicable to Grantor, under the terms of the Loan Agreement and any other Loan Document in all material respects.

(c) **Insurance.** Grantor shall, at its sole cost and expense, continuously keep and maintain insurance in respect of the Property and Grantor's operations thereat, of the type and in the form and with insurers, all to the extent provided in, and subject to the terms of, Section 5.12 of the Loan Agreement. All Proceeds to which Grantor may be entitled resulting from damage to or destruction of the Property or any part thereof by a casualty or a taking for public use, an action in eminent domain, or the exercise of the police power, whether by a condemnation proceeding or otherwise (such as by inverse condemnation), shall be distributed and applied towards restoration of the Property or repayment of the

UNOFFICIAL COPY

Obligations in accordance with the provisions of Section 5.13 of the Loan Agreement; provided, however, that Grantor shall have no obligation to restore the Property if the Proceeds are not made available to Grantor for such restoration pursuant to the terms and provisions of the Loan Agreement.

(d) Additions to Security. All right, title and interest of Grantor in and to all Improvements and Appurtenances hereafter constructed or placed on the Property and in and to any Personalty hereafter acquired shall, without any further grant, conveyance, assignment or other act by Grantor, become subject to the Lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the Granting Clauses hereof. Grantor agrees, however, to execute and deliver to Agent such further documents as may be reasonably required by Agent to subject such Improvements, additions, and after-acquired Personalty to the Lien of this Security Instrument.

(e) Maintenance of Validity and Recording.

(i) Grantor covenants that it will forthwith after the execution and delivery of this Security Instrument and thereafter as necessary from time to time cause this Security Instrument and the other Loan Documents and any continuation statement or similar instrument relating to any property subject thereto or to any property intended to be encumbered, granted, conveyed, transferred and assigned by this Security Instrument to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to protect the validity thereof or the grant thereby of the property subject thereto and the interest and rights of Agent therein. Grantor covenants that it has paid or will pay or cause to be paid all taxes and fees incident to such filing, registration and recording, and all reasonable expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all federal or state stamp taxes, intangible taxes or other charges arising out of or in connection with the execution and delivery of such instruments.

(ii) Unless otherwise permitted in this Security Instrument and the other Loan Documents, Grantor will not take any action, will not permit action to be taken by others and will not omit to take any action, nor will Grantor give any notice, approval or consent or exercise, waive or modify any rights under or in respect of the Permitted Exceptions, which action, omission, notice, approval, consent or exercise, waiver or modification of rights would release Grantor from, or reduce any of Grantor's obligations or liabilities under, or would result in the termination, surrender or assignment of, or the amendment or modification of, any of the Loan Documents, or would impair the validity of this Security Instrument or any of the other Loan Documents or have a material adverse effect, without Agent's consent, and any attempt to do any of the foregoing without such consent shall be of no force and effect.

(iii) Grantor, at its expense, will execute, acknowledge and deliver all such instruments and take all such actions as Agent from time to time reasonably may request or as may be reasonably necessary or proper for the better assuring to Agent of the properties and rights now or hereafter subject to the Lien hereof or intended so to be.

3.4 License to Collect Rents. Agent and Grantor hereby confirm that for so long as no Event of Default shall have occurred, Agent has granted to Grantor a revocable license to collect and use the Rents stemming from Leases as they become due and payable in accordance with the provisions of the Loan Agreement and the Assignment of Leases; provided, that the existence of such right shall not operate to subordinate the Assignment of Leases to any subsequent assignment, in whole or in part by Grantor, and any such subsequent assignment shall be subject to Agent's rights under this Security Instrument. Grantor further agrees to execute and deliver such assignments of Leases and associated rents

UNOFFICIAL COPY

as Agent may from time to time reasonably request in order to better assure, transfer and confirm to Agent the rights intended to be granted to Agent with respect thereto. In accordance with the provisions of the Assignment of Leases, upon the occurrence and during the continuance of an Event of Default, Grantor agrees that Agent may, but shall not be obligated to, assume the management of the Property, and collect the Rents, applying the same upon the Obligations. Upon the occurrence and during the continuance of an Event of Default, Agent shall have and hereby expressly reserves the right and privilege (but assumes no obligation), to demand, collect, sue for, receive and recover the rents, or any part thereof, now existing or hereafter made, and apply the same in accordance with this Security Instrument, the Assignment of Leases, and applicable law.

3.5 Security Agreement, Fixture Filing, and Financing Statement This Security Instrument constitutes a financing statement and, to the extent required under the UCC because portions of the Property may constitute fixtures, this Security Instrument is to be filed in the office where a mortgage, open end mortgage, deed to secure debt, or deed of trust for the Property would be recorded. Agent also shall be entitled to proceed against all or portions of the Property in accordance with the rights and remedies available under the UCC. Grantor is, for the purposes of this Security Instrument, deemed to be the debtor, and Agent, on behalf of the Lenders, is deemed to be the secured party, as those terms are defined and used in the UCC. Grantor agrees that the Indebtedness and Obligations secured by this Security Instrument are further secured by security interests in all of Grantor's right, title and interest in and to fixtures, equipment, and other property covered by the UCC, if any, which are owned by Grantor. Grantor grants to Agent a valid and effective first priority security interest in all of Grantor's right, title and interest in and to such personal property (but only to the extent permitted in the case of leased personal property), together with all replacements, additions, and proceeds. Grantor hereby authorizes Agent to execute, deliver, file, or re-file as secured party without joinder of Grantor, any Financing Statement, Continuation Statement, or other instruments Agent may reasonably require from time to time to perfect or renew such security interest under the UCC, including a financing statement which indicates the collateral as "all assets" of the Grantor or words to similar effect. Except for Permitted Exceptions, Grantor agrees that, without the written consent of Agent, no other security interest will be created under the provisions of the UCC with respect to any goods, fixtures, equipment, appliances, or articles of personal property now attached to or used or to be attached to or used in connection with the Property except as otherwise permitted hereunder or under the Loan Agreement. Grantor agrees that all property of every nature and description covered by the Lien and charge of this Security Instrument together with all such property and interests covered by this security interest are encumbered as a unit, and upon the occurrence and during the continuance of an Event of Default by Grantor, all of the Property, at Agent's option, may be foreclosed upon or sold in the same or different proceedings or at the same or different time, subject to the provisions of the Loan Agreement and applicable law. The filing of any financing statement relating to any such property or rights or interests shall not be construed to diminish or alter any of Agent's rights or priorities under this Security Instrument.

3.6 Lease Subordination and Attornment Leases To Be Subordinate. All new Leases entered into by Grantor after the date hereof shall by their express terms be subject and subordinate to this Security Instrument, the Loan Agreement and each of the other Loan Documents (through a subordination provision contained in such Lease, the execution and delivery of a Non-Disturbance Agreement (as defined below) by Agent and the tenant under such new Lease, or otherwise) and shall provide that the Person holding any rights thereunder shall attorn to Agent or any other Person succeeding to the interests of Agent upon the exercise of its remedies hereunder or any transfer in lieu thereof on the terms set forth in this Security Instrument.

(b) Attornment. Each new Lease entered into by Grantor from and after the date hereof shall provide (either pursuant to the terms of such Lease or pursuant to a Non-Disturbance Agreement between Agent and the tenant under such new Lease) that in the event of the enforcement by

UNOFFICIAL COPY

Agent of any remedy under this Security Instrument or the Loan Agreement, the tenant under such Lease shall, at the option of Agent or of any other Person succeeding to the interest of Agent as a result of such enforcement, attorn to Agent or to such Person and shall recognize Agent or such successor in the interest as lessor under such Lease without change in the provisions thereof; provided, however, that Agent or such successor in interest shall not (except as otherwise agreed to by Agent in writing) be liable for or bound by (i) any payment of an installment of rent or additional rent which may have been made more than thirty (30) days before the due date of such installment (other than refundable security deposits in the ordinary course of business), (ii) any act or omission of or default by Grantor under any such Lease (but Agent, or such successor, shall be subject to the continuing obligations of the landlord to the extent arising from and after such succession to the extent of Agent's, or such successor's, interest in the Property), (iii) any credits, claims, setoffs or defenses which any tenant may have against Grantor which are not expressly set forth in the terms of such Lease or modification to such Lease, (iv) any obligation on Grantor's part, pursuant to such Lease, to perform any tenant improvement work, or (v) any obligation on Grantor's part, pursuant to such Lease, to pay any sum of money to any tenant. Each such new Lease shall also provide that, upon the reasonable request by Agent or such successor in interest, such tenant shall execute and deliver an instrument or instruments confirming such attornment. Notwithstanding the foregoing, Grantor shall not be deemed to be in breach of this subsection (b) if a new Lease does not contain one or more of the foregoing provisions; provided, that such new Lease has been approved by Agent pursuant to the terms of the Loan Agreement.

3.7 Protection of Security, Costs and Expenses Subject to the terms of the Loan Agreement, Grantor shall appear in and defend any action or proceeding of which it has notice purporting to affect the security hereof or the rights or powers of Agent.

3.8 Remedies Upon the occurrence and during the continuance of an Event of Default hereunder or under the Loan Agreement, Agent may, to the fullest extent permitted by law, take such actions against Grantor, and/or against the Property or any portion thereof as Agent reasonably determines is necessary to protect and enforce its rights hereunder, without notice or demand except as set forth below or as required under applicable law. Any such actions taken by Agent shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Agent may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Agent permitted by law, equity or contract or as set forth herein or in the other Loan Documents. No recovery of any judgment by Agent and no levy of an execution under any judgment upon any other Property or any portion thereof or upon any other property of Grantor shall adversely affect in any manner or to any extent the lien of this Security Instrument upon the remaining Property or any portion thereof, or any rights, powers or remedies of Agent hereunder, which lien, rights, powers and remedies shall continue unimpaired as before. Agent's determination of appropriate action may be based on an appropriate real estate or other consultant and/or counsel, and Agent may rely conclusively on such advice. Grantor shall pay such reasonable consultants' fees and reasonable attorneys' fees and expenses incurred by Agent pursuant to this Section 3.8. Such actions may include, without limitation, the following:

(a) Acceleration. Agent may declare all or any portion of the unpaid principal balance under the Notes, together with all accrued and unpaid interest thereon, and all other unpaid Indebtedness, to be immediately due and payable.

(b) Entry. Agent, personally, or by its agents or attorneys, at Agent's election, may enter into and upon all or any part of the Property (including, but not limited to, the Land and the Improvements and any part thereof), and may exclude Grantor, its agents and servants therefrom; and Agent, having and holding the same, may use, operate, manage and control the Property or any part thereof and conduct the business thereof, either personally or by its superintendents, managers, agents,

UNOFFICIAL COPY

servants, attorneys or receiver. Upon every such entry, Agent may, at the reasonable expense of the Property and/or Grantor, from time to time, either by purchase, repair or construction, maintain and restore the Property or any part thereof, and may insure and reinsure the same in such amount and in such manner as may seem to them to be advisable. Similarly, from time to time, Agent may, at the expense of Grantor (which amounts may be disbursed by Agent from the Property on behalf of Grantor), make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements to and on the Property or any part thereof as it may deem advisable. Agent or its designee shall also have the right to manage and operate the Property or any part thereof and to carry on the business thereof and exercise all rights and powers of Grantor with respect thereto, either in the name of Grantor or otherwise, as may seem to them to be advisable. In confirmation of the grant made in the Assignment of Leases, in the case of the occurrence and continuation of an Event of Default, Agent shall be entitled to collect and receive all rents under Leases to be applied in the order of priorities and amounts as shall be provided for in Section 3.9 hereof. Agent shall be liable to account only for rents and other proceeds actually received by Agent.

(c) Phase I Environmental Report. Agent may at its option obtain, in each instance described in clauses (a) and (b) above, at Grantor's reasonable expense, a new phase I environmental report with respect to the Property, and such additional environmental studies as may be recommended in such phase I reports.

(d) Foreclosure. Agent, with or without entry, personally or by its agents or attorneys, insofar as applicable, and in addition to any and every other remedy, shall have alternate remedies as follows:

(i) Power of Sale. To the extent, and in the manner permitted by law, Agent may elect to exercise the non-judicial power of sale which is hereby conferred under the terms of this Security Instrument and with respect to the Land as provided for by the statutes of the state in which such Land is located. Agent may, without further notice or demand, sell and convey the Property in accordance with applicable law. The Property may be sold as a whole or in separate lots, parcels or items and in such order as Agent may direct, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Agent shall deliver to such purchaser(s) good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty express or implied. The recitals in such deed of any matter or fact shall be conclusive proof of the truthfulness thereof. Any Person, including Agent, may purchase at any such sale. A sale of less than all of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein, and subsequent sales may be made hereunder until all Obligations have been satisfied or the entire Property sold, without defect or irregularity. No action of Agent based upon the provisions contained herein or contained in the applicable statutes, including, without limitation, the giving of any required Notice of Default and Election to Sell or Notice of Sale, shall constitute an election of remedies which would preclude Agent from pursuing judicial foreclosure before a completed sale pursuant to the power of sale contained herein.

(ii) Judicial Foreclosure.

(A) Whether or not proceedings have commenced by the exercise of the power of sale above given, Agent or the holder or holders of any the Obligations, in lieu of proceeding with the power of sale, may at its option declare the whole amount or any part, of the Indebtedness remaining unpaid immediately due and payable without notice, by suit or suits in equity or at law to foreclose the same. Appraisal of the Property is hereby waived at the option of Agent, that option to be exercised at or prior to the time

UNOFFICIAL COPY

judgment is rendered in the judicial foreclosure. The Property may be sold as one parcel or in such parcels as Agent may elect unless otherwise provided by law. Agent may be a purchaser of the Property or any part thereof or of any interest therein at any sale thereof, whether pursuant to power of sale, foreclosure or otherwise, and Agent may apply the outstanding Indebtedness against the purchase price. Any purchaser shall, upon its purchase, acquire good title to the properties so purchased, free of the security interest and Lien of this Security Instrument.

(B) Agent may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more such sales as to any part of the Property remaining unsold, but shall continue unimpaired until the entire Property shall have been sold. Upon taking title to the Property (whether by foreclosure, deed in lieu or otherwise) by Agent or any other purchaser or assignee of the Property after an Event of Default, Grantor shall assign and transfer all of its right, title and interest in and to the Property to Agent. Grantor hereby irrevocably appoints Agent as its attorney-in-fact to execute all documents and take all actions necessary to effectuate such assignment and transfer, provided, that such power may only be exercised by Agent while an Event of Default exists and is continuing.

(e) Specific Performance. Agent, in its sole and absolute discretion, may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained herein or in the Notes or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(f) Enforcement of Notes. Agent may recover judgment on the Notes (or any portion of the Indebtedness evidenced thereby), either before, during or after any proceedings for the foreclosure (or partial foreclosure) or enforcement of this Security Instrument.

(g) Sale of Property.

(i) Agent may postpone any sale of all or any part of the Property to be made under or by virtue of this Section 3.8 by public announcement at the time and place of such sale, or by publication, if required by law, and, from time to time, thereafter, may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement.

(ii) Upon the completion of any sale made by Agent under or by virtue of this Section 3.8, Agent shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or deeds or other appropriate instruments, conveying, assigning and transferring all its estate, right, title and interest in and to the property and rights so sold. Agent is hereby appointed the true and lawful irrevocable attorney-in-fact of Grantor in its name and stead or in the name of Agent to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and, for that purpose, Agent may execute all necessary deeds and other instruments of assignment and transfer, and may substitute one or more persons with like power, Grantor hereby ratifying and confirming all that such attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof; provided, however, that such power of attorney shall be effective only after an Event of Default shall have occurred. Grantor shall, nevertheless, if so requested in writing by Agent, ratify and confirm any such sale or sales by executing and delivering to Agent or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Agent, for such purposes and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 3.8 shall operate to divest

UNOFFICIAL COPY

all the estate, right, title, interest, claim and demand, whether at law or in equity, of Grantor in and to the property and rights so sold, and shall be a perpetual bar, at law and in equity, against Grantor, its successors and assigns and any Person claiming through or under Grantor and its successors and assigns.

(iii) The receipt of Agent of the purchase money paid as a result of any such sale shall be a sufficient discharge therefor to any purchaser of the property or rights, or any part thereof, so sold. No such purchaser, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Security Instrument, or shall be answerable, in any manner, for any loss, misapplication or non-application of any such purchase money or any part thereof, nor shall any such purchaser be bound to inquire as to the authorization, necessity, expediency or regularity of such sale.

(iv) Upon any sale made under or by virtue of this Section 3.8, Agent may bid for and acquire the Property or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Notes secured by this Security Instrument the net proceeds of sale, after deducting therefrom the expense of the sale and the costs of the action and any other sums which Agent is authorized to deduct under this Security Instrument. The person making such sale shall accept such settlement without requiring the production of the Notes or this Security Instrument, and there shall be deemed credited to the Indebtedness and Obligations under this Security Instrument the net proceeds of such sale. Agent, upon acquiring the Property or any part thereof, shall be entitled to own, hold, lease, rent, operate, manage or sell the same in any manner permitted by applicable laws.

(h) Voluntary Appearance; Receivers. Upon the occurrence and during the continuance of any Event of Default hereunder or pursuant to the Loan Agreement, and promptly upon commencement of (i) any action, suit or other legal proceeding by Agent to obtain judgment for the principal and interest on the Notes and any other sums required to be paid pursuant to this Security Instrument, or (ii) any action, suit or other legal proceeding by Agent of any other nature in aid of the enforcement of the Loan Documents or any of them, Grantor will (x) enter its voluntary appearance in such action, suit or proceeding, and (y) if required by Agent, consent to the appointment, of one or more receivers of the Property and all of the Operating Revenues. After the occurrence of any Event of Default, or upon the filing of a bill in equity or other action to foreclose this Security Instrument or to enforce the specific performance hereof or in aid thereof, or upon the commencement of any other judicial proceeding to enforce any right of Agent, Agent shall be entitled, as a matter of right, if it shall so elect, without notice to any other party and without regard to the adequacy of the security of the Property, forthwith, either before or after declaring the principal and interest on the Notes to be due and payable, to the appointment of such a receiver or receivers. Any receiver or receivers so appointed shall have such powers as a court or courts shall confer, which may include, without limitation, any or all of the powers which Agent is authorized to exercise by the provisions of this Section 3.8, and shall have the right to incur such obligations and to issue such certificates therefor as the court shall authorize. Notwithstanding the foregoing, after the occurrence and during the continuance of any Event of Default hereunder or pursuant to the Loan Agreement, Agent as a matter of right may appoint or secure the appointment of a receiver, trustee, liquidator or similar official of the Property or any portion thereof, and Grantor hereby irrevocably consents and agrees to such appointment, without notice to Grantor and without regard to the value of the Property or adequacy of the security for the Indebtedness and without regard to the solvency of the Grantor or any other Person liable for the payment of the Indebtedness, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official

UNOFFICIAL COPY

shall not impair or in any manner prejudice the rights of Agent to receive the Operating Revenues pursuant to this Security Instrument or the Assignment of Leases.

(i) UCC Remedies. Agent may, as to the personal property described herein, exercise any or all of the remedies granted to a secured party under the UCC, specifically including, without limitation, the right to recover the reasonable attorneys' fees and disbursements and other expenses incurred by Agent in the enforcement of this Security Instrument or in connection with Grantor's redemption of the Improvements or building equipment or Intangibles. Agent may exercise its rights under this Security Instrument independently of any other collateral or guaranty that Grantor may have granted or provided to Agent in order to secure payment and performance of the Obligations, and Agent shall be under no obligation or duty to foreclose or levy upon any other collateral given by Grantor to secure any Obligation or to proceed against any guarantor before enforcing its rights under this Security Instrument.

(j) Leases. Agent may, at its option, before any proceeding for the foreclosure (or partial foreclosure) or enforcement of this Security Instrument, treat any Lease which is subordinate by its terms to the Lien of this Security Instrument, as either subordinate or superior to the Lien of this Security Instrument.

(k) Other Rights. Agent may pursue against Grantor any other rights and remedies of Agent permitted by law, equity or contract or as set forth herein or in the other Loan Documents, subject to the provisions of the Loan Agreement.

(l) Retention of Possession. Notwithstanding the appointment of any receiver, liquidator or trustee of Grantor, or any of its property, or of the Property or any part thereof, Agent, to the extent permitted by law, shall be entitled to retain possession and control of all property now or hereafter granted to or held by Agent under this Security Instrument.

(m) Suits by Agent. All rights of action under this Security Instrument may be enforced by Agent without the possession of the Notes and without the production thereof or this Security Instrument at any trial or other proceeding relative thereto, provided, however, that Agent shall in any event be, and shall certify that it is, the current holder of the Notes. Any such suit or proceeding instituted by Agent shall be brought in the name of Agent and any recovery of judgment shall be subject to the rights of Agent.

(n) Remedies Cumulative. Subject to the Loan Agreement, no remedy herein (or pursuant to the Loan Agreement or any Loan Document) conferred upon or reserved to Agent shall exclude any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission of Agent to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given to Agent by this Security Instrument or any other Loan Document may be exercised from time to time and as often as Agent may deem expedient. Nothing in this Security Instrument shall affect Grantor's obligations to pay the principal of, and interest on, the Notes in the manner and at the time and place expressed in the Notes.

(o) Waiver of Rights. Grantor agrees that, to the fullest extent permitted by law, it will not at any time: (i) insist upon, plead or claim or take any benefit or advantage of any stay, extension or moratorium law, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Security Instrument or any Loan Document, or (ii) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the

UNOFFICIAL COPY

United States or any State or otherwise to redeem the property and rights sold pursuant to such sale or sales or any part thereof. Grantor hereby expressly waives all benefits and advantages of such laws, and covenants, to the fullest extent permitted by law, not to hinder, delay or impede the execution of any power herein granted or delegated to Agent, but will suffer and permit the execution of every power as though no such laws had been made or enacted. Grantor for itself and all who may claim through or under it, waives, to the extent it lawfully may do so, any and all homestead rights and, any and all rights to reinstatement, any and all right to have the property comprising the Property marshaled upon any foreclosure of the Lien hereof.

3.9 Application of Proceeds Unless otherwise provided by applicable law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in Section 3.8 above, and any other proceeds received by Agent from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied in accordance with the Loan Agreement.

3.10 Miscellaneous CERTAIN WAIVERS. TO INDUCE LENDERS TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE NOTES AND THIS SECURITY INSTRUMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, GRANTOR EXPRESSLY AND IRREVOCABLY HEREBY, IN ADDITION TO AND NOT IN DEROGATION OF ALL OTHER WAIVERS CONTAINED IN THE NOTES, THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS, WAIVES AND SHALL WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY, OR COUNTERCLAIM ASSERTED BY AGENT WHICH ACTION, PROCEEDING OR COUNTERCLAIM ARISES OUT OF OR IS CONNECTED WITH THIS SECURITY INSTRUMENT, THE NOTES OR ANY OTHER LOAN DOCUMENT.

(a) Notices. All notices, consents, approvals, and requests (each a "Notice") required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the address specified in the introductory paragraph hereof with a copy to each of the parties provided for Notice to Grantor as set forth in Section 7.1 of the Loan Agreement. Any Notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address set forth in the introductory paragraph hereof and in the manner provided in Section 7.1 of the Loan Agreement; provided, that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. This Section 3.10 shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Security Instrument or in any other Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(b) No Oral Modification. This Security Instrument may not be waived, altered, amended, modified, changed, discharged or terminated orally but only by a written agreement signed by the party against which enforcement is sought.

(c) Partial Invalidity. In the event any one or more of the provisions contained in this Security Instrument shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included hereunder.

UNOFFICIAL COPY

(d) Successors and Assigns. All covenants of Grantor contained in this Security Instrument are imposed solely and exclusively for the benefit of Agent and its successors and assigns, and no other Person shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Agent at any time if in its sole discretion it deems it advisable to do so. All such covenants of Grantor shall run with the land and bind Grantor, the successors and assigns of Grantor (and each of them) and all subsequent owners, encumbrances and tenants of the Property, and shall inure to the benefit of Agent, its successors and assigns.

(e) GOVERNING LAW. THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER 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 CONFLICT LAWS AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA); PROVIDED, HOWEVER, THAT AT ALL TIMES THE PROVISIONS HEREIN FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED IN THE PROPERTY (OTHER THAN PERSONALTY) PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS.

(f) No Waiver. No failure by Agent to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such term or right, power or remedy or of any such breach. No waiver of any breach shall affect or alter this Security Instrument, which shall continue in full force and effect, or shall affect or alter the rights of Agent with respect to any other then existing or subsequent breach.

(g) Further Assurances. Grantor at its own expense, will execute, acknowledge and deliver all such reasonable further documents or instruments including, without limitation, (i) security agreements on any building equipment included or to be included in the Property, and (ii) such other documents as Agent from time to time may reasonably request to better assure, transfer and confirm unto Agent the rights now or hereafter intended to be granted to Agent under this Security Instrument or the other Loan Documents. Grantor shall notify Agent in writing no less than thirty (30) days prior to a change of address.

(h) Merger, Conversion, Consolidation or Succession to Business of Agent. Any person into which Agent may be merged or converted or with which it may be consolidated, or any person resulting from any merger, conversion or consolidation to which Agent shall be a party, or any person succeeding to all or substantially all the business of Agent, shall be the successor of Agent hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

(i) No Endorsement. Agent shall not become or be considered to be an endorser, co-maker or co-obligor on the Notes or on any other Obligation of Grantor secured by this Security Instrument or otherwise.

(j) Joint and Several Liability. Each the undersigned shall have joint and several liability for the obligations and liabilities of Grantor hereunder.

(k) Counterparts. This Security Instrument may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

UNOFFICIAL COPY

(l) Incorporation of Recitals. The recitals set forth above are true and correct and are hereby incorporated into the body of this Security Instrument by reference.

ARTICLE IV. STATE LAW PROVISIONS

4.1 Illinois Law Provisions Notwithstanding anything to the contrary elsewhere in this Security Instrument:

(a) Conflicts with this Section. In the event of any conflict between the provisions of this Section 4.1 and any other Section of this Security Instrument, then the provisions of this Section 4.1 shall control and be binding.

(b) Maximum Principal Sum. Notwithstanding anything herein to the contrary, it is agreed that the maximum principal amount of the Debt secured by this Security Instrument, including all advancements, at any one time shall not exceed Sixty Million and No/100 Dollars (\$60,000,000.00).

(c) Illinois Mortgage Foreclosure Law. It is the intention of Grantor and Agent that the enforcement of the terms and provisions of this Security Instrument shall be accomplished in accordance with all of the provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101, et seq.), as amended from time to time (the "IMFL") and, with respect to thereto, Grantor agrees and covenants that:

(i) Grantor and Agent shall have the benefit of all of the provisions of the IMFL, including all amendments thereto which may become effective from time to time after the date hereof. In the event of any provision of the IMFL which is specifically referred to herein may be repealed, Agent shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(ii) Wherever provision is made in this Security Instrument, the Note, the Loan Agreement or the other Loan Documents for insurance policies to bear mortgage clauses or other loss payable clause of endorsements in favor of Agent, or to confer authority upon Agent to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Agent shall continue in Agent as judgment creditor or mortgagee until confirmation of sale;

(iii) Subject to, and to the maximum extent allowed under, the IMFL, all advances, disbursements and expenditures made or incurred by Agent before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, of the type contemplated under Subsection b(5) of Section 15-1302 of the IMFL (collectively "IMFL Protective Advances"), shall have the benefit of all applicable provisions of the IMFL. To the maximum extent allowed under the IMFL, all IMFL Protective Advances shall be additional indebtedness secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Loan Documents. To the maximum extent allowed under the IMFL, this Security Instrument shall be a lien for all IMFL Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the IMFL. The total amount outstanding at any one time which is secured by this Security Instrument, excluding any interest and any amounts advanced by Agent in accordance with the terms of this Security Instrument to (i) preserve or restore the Property, (ii) preserve the lien

UNOFFICIAL COPY

of the Security Instrument or the priority thereof, or (iii) enforce this Security Instrument, shall not exceed two hundred percent (200%) of the sum of (i) the total face amount of the Note, plus (ii) the total interest which may hereafter accrue under the Note on such face amount. Grantor covenants and agrees that the recording of this Security Instrument in the Official Records of the County where the Premises is located shall also operate from the date of such recording as a financing statement filed as a fixture filing in accordance with Section 9-502(c) of the UCC. The addresses of Grantor (debtor) and Agent (secured party) are set forth above;

(iv) In addition to any provision of this Security Instrument authorizing the Agent to take or be placed in possession of the Property, or for the appointment of a receiver, Agent shall have the right, in accordance with, and subject to, Sections 15-1701 and 15-1702 of the IMFL, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Agent, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMFL;

(v) Grantor acknowledges that (i) the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the IMFL and (ii) the entire principal obligation secured hereby constitutes a "loan secured by a mortgage on real estate" within the purview of the operation of 815 ILCS 205/4(1)(1). To the fullest extent permitted by the IMFL and any other applicable law, pursuant to Section 15-1601(b) of the IMFL, Grantor hereby waives any and all right of redemption;

(vi) In addition to the prior grant of a security interest set forth above, Grantor hereby grants to Agent a continuing security interest in all chattels and articles of personal property described in the GRANTING CLAUSES of this Security Instrument, including all existing and future equipment, general intangibles, accounts, instruments, chattel paper, documents, and other items so included therein, now owed or hereafter acquired by Grantor or in which Grantor has or shall acquire an interest in any way belonging, relating or pertaining to, or used in connection with, or located on, the properties referenced in the GRANTING CLAUSES, or placed on any part thereof, and in all accessories, parts and accessions attached to or used in connection therewith and in cash and in non-cash proceeds thereof;

(vii) Without limiting the generality of the foregoing, all expenses incurred by Agent to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Debt;

(viii) Upon the occurrence of an Event of Default, Agent shall, at its option and without notice or demand but subject to the requirements of applicable law, be entitled to enter upon the Property to take immediate possession of any personal property. Upon request, Grantor shall assemble and make such personal property available to Agent at a place designated by Agent which is reasonably convenient to both parties. Agent may sell all or any portion of such personal property at public or private sale in accordance with the UCC or in accordance with the foreclosure sale provisions under this Security Instrument. Except to the extent contrary to law, Grantor agrees that a commercially reasonable manner of disposition of such personal property upon the occurrence of an Event of Default shall include, without limitation and at the option of Agent, the sale of such personal property, in whole or in part, concurrently with a foreclosure sale of the Property in accordance with the provisions of this Security Instrument; and

UNOFFICIAL COPY

(ix) Except to the extent contrary to law, Grantor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any valuation or appraisal before sale of any portion of the Property, (ii) any exemption, under and by virtue of any statute of the State of Illinois or the United States, (iii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement and collection of the Debt or creating or extending a period of redemption from any sale made in collecting the Debt, and (iv) any rights and remedies which Grantor may have or be able to assert by reason of (a) the laws of the State of Illinois pertaining to the rights and remedies of sureties, (b) 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 Note or other obligations, or (c) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order. If any law now or hereafter in force referred to in this paragraph of which Grantor or Grantor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph.

Notwithstanding anything contained in this Security Instrument to the contrary, if any provision in this Security Instrument shall be inconsistent with any provision of the IMFL, the provisions of the IMFL shall take precedence over the provisions of this Security Instrument with respect to such inconsistent provision, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the IMFL.

(d) Use of Loan Proceeds. Grantor covenants that the proceeds of the Loan evidenced by the Notes and secured by this Security Instrument will be used for business purposes as specified in 815 ILCS 205/4, as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of such Section.

(e) Possession of the Premises. To the maximum extent permitted by applicable law, Grantor hereby releases and waives any and all rights to retain possession the Property after the occurrence of any Event of Default and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Grantor, all persons and entities interested in Grantor and each and every person (except judgment creditors of Grantor) acquiring any interest in, or title to, the Property subject to the date of this Security Instrument, and on behalf of all other persons to the extent permitted by the provisions of 735 ILCS 5/15-1603, as amended.

(f) Insurance Default. In the event Grantor at any time, fails to provide Agent with evidence of the insurance coverage as required by this Security Instrument or the other Loan Documents, Agent may purchase the insurance coverage at Grantor's expense to protect Agent's interests in the Property. Pursuant to 815 ILCS 180/10, such insurance may, but need not, protect Grantor's interests, and Agent shall be under no obligation to so protect Grantor's interests. The insurance coverage that Agent purchases on behalf of Grantor may not pay any claim that Grantor makes or any claim that is made against Grantor in connection with the Property. Grantor may later cancel any insurance coverage purchased by Agent, but only after providing Agent with evidence that insurance coverage has been obtained as provided for in this Security Instrument and the other Loan Documents. In the event Agent purchases all or any portion of the insurance coverage for the Property or as otherwise required hereunder or in the other Loan Documents, Grantor will be responsible for all costs and expenses of such insurance coverage, including, but not limited to, interest and any other charges imposed by Agent in connection with the purchase of the insurance coverage, until the effective date of the cancellation or expiration of the insurance coverage. The costs and expenses of any insurance coverage purchased by Agent shall be added to the Debt secured hereby. Grantor

UNOFFICIAL COPY

acknowledges that the cost of the insurance coverage purchased by Agent pursuant hereto may be more than the cost of insurance that Grantor may be able to obtain on its own.

(g) Stated Maturity Date. The stated maturity date of the Loan is November 2, 2020, as such stated maturity date may be extended until November 1, 2021 in accordance with the express terms and conditions of the Loan Agreement.

[Remainder of page intentionally blank; signature page follows.]

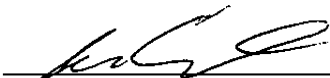
Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned, pursuant to proper authority of its operating agreement, has duly executed, sealed, acknowledged and delivered this Security Instrument as of the day and year first above written.

GRANTOR:

65 OAK STREET OWNER, LLC, a Delaware limited liability company

By: 
Name: James Eberhart
Title: Authorized Signatory

ACKNOWLEDGMENT

State of Connecticut
County Fairfield
State of Fairfield:

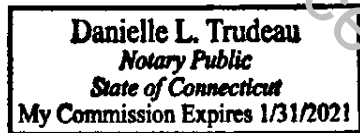
I HEREBY CERTIFY, that on this 30th day of October, 2018, before me, the undersigned Notary Public of said State, personally appeared James Eberhart, an authorized signatory of 65 Oak Street Owner, LLC, a Delaware limited liability company, on behalf of said limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and Notarial Seal.


Notary Public

My Commission Expires: 1/31/21

[NOTARIAL SEAL]



Secured Party's Mailing Address:
ACM CRE Fund I-L, LP
444 Madison Avenue, 19th Floor
New York, NY 10022
Attn: Chris Kelly

[SIGNATURE PAGE TO TO MORTGAGE]

UNOFFICIAL COPY

EXHIBIT A

Property Description

PARCEL 1:

LOT 6 IN THE NORTH 1/2 OF BLOCK 8 IN THE SUBDIVISION BY THE COMMISSIONERS OF THE ILLINOIS AND MICHIGAN CANAL OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 17-03-207-017-0000

PARCEL 2:

LOT 1 IN LAWRENCE'S SUBDIVISION OF PART OF LOT 7 IN SUBDIVISION OF THE NORTH HALF OF BLOCK 8 IN CANAL TRUSTEES SUBDIVISION OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF BLOCK 8 IN CANAL TRUSTEES SUBDIVISION AFORESAID, COMMENCING AT A POINT ON THE NORTH LINE OF SAID BLOCK 340.2 FEET EAST OF THE NORTHWEST CORNER, THENCE EAST ON SAID LINE TO THE NORTHWEST CORNER OF LOT 1 IN LAWRENCE'S SUBDIVISION AFORESAID; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT TO SOUTHWEST CORNER THEREOF; THENCE WEST 33 FEET 9 5/8 INCHES; THENCE NORTHERLY PARALLEL TO THE WEST LINE OF LOT 1 TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PIN: 17-03-207-018-0000