

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1912734088

Doc# 1912734088 Fee \$94.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 05/07/2019 02:10 PM PG: 1 OF 29

The property identified as: **PIN: 17-17-208-001-0000**

Address:

Street: 845 WEST MADISON

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60607

Lender: WELLS FARGO BANK, NATIONAL ASSOCIATION

Borrower: 845 WEST MADISON STREET OWNER, LLC

Loan / Mortgage Amount: \$160,589,000.00

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: F185D50C-DB67-4F13-9EBB-8818E944F846

Execution date: 4/29/2019

29

R4

UNOFFICIAL COPY**PREPARED BY:**

Scott E. Cooper, Esq.
 Hinckley, Allen & Snyder LLP
 28 State Street
 Boston, MA 02109

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National Association
 Commercial Real Estate (AU NO. 0001189)
 125 High Street, 15th Floor
 Boston, MA 02110

Loan No. 1018743

Attn: Jannine M. Perry, Vice President

(Space Above For Recorder's Use)

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

NAME AND ADDRESS OF MORTGAGOR:	845 WEST MADISON STREET OWNER, LLC c/o Intercontinental Real Estate Corporation 1270 Soldiers Field Road Boston, Massachusetts 02135 Attention: Paul J. Nasser Organizational Number: 7164830
NAME AND ADDRESS OF ADMINISTRATIVE AGENT:	WELLS FARGO BANK, NATIONAL ASSOCIATION 125 High Street, 15th Floor Boston, MA 02110 Attn: Robert E. Deignan, Senior Vice President
PROPERTY ADDRESS / ABBREVIATED LEGAL DESCRIPTION:	845 West Madison Street Chicago, Illinois Additional legal description on Exhibit A of this document.

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S):	17-17-208-001-0000
	17-17-208-002-0000
	17-17-208-005-0000
	17-17-208-006-0000
	17-17-208-007-0000
	17-17-208-008-0000
	17-17-208-009-0000
	17-17-208-010-0000
	17-17-208-016-0000
	17-17-208-017-0000
	17-17-208-018-0000

THIS INSTRUMENT COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY, THE MAILING ADDRESSES OF THE SECURED PARTY AND THE DEBTOR ARE WITHIN.

THIS INSTRUMENT SECURES FUTURE AND/OR REVOLVING ADVANCES.

**THIS MORTGAGE SECURES A NOTE WHICH PROVIDES FOR A
VARIABLE INTEREST RATE**

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

(Illinois)

Term or Maturity Date (exclusive of any renewal or extension rights): April 29, 2023

THIS CONSTRUCTION MORTGAGE, WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter referred to as this "**Mortgage**" or "**Security Instrument**"), made as of April 29, 2019, is granted by 845 WEST MADISON STREET OWNER, LLC, a Delaware limited liability company ("**Mortgagor**" or "**Borrower**"), for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION ("**Administrative Agent**" or "**Mortgagee**"), as Administrative Agent for itself and certain other Lenders (each a "**Lender**" and collectively, the "**Lenders**"), who are now or become party to the Loan Agreement (as hereinafter defined).

ARTICLE 1. GRANT

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Security Instrument, Mortgagor irrevocably warrants, bargains, conveys, mortgages, encumbers, transfers, hypothecates, pledges, sets over, assigns and grants a security interest and assigns to Mortgagee for the benefit of the Lenders, its successors and assigns, all of that real property located in the City of Chicago, County of Cook, Illinois, described on Exhibit A attached hereto and made a part hereof, together with the Collateral (as defined herein), all buildings and other improvements, fixtures and equipment now or hereafter located on the real property and all right, title, interest, and privileges of Mortgagor now owned or hereafter acquired in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, licenses and permits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, estates, tenements, hereditaments, privileges, rights and rights of way appurtenant or related thereto; all buildings and other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property ("**Improvements**"); all interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "**Property**"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

TO HAVE AND TO HOLD the Property, together with the Collateral and all the rights, easements, profits and appurtenances and other property described above, together with all proceeds, products, replacements, additions, substitutions and renewals to or of any or all of the foregoing belonging unto and to the use of Mortgagee, its successors and assigns, in fee simple forever;

PROVIDED, ALWAYS, that if Mortgagor shall pay unto Lenders the principal of and interest on the Note, when and as the same shall become due and payable whether by acceleration or otherwise, and shall pay all Secured Obligations (as hereinafter defined), and performs all obligations on its behalf contained in this Security Instrument, the Loan Agreement or any of the

other documents evidencing any of the Secured Obligations, then and in that case, the Property and the Collateral hereby conveyed and all rights and interests therein and thereto shall revert to Mortgagor and the estate, right, title and interest of Mortgagee therein shall thereupon cease, determine and become void and in such case Mortgagee shall execute and deliver to Mortgagor at Mortgagor's cost, an appropriate release and discharge of this Security Instrument in form to be recorded.

- 1.2 **ADDRESS.** The address of the Property (if known) is: 845 West Madison Street, Chicago, Illinois. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Security Instrument on the Property as described on Exhibit A.
- 1.3 **WARRANTY OF TITLE; USE OF PROPERTY.** Mortgagor represents and warrants that Mortgagor lawfully holds and possesses fee simple title absolute to the Property without limitation on the right to convey and encumber, and that this Security Instrument is a first and prior lien on the Property subject only to those exceptions set forth in the Title Policy or otherwise approved by Mortgagee in writing. Mortgagor further warrants that the Property is not used principally for agricultural or farming purposes.
- 1.4 **USE OF PROCEEDS.** Mortgagor represents and warrants to Mortgagee that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Security Instrument constitute (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l). Mortgagor releases and waives all rights under the homestead and exemption laws of the State of Illinois.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Security Instrument for the purpose of securing the payment and performance of the following obligations (collectively "**Secured Obligations**"):
- (a) Payment to Lenders of all sums at any time owing, with interest thereon, according to the terms of that certain Promissory Note of even date herewith, executed by Borrower and payable to the order of Wells Fargo Bank, National Association, in the principal amount of One Hundred Million and 00/100 Dollars (\$100,000,000) (as the same may be amended, modified, supplemented or replaced from time to time, the "**Wells Fargo Note**"), and that certain Promissory Note of even date herewith, executed by Borrower and payable to the order of Citizens Bank, N. A., in the principal amount of Sixty Million Five Hundred Eighty-Nine Thousand and 00/100 Dollars (\$60,589,000) (as the same may be amended, modified, supplemented or replaced from time to time, the "**Citizens Note**"); the Wells Fargo Note and the Citizens Note, together with such other replacement notes as may be issued from time to time pursuant to the terms of the Loan Agreement, as hereafter amended, supplemented, replaced or modified from time to time, are sometimes collectively referred to herein as, the "**Note**"; and
 - (b) Payment and performance of all covenants and obligations of Mortgagor under this Security Instrument; and
 - (c) Payment and performance of all covenants and obligations on the part of Borrower under that certain Construction Loan Agreement ("**Loan Agreement**") of even date herewith by and between Borrower, Administrative Agent and Lenders, which Loan Agreement provides for the construction of the Improvements on the Property; and
 - (d) Payment and performance of all covenants and obligations on the part of Borrower and Guarantor under all of the other Loan Documents (as defined in the Loan Agreement),

including, without limitation, that certain Hazardous Materials Indemnification Agreement of even date herewith executed by Borrower and Guarantor in favor of Administrative Agent and Lenders; and

- (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Administrative Agent and Lenders, when such future advance or obligation is evidenced by an instrument in writing, which recites that it is secured by this Security Instrument including any and all advances or disbursements of any Lender with respect to the Property for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Property; and
 - (f) Payment and performance of all obligations of Borrower under or in connection with any "Swap Agreement", as defined in the Loan Agreement, at any time entered into between Borrower and any Lender, together with all modifications, extensions, renewals and replacements thereof; and
 - (g) All modifications, extensions, novations and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.
- 2.2 **OBLIGATIONS**. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations together with all costs of collecting the Secured Obligations.
- 2.3 **INCORPORATION**. All terms of the Secured Obligations, and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.
- 2.4 **MAXIMUM INDEBTEDNESS**. This Security Instrument secures the payment of the entire indebtedness secured hereby; provided, however, that the total amount secured by this Security Instrument shall not exceed an amount equal to 200% of the face amount of the Note. The Note has an initial maturity date of April 29, 2023, subject to extension by Mortgagor for one (1) additional 12-month period in accordance with the terms and conditions of the Loan Agreement, and the Note bears interest at a variable rate determined in accordance with the terms and conditions of the Note.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT**. Mortgagor hereby absolutely and irrevocably assigns and transfers to Mortgagee for the benefit of the Lenders all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases, subleases, licenses or occupancy agreements of the Property or any portion thereof, and all other agreements of any kind relating to the management, leasing, operation, use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof ("**Leases**"); and (b) the rents, revenue, income, receipts, reserves, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("**Payments**"). The term "Leases", as referred to herein, shall also include all subleases and other agreements for the use or occupancy of the Property, options, rights of first refusal or guarantees of and security for the tenant's

performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This assignment is intended to be and constitutes a present, unconditional and absolute assignment, not an assignment for security purposes only, and Mortgagee's and Lenders' right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

- 3.2 **GRANT OF LICENSE.** Mortgagee confers upon Mortgagor a revocable license ("**License**") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Mortgagee on behalf of Lenders may collect and apply the Payments pursuant to that certain Section hereof entitled Application of Other Sums without notice and without taking possession of the Property. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee on behalf of Lenders. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee for the benefit of Lenders of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the tenants from any liability to Mortgagee by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee on behalf of Lenders may apply, in its sole discretion, any Payments so collected by Mortgagee on behalf of Lenders against any Secured Obligation under the Loan Documents (as defined in the Loan Agreement), whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee on behalf of Lenders shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.
- 3.3 **EFFECT OF ASSIGNMENT.** Except as imposed by applicable law if Mortgagee on behalf of Lenders takes possession of the Property or exercises its right to collect Payments following a Default, the foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties; 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, invitee or other person; or (d) responsible for or under any duty to produce rents or profits. Neither Mortgagee nor any Lender shall directly or indirectly be liable to Mortgagee or any other person as a consequence of: (i) the exercise or failure to exercise by Mortgagee or any Lender, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Mortgagee or any Lender hereunder; or (ii) the failure or refusal of Mortgagee or any Lender to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.
- 3.4 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that Mortgagor has delivered to Mortgagee a true, accurate and complete list of all Leases if any, and that, except as disclosed to Mortgagee in writing prior to the date hereof, (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (b) no rent or other payment under any existing Lease has been paid by any tenant for more than one (1) month in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised; and (c) none of the landlord's interests under any of the Leases has been transferred or assigned.
- 3.5 **COVENANTS.** Until such time as Mortgagee succeeds to the interest of the landlord under the Leases, Mortgagor covenants and agrees, at Mortgagor's sole cost and expense, to: (a) perform

all of the obligations of landlord contained in the Leases and exercise reasonable business judgment regarding the enforcement of the performance by the tenants of their obligations contained in the Leases; (b) give Mortgagee prompt written notice of any monetary or material nonmonetary default which occurs with respect to any of the Leases, whether the default be that of the tenant or of the landlord; (c) exercise Mortgagor's commercially reasonable efforts to keep all portions of the Property that are currently subject to Leases leased at all times at rentals not less than the fair market rental value; (d) deliver to Mortgagee fully executed, counterpart original(s) of each and every Lease and any modifications or amendments thereto if requested to do so; and (e) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the landlord and tenant) of any Lease to the Security Instrument, in form and substance acceptable to Mortgagee, as Mortgagee may request. Mortgagor shall not, without Mortgagee's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) enter into any non-residential Leases after the date hereof; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under any non-residential Leases or collect any rent or other sums due under any of the Leases in advance, other than to collect rentals one (1) month in advance of the time when it becomes due under any of the Leases; (iv) terminate, modify or amend any of the terms of any non-residential Leases or in any manner release or discharge the tenants from any obligations thereunder; (v) consent to any assignment or subletting by any tenant under any non-residential Lease; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust, mortgage, deed to secure debt or encumbrance. Any such attempted amendment, cancellation, modification or other action in violation of the provisions of this Section without the prior written consent of Mortgagee shall be null and void. Without in any way limiting the requirement of Mortgagee's consent hereunder, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any tenant), modification or amendment of any Lease shall be (i) applied to reduce the outstanding Secured Obligations or, (ii) at Mortgagee's option, deposited with Mortgagee for the benefit of Lenders in a restricted deposit account and released from time to time, upon such terms and conditions as Mortgagee may reasonably require, to pay for tenant improvements and leasing commissions due under new Leases approved by Mortgagee, and any such sums received by Mortgagor shall be held in trust by Mortgagee for such purpose.

- 3.6 **ESTOPPEL CERTIFICATES.** Within thirty (30) days after written request by Mortgagee, but in no event more than one (1) time for each applicable party during any twelve (12) month period (except while a Default exists or in connection with Borrower's exercise of any right to extend the term of the Loan), Mortgagor shall obtain and shall deliver to Mortgagee and to any party designated by Mortgagee estoppel certificates executed by Mortgagor and by each of the tenants, other than any tenant(s) under a residential lease, certifying (if such be the case) to certain matters relating to the Leases, including, without limitation: (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date and amount of each tenant's most recent payment of rent and other charges; (c) that there are no uncured defaults, defenses or offsets outstanding, or stating those claimed by Mortgagor or tenants under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Mortgagee.
- 3.7 **LENDER RIGHT TO CURE.** Without regard to whether there exists a Default, if there exists a default under a Lease or any other contract collaterally assigned by Borrower to Mortgagee or any Lender in connection with the Loan, Mortgagor acknowledges and agrees (A) that Mortgagee may, at its option, with no obligation to do so, take any actions necessary to cure such default including, without limitation, any actions that require Mortgagee or its designee to enter onto the Property, (B) to indemnify, defend and hold Indemnitees (defined below) harmless in connection with any such action, and (C) any money advanced for any such purpose shall be secured hereby and payable by Mortgagor to Mortgagee on behalf of Lenders on demand, with interest thereon at the Default Rate from the date such amounts are advanced.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Mortgagee for the benefit of Lenders as of the Effective Date (as defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "**Collateral**"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts (including impound accounts, if any), accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Mortgagee on behalf of Lenders, whether or not disbursed; all funds deposited with Mortgagee on behalf of Lenders pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from any Lender to Mortgagor under any Swap Agreement, together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, it is intended by Mortgagor and Lender that this Security Instrument constitutes a fixture filing filed with the real estate records of Cook County, Illinois, under the Uniform Commercial Code, as amended or recodified from time to time, from the state wherein the Property is located ("**UCC**"), and is acknowledged and agreed to be a "construction mortgage" under the UCC. For purposes of this fixture filing, the "**Debtor**" is the Mortgagor and the "**Secured Party**" is the Lender. A description of the land which relates to the fixtures is set forth in **Exhibit A** attached hereto. Mortgagor is the record owner of such land. The filing of a financing statement covering the Collateral shall not be construed to derogate from or impair the lien or provisions of this Security Instrument with respect to any property described herein which is real property or which the parties have agreed to treat as real property. Similarly, nothing in any financing statement shall be construed to alter any of the rights of Lender under this Security Instrument or the priority of Lender's lien created hereby, and such financing statement is declared to be for the protection of Lender in the event any court shall at any time hold that notice of Lender's priority interest in any property or interests described in this Security Instrument must, in order to be effective against a particular class of persons, including but not limited to the Federal government and any subdivision, agency or entity of the Federal government, be filed in the UCC records.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, or will have, good title to the Collateral; (b) Mortgagor has not previously assigned or encumbered (except for those encumbrances set forth in the Title Policy) the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Mortgagor's principal place of business is located at the address set forth on the cover page of this Security Instrument.
- 4.3 **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents as Mortgagee deems reasonably necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Mortgagee prior written notice thereof; (c) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Mortgagee is authorized to file financing statements in the name of Mortgagor to perfect Mortgagee's security interest in the Collateral.
- 4.4 **RIGHTS OF MORTGAGEE AND LENDERS.** In addition to Mortgagee's rights as a "**Secured Party**" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's and Lenders' rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee and Lenders therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral.

Upon the occurrence of a Default (hereinafter defined) under this Security Instrument, then in addition to all of Mortgagee's rights as a "**Secured Party**" under the UCC or otherwise at law and in addition to Mortgagee's and Lenders' rights under the Loan Documents:

- (a) Mortgagee on behalf of Lenders may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license or otherwise dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
- (b) Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Mortgagee deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Mortgagee may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral; and
- (c) Any proceeds of any disposition of any Collateral may be applied by Mortgagee on behalf of Lenders to the payment of expenses incurred by Mortgagee or any Lender in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Mortgagee on behalf of Lenders toward the payment of the Secured Obligations in such order of application as Mortgagee may from time to time elect.

Notwithstanding any other provision hereof, Mortgagee shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee or any Lender unless Mortgagor shall make an express written election of said remedy under the UCC or other

applicable law. Mortgagor agrees that Mortgagee shall have no obligation to process or prepare any Collateral for sale or other disposition. Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's and Lenders' rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice.

- 4.5 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Mortgagee may, without the obligation to do so, in Mortgagee's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Mortgagor; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation for which it is responsible hereunder or under the Loan Agreement when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums) prior to delinquency, or if a legal proceeding is commenced that may adversely affect Mortgagee's or Lenders' rights in the Property, then Mortgagee may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to protect the value of the Property and Mortgagee's and Lenders' rights in the Property, including the retaining of counsel, and any amount so expended by Mortgagee or any Lender will be added to the Secured Obligations and will be payable by Mortgagor to Mortgagee on behalf of Lenders within five (5) Business Days following Mortgagor's receipt of written demand and if not timely paid, together with interest thereon from the date of advance until paid at the default rate provided in the Note.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Mortgagor's rights to contest payment of taxes or assessments as may be provided in the Loan Agreement, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Mortgagee or any Lender by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Mortgagee on behalf of Lenders pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Mortgagor or any Lender and which are measured by and imposed upon Mortgagor's or any Lender's net income.
- 5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall immediately discharge all liens, claims and encumbrances not approved by Mortgagee in writing that has or may attain priority over this Security Instrument. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Mortgagor shall pay when due all obligations secured by, or which may become, liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or Collateral, or any interest therein, whether senior or subordinate hereto.
- 5.4 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**
- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Mortgagee and, at the request of Mortgagee, shall be paid directly to Mortgagee on behalf of Lenders: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value

of, all or any part of, or any interest in, the Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Mortgagee to be maintained by Mortgagor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Notwithstanding anything to the contrary in the Loan Documents, provided no Default by Mortgagor exists, in the event that the foregoing awards or proceeds are less than \$1,000,000, Mortgagee shall have the right to directly receive such award or proceeds and utilize such for the repair or restoration of the Property. Subject to applicable law, and without regard to any requirement contained in this Security Instrument, Mortgagee on behalf of Lenders may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim subject to the terms of Section 5.4(b) herein, and may apply the balance to the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose, in which event any surplus in excess of the Secured Obligations shall be paid over to Mortgagor, and/or Mortgagee may release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may impose. Mortgagee may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; provided, however, in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Mortgagee or any Lender or their employees or agents.

- (b) (i) In the event there occurs any casualty or damage to the Property prior to the Completion Date for which Mortgagee receives insurance proceeds, Mortgagee shall make such proceeds available to Mortgagor on the same terms and conditions as disbursements are made under the Loan Agreement, provided that (A) no Default exists and (B) all of the Improvements can be Substantially Completed no later than the Completion Date, notwithstanding such casualty or damage.
- (ii) In the event there occurs any casualty or damage to the Property following the Completion Date for which Mortgagee receives insurance proceeds in an amount less than \$7,500,000, Mortgagee shall permit such insurance or condemnation proceeds held by Mortgagee to be used to reconstruct, restore or repair the Property (the "Work") but may condition such application upon the following conditions: (i) the deposit with Mortgagee for the benefit Lenders of such additional funds which Mortgagee determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Mortgagee of plans and specifications for the Work, a contract for the Work signed by a contractor acceptable to Mortgagee, a cost breakdown for the Work and a payment and performance bond for the Work, all of which shall be acceptable to Mortgagee; (iv) Mortgagee's reasonable determination that the Work is capable of being completed prior to the Maturity Date; (v) no Default exists; (vi) the delivery to Mortgagee of a completion guaranty acceptable to Mortgagee; (vii) the delivery to Mortgagee of evidence acceptable to Mortgagee (aa) that after completion of the Work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) of the continuation of Leases acceptable to and required by Mortgagee; (cc) that upon completion of the Work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; and (dd) that there has been no material adverse change in the financial condition or credit of Mortgagor or any guarantors since the date of this Security Instrument; and (viii) the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within sixty (60) days of receipt by Mortgagee on

behalf of Lenders of such insurance or condemnation proceeds, then Mortgagee on behalf of Lenders may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose. Mortgagor shall promptly commence such Work and diligently pursue such reconstruction, restoration or repair to completion prior to the Maturity Date.

(iii) In the event there occurs any casualty or damage to the Property for which Mortgagee receives insurance proceeds in an amount equal to or greater than \$7,000,000, Mortgagee may (A) make such proceeds available to Mortgagor in accordance with the terms of paragraph (ii) above, or (B) apply such proceeds to pay the Secured Obligations in such order and manner as Mortgagee in its sole discretion may choose.

- 5.5 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Subject to the provisions of the Loan Agreement, Mortgagor covenants: (a) to insure the Property and Collateral against such risks as Mortgagee may require as set forth in the Loan Agreement, and, at Mortgagee's request, to provide evidence of such insurance to Mortgagee, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Property and Collateral in good condition and repair; (c) not to remove or demolish the Property or Collateral or any part thereof, not to alter or add to the Property or Collateral; (d) to complete or restore promptly and in good and workmanlike manner the Property and Collateral, or any part thereof which may be damaged or destroyed, provided that if such casualty is insured, Mortgagee makes the insurance proceeds available to the Mortgagor for such restoration as provided in that certain Section hereof entitled **Damages; Insurance and Condemnation Proceeds;** (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Property or Collateral; and (g) to do all other acts which from the character or use of the Property or Collateral may be reasonably necessary to maintain and preserve its value; provided, however, that, after Substantial Completion of the Improvements, alterations that (i) do not alter the structural integrity of the Improvements or building systems, (b) are required under a Permitted Lease, or (c) do not materially and adversely affect the value of the Property, shall not require Lender's prior written consent.
- 5.6 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Mortgagee and Lenders hereunder against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any material damage to the Property or Collateral and of any condemnation offer or action with respect to the Property or Collateral.
- 5.7 **DUE ON SALE; ENCUMBRANCE.** If the Property or any interest therein or if any direct or indirect ownership interest in Mortgagor shall be sold, transferred, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, or if there shall be any change in the management of the Property or Mortgagor, in each case without the prior written consent of Mortgagee or which is prohibited by the Loan Agreement, **THEN** Mortgagee on behalf of Lenders, in its sole discretion, may at any time thereafter declare all Secured Obligations immediately due and payable.
- 5.8 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property and Collateral or in any manner obligated under the Secured Obligations ("**Interested Parties**"), Mortgagee may, from time to time and without notice to Mortgagor or Borrower (i) release any person or entity from liability for the payment or performance of any Secured Obligation; (ii) take any action or make any agreement extending the maturity or otherwise altering the terms or

increasing the amount of any Secured Obligation; or (iii) accept additional security or release all or a portion of the Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Security Instrument upon the Property, the Collateral or any other security provided herein or in the other Loan Documents.

- 5.9 **SUBROGATION.** Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee on behalf of Lenders pursuant to the Loan Documents or by the proceeds of any loan secured by this Security Instrument.
- 5.10 **RIGHT OF INSPECTION.** Mortgagee and Lenders, their agents, representatives and employees, may enter any part of the Property at any reasonable time for the purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof and the other Loan Documents.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "**Default**" shall mean the occurrence of any Default as defined in any one or more of the Loan Agreement, any other Loan Document or any Other Related Document, or an "Event of Default" under any Swap Agreement (as defined therein) between Borrower and any Lender, which Default is not cured within the applicable grace period, if any.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Mortgagee and Lenders shall have each and every one of the following rights and remedies in addition to Mortgagee's and Lenders' rights under the other Loan Documents or under any Swap Agreement between Borrower and any Lender:
- (a) With or without notice, to declare all Secured Obligations (other than Swap Agreements) immediately due and payable.
 - (b) Pursuant to the terms of a Swap Agreement between Borrower and any Lender, terminate such Swap Agreement.
 - (c) With or without notice, and without releasing Mortgagor or Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor or Borrower and, in connection therewith, to enter upon the Property and do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Security Instrument or the rights or powers of Mortgagee and Lenders under this Security Instrument; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority to this Security Instrument, the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Security Instrument; or (iv) to employ counsel, accountants, contractors and other appropriate persons.
 - (d) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a deed of trust or mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations.

- (e) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment (the provisions for the appointment of a receiver and assignment of rents being an express condition upon which the loan secured hereby is made).
- (f) To enter upon, possess, control, lease, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Mortgagee deems proper, to make repairs, alterations and improvements to the Property as necessary, in Mortgagee's sole judgment, to protect or enhance the security hereof and to continue and complete construction of the Improvements of the Property as necessary in Mortgagee's sole judgment.
- (g) To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent actions, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee determines in its sole discretion.
- (h) Upon sale of the Property at any foreclosure sale, Mortgagee on behalf of Lenders may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, to the extent permitted by law, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee and Lenders with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Mortgagee (in its sole and absolute discretion) deems commercially appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Mortgagee or Lenders any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor, Mortgagee and Lender; and (z) Mortgagee's credit bid may be (at Mortgagee's sole and absolute discretion) higher or lower than any appraised value of the Property.
- (i) Upon the completion of any foreclosure of all or a portion of the Property, commence an action to recover any of the Secured Obligations that remains unpaid or unsatisfied.
- (j) Exercise any and all remedies at law, equity, or under the Note, Security Instrument or other Loan Documents for such Default.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Mortgagee and Lenders, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Mortgagee and Lenders under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Mortgagee on behalf of Lenders under this Security Instrument other than those described in that certain Section hereof entitled Rights and Remedies or that certain Section hereof entitled Grant of License, less all costs and expenses incurred by Mortgagee and Lenders or any receiver, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Mortgagee shall determine in its sole discretion; provided, however, Mortgagee and Lenders shall have no liability for funds not actually received by Mortgagee or Lenders.
- 6.5 **NO CURE OR WAIVER.** Neither Mortgagee's, Lenders' nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Mortgagee or Lenders or any receiver shall cure or waive any breach, Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or limit or impair the status of the security, or prejudice Mortgagee and Lenders in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee or Lenders of any tenancy, lease or option or a subordination of the lien of or security interests created by this Security Instrument.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee for the benefit of Lenders immediately and without demand all documented costs and expenses of any kind incurred by Mortgagee or any Lender pursuant to this Article (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein or as allowed by applicable law. In addition, Mortgagor will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing amounts must be paid to Mortgagee for the benefit of Lenders as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Mortgagee or any Lender.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of cessation of labor, commencement or completion of construction of the Improvements or any other notices that Mortgagee deems appropriate to protect Mortgagee's and Lenders' interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Security Instrument or the delivery of a deed in lieu of foreclosure following a Default, to execute all instruments of assignment or further assurance with respect to the Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Property

and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Mortgagee on behalf of Lenders may perform any obligation of Mortgagor hereunder; provided, however, that: (i) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee or Lenders; and (ii) Mortgagee and Lenders shall not be liable to Mortgagor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Mortgagee or Lenders under this Section. Furthermore, the Mortgagor hereby authorizes Mortgagee and its agents or counsel to file financing statements that indicate the collateral (i) as all assets of the Mortgagor or words of similar effect or (ii) as being of an equal, greater or lesser scope, or with greater or lesser detail, than as set forth in this Security Agreement and/or this Security Instrument, on behalf of the Mortgagor.

6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Mortgagee and Lenders provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Mortgagee. No failure on the part of Mortgagee or any Lender to exercise any of their rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Mortgagee or any Lender in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Mortgagee and Lenders may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, neither Mortgagee nor any Lender shall waive the agreement contained herein that time is of the essence, nor shall Mortgagee or any Lender waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

6.9 **ILLINOIS MORTGAGE FORECLOSURE LAW.** It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Security Instrument shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "**Act**"), 735 ILCS 5/15-1101 et seq., and with respect to such Act, Mortgagor agrees and covenants that:

- (a) Mortgagee and Lenders shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee and Lenders 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. If any provision in this Security Instrument shall be inconsistent with any provision of the Act, provisions of the Act 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 Act. If any provision of this Security Instrument shall grant to Mortgagee or any Lender (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of that certain Section hereof entitled Rights and Remedies of this Security Instrument any powers, rights or remedies prior to, upon or following the occurrence of a Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or any Lender or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee or any Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Security Instrument, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.

- (b) Wherever provision is made in this Security Instrument or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee for the benefit of the Lenders, or to confer authority upon Mortgagee on behalf of the Lenders to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control the use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.
- (c) In addition to any provision of this Security Instrument authorizing Mortgagee for the benefit of the Lenders to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, 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 and provisions for in Sections 15-1701 and 15-1703 of the Act.
- (d) Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.
- (e) All advances, disbursements and expenditures made by Mortgagee or any Lender 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 authorized by this Security Instrument or by the Act (collectively, "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act. This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:
- (i) determination of the amount of indebtedness secured by this Security Instrument at any time;
 - (ii) the indebtedness found due and owing to Mortgagee or any Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications, or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
 - (iii) if right of redemption has not been waived by Borrower in this Security Instrument, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;
 - (iv) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act; and
 - (v) application of income in the hands of any receiver or Lender in possession; and computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

- (f) 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 PURSUANT TO 735 ILCS 5/15-1601 OF THE ACT ANY AND ALL RIGHTS OF REDEMPTION WHICH MAY RUN TO MORTGAGOR OR ANY OTHER OWNER OF REDEMPTION, AS THAT TERM IS DEFINED IN 735 ILCS 5/15-1212, OR REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15 1602) AND WAIVES ANY RIGHT OF REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS SECURITY INSTRUMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15 1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT TO THE GREATEST EXTENT PERMITTED BY LAW.
- (g) Borrower agrees, to the full extent permitted by law, that at all times during the continuance of a Default, neither Borrower nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, or extension laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security instrument or the absolute sale of the Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat; and Borrower, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws and any and all right to have the assets comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that Mortgagee, on behalf of the Lenders or any court having jurisdiction to foreclosure such lien may sell the Property in part or as an entirety. To the full extent permitted by law, Borrower hereby waives any and all statutory or other rights of redemption from sale under any order or decree of foreclosure of this Security Instrument, including the waiver of such rights as provided under Sections 15-1601 and 15-1602 of the Act, 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 hereof.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **NOTICES.** All notices, demands, or other communications under this Security Instrument and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Security Instrument). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	845 West Madison Street Owner, LLC c/o Intercontinental Real Estate Corporation 1270 Soldiers Field Road Boston, Massachusetts 02135 Attention: Paul J. Nasser
------------	--

SECURITY INSTRUMENT **UNOFFICIAL COPY** LOAN NUMBER 1018743

With copies to:	Bradley & Associates, P.C. Attorneys at Law 1270 Soldiers Field Road Boston, Massachusetts 02135 Attention: James M. Bradley, Esquire
With copies to:	845 West Madison Partners LLC c/o The John Buck Company 225 W. Washington Street, Suite 2300 Chicago, Illinois 60606 Attention: John Silvestri
With copies to:	Lendlease Americas, Inc. 200 Park Avenue, 9th Floor New York, NY 10166 Attention: General Counsel
Administrative Agent:	Wells Fargo Bank, National Association Commercial Real Estate Group (AU No. 0001189) MAC: J9226-156 125 High Street, 15th Floor Boston, MA 02110 Attn: Robert E. Deignan, Senior Vice President Loan No. 1018743
With copies to:	Wells Fargo Bank, National Association MAC G0128-048 171 17th Street, NW., 4th Floor Atlanta, GA 30363 Attention: Sandra A. Wheeler, Vice President CRE-Shared Credit Manager Loan No. 1018743
With copies to:	Wells Fargo Bank, National Association Loan Center MAC: N9300-091 600 South 4th Street, 9th Floor Minneapolis, MN 55415 Attention: Disbursement Administrator Loan No. 1018743
And	Hinckley Allen & Snyder LLP 28 State Street Boston, Massachusetts 02109 Attention: Scott E. Cooper, Esquire

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Mortgagee, without delay, any notices, letters or other communications delivered to the Property or to Mortgagor naming Mortgagee or any Lender or the "**Construction Lender**" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Mortgagor to perform its obligations to Mortgagee and Lenders under the Loan Documents.

- 7.2 **ATTORNEYS' FEES AND EXPENSES; ENFORCEMENT.** If the Note is placed with an attorney for collection or if an attorney is engaged by Mortgagee to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, reinforcement of rights and remedies, then in all events, Mortgagor agrees to pay to Mortgagee all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 7.3 **NO WAIVER.** No previous waiver and no failure or delay by Mortgagee in acting with respect to the terms of the Note or this Security Instrument shall constitute a waiver of any breach, default, or failure of condition under the Note, this Security Instrument or the obligations secured thereby. A waiver of any term of the Note, this Security Instrument or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.
- 7.4 **SEVERABILITY.** If any provision or obligation under this Security Instrument shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Security Instrument and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of this Security Instrument.
- 7.5 **HEIRS, SUCCESSORS AND ASSIGNS.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Security Instrument shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto, including, without limitation, subsequent owners of the Property or any part thereof; provided, however, that this Section does not waive or modify the provisions of that certain Section entitled Due on Sale or Encumbrance.
- 7.6 **ATTORNEY-IN-FACT.** Mortgagor hereby irrevocably appoints and authorizes Mortgagee as Mortgagor's attorney-in-fact, which agency is coupled with an interest, and as such attorney-in-fact Mortgagee may, upon the occurrence and continuation of a Default or if Borrower shall fail to so act following the reasonable request of Administrative Agent, without the obligation to do so, execute and/or record in Mortgagee's or Mortgagor's name any notices, instruments or documents that Mortgagee deems appropriate to protect Mortgagee's and Lenders' interest under any of the Loan Documents.
- 7.7 **TIME.** Time is of the essence of each and every term herein.
- 7.8 **GOVERNING LAW AND CONSENT TO JURISDICTION.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Security Instrument, this Security Instrument shall be governed by, and construed in accordance with, the laws of Illinois, it being understood that, except as expressly set forth above in this paragraph and to the fullest extent permitted by the laws of Illinois, the laws of the State of New York shall govern any and all matters, claims, controversies or disputes arising under or related to this Security Instrument, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties relating to this Security Instrument, the Loan Agreement and the other Loan Documents and all of the indebtedness or obligations arising thereunder or hereunder. Mortgagor hereby consents to the jurisdiction of any federal or state court within the

State of New York having proper venue and also consent to service of process by any means authorized by New York or federal law.

- 7.9 **JOINT AND SEVERAL LIABILITY**. The liability of all persons and entities obligated in any manner hereunder and under any of the Loan Documents shall be joint and several.
- 7.10 **HEADINGS**. All article, section or other headings appearing in this Security Instrument are for convenience of reference only and shall be disregarded in construing this Security Instrument.
- 7.11 **COUNTERPARTS**. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 7.12 **POWERS OF ATTORNEY**. The powers of attorney granted by Mortgagor to Mortgagee in this Security Instrument shall be unaffected by the disability of the principal so long as any portion of the Loan remains unpaid or unperformed or any obligation under or in connection with a Swap Agreement between Borrower and any Lender remains unpaid or unperformed. Mortgagee shall have no obligation to exercise any of the foregoing rights and powers in any event. Mortgagee hereby discloses that it may exercise the foregoing powers of attorney for Mortgagee's and Lenders' benefit, and such authority need not be exercised for Borrower's best interest.
- 7.13 **DEFINED TERMS**. Unless otherwise defined herein, capitalized terms used in this Security Instrument shall have the meanings attributed to such terms in the Loan Agreement.
- 7.14 **RULES OF CONSTRUCTION**. The word "**Borrower**" as used herein shall include both the named Borrower and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Note and the other Loan Documents; provided, however, that nothing herein shall be construed to increase the liability of the Guarantor beyond the liability assumed by Guarantor under that certain Payment and Completion Guaranty and Hazardous Materials Indemnity Agreement, both executed by Guarantor and of even date herewith. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Security Instrument is executed by more than one person, the term "**Mortgagor**" shall include all such persons. The word "**Mortgagee**" as used herein shall include Mortgagee, its successors, assigns and affiliates. The word "**Lender**" as used herein shall include Lender, its successors, assigns and affiliates. The term "**Property**" and "**Collateral**" means all and any part of the Property and Collateral, respectively, and any interest in the Property and Collateral, respectively. "**Mortgagor**" as used herein shall include Mortgagor, its successors, assigns and affiliates.
- 7.15 **USE OF SINGULAR AND PLURAL; GENDER**. When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural, and the masculine gender includes the feminine and/or neuter.
- 7.16 **EXHIBITS, SCHEDULES AND RIDERS**. All exhibits, schedules, riders and other items attached hereto are incorporated into this Security Instrument by such attachment for all purposes.
- 7.17 **INCONSISTENCIES**. In the event of any inconsistencies between the terms of this Security Instrument and the terms of the Loan Agreement or Note, including without limitation, provisions regarding collection and application of Property revenue, required insurance, tax impounds, and transfers of the Property, the terms of the Loan Agreement or Note, as applicable, shall prevail.

- 7.18 **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing and in accordance with the terms of the Loan Agreement.
- 7.19 **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property and Collateral, hereby waives all rights to have the Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation marshalled upon any foreclosure of the lien of this Security Instrument or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Mortgagee on behalf of Lenders shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or other property as a whole or in separate parcels, in any order that Mortgagee may designate.
- 7.20 **ADVERTISING.** In connection with the Loan, Mortgagor hereby agrees that Wells Fargo & Company and its subsidiaries ("**Wells Fargo**") may publicly identify details of the Loan in Wells Fargo advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Loan, the date of the closing and a description of the size/location of the Property.
- 7.21 **SUBORDINATION OF PROPERTY MANAGER'S LIEN.** Any property management agreement for the Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Property shall be subject and subordinate to the lien of this Security Instrument and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of a Default hereunder. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the County Recorder of the county where the Property is located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Security Instrument.
- 7.22 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Mortgagee in writing. The Loan Documents grant further rights to Mortgagee and Lenders and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Security Instrument and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference.

ARTICLE 8. ILLINOIS PROVISIONS

- 8.1 **PRINCIPLES OF CONSTRUCTION.** In the event of any inconsistencies between the terms and conditions of this Article 8 and the terms and conditions of the other provisions of this Mortgage, the terms and conditions of this Article 8 shall control and be binding.
- 8.2 **SECURITY AGREEMENT.** Borrower and Mortgagee agree that this Security Instrument shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (the "**Illinois UCC**") with respect to (i) all sums at any time on deposit for the benefit of the Lenders or

held by Mortgagee or any Lender (whether deposited by or on behalf of Borrower or anyone else) pursuant to any of the provisions of the Note, the Loan Agreement, this Security Instrument and (ii) the Collateral and other property constituting the Property, whether now owned or hereafter acquired, to the full extent that the Collateral and such other property may be subject to the Uniform Commercial Code, and that Borrower hereby grants to Mortgagee for the benefit of the Lenders, as security for the Secured Obligations a security interest in and to the Collateral and all of Borrower's right, title and interest therein are hereby assigned by Borrower to Mortgagee for the benefit of the Lenders, all to secure payment of the Note. All of the provisions contained in this Security Instrument pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property; and the following provisions of this Section shall not limit the applicability of any other provision of this Security Agreement but shall be in addition thereto:

- (a) Borrower (being the Debtor as that term is used in the Illinois UCC) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting the Lenders and no other party, and liens and encumbrances, if any, expressly permitted by the Loan Agreement or any other Loan Document;
- (b) The Collateral is to be used by Borrower solely for business purposes;
- (c) All tangible personal property owned by Borrower will be kept at the Property (except for normal replacement of personal property) and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Illinois UCC). The Collateral may be affixed to the Property but will not be affixed to any other real estate;
- (d) The only persons having any interest in the Property are Borrower, Mortgagee, the Lenders and holders of interests, if any, expressly permitted hereby;
- (e) No financing statement (other than financing statements showing Lender as the sole secured party; or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto, and Borrower at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may reasonably request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Debt, subject to no other liens or encumbrances, other than liens or encumbrances benefitting the Lenders and no other party and liens and encumbrances, if any, expressly permitted hereby; and Borrower will pay the cost of filing or recording such financing statements or other documents, and this Security Instrument in all public offices wherever filing or recording is deemed by Mortgagee to be desirable;
- (f) During the continuance of a Default, Mortgagee shall have the remedies of a secured party under the Illinois UCC, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Borrower can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject

to the conditions stated in the Illinois UCC); and Mortgagee for the benefit of the Lenders shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Borrower's right of redemption in satisfaction of Borrower's obligations, as provided in the Illinois UCC. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Property. Mortgagee may require Borrower to assemble the Collateral and make it available to Lender for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Borrower at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Borrower hereinabove set forth at least ten (10) days before the time of the sale or disposition. Mortgagee or any Lender may buy at any public sale. Mortgagee and any Lender may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Mortgagee so elects, the Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee and any Lender, shall be applied against the Debt in such order or manner as Mortgagee shall select. Mortgagee will account to Borrower for any surplus realized on such disposition.

- (g) The terms and provisions contained in this Section 8.2, unless the context otherwise requires, shall have the meanings and be construed as provided in the Illinois UCC;
- (h) This Security Instrument is intended to be a financing statement within the purview of Section 9-502(c) of the Illinois UCC with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. The addresses of Borrower (Debtor) and Mortgagee (Secured Party) are hereinabove set forth. This Security Instrument is to be filed for recording with the recorder of deeds of the county or counties where the Property is located. Borrower is the record owner of the Property;
- 8.3 **INTEREST RATE.** Interest on the outstanding principal balance of the Note shall accrue at a variable interest rate in accordance with the applicable terms and conditions of the Loan Documents.
- 8.4 **POWER OF SALE.** Any references to "power of sale" in this Security Instrument are permitted only to the extent allowed by law.
- 8.5 **FUTURE ADVANCES.** This Security Instrument is given for the purpose of securing loan advances which Lender may make to or for Borrower pursuant and subject to the terms and provisions of the Loan Agreement. The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Security Instrument shall secure unpaid balances of loan advances made after this Security Instrument is delivered to the Office of the Recorder of the County in which the Property is located, whether made pursuant to an obligation of Lender or otherwise, and such advances shall be secured to the same extent as if such future advances were made on the date hereof as provided in 5/15-1302(b)(1) of the Act, although there may be no advance made at the time of

execution hereof and although there may be no indebtedness outstanding at the time any advance is made. Such loan advances may or may not be evidenced by notes executed pursuant to the Loan Agreement.

8.6 **OPTIONAL SUBORDINATION**. At the option of Lender, this Security Instrument shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation proceeds), to any and all leases of all or any part of the Property upon the execution by Lender and recording thereof, at any time hereafter in the appropriate official records of the County wherein the Property is situated, of a unilateral declaration to that effect

8.7 **CERTAIN INSURANCE DISCLOSURES**. Pursuant to the Illinois Collateral Protection Act and the Illinois Financial Institution Insurance Sales Law, Mortgagee hereby notifies Mortgagor as follows:

You may obtain insurance required in connection with your loan or extension of credit from any insurance agent, broker, or firm that sells such insurance that is licensed to underwrite such insurance by the Illinois Department of Insurance, provided the insurance requirements in connection with your loan are otherwise complied with. Your choice of insurance provider will not affect our credit decision or your credit terms. Unless you provide us with evidence of the insurance coverage required by your agreements with us, we may purchase insurance at your expense to protect our interest 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. Only after providing us with evidence that you have obtained insurance as required by our agreements, we shall cancel any insurance obtained by us in connection with this provision. 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.

8.8 **NOTE**. The Note is hereby incorporated and made a part of this Security Instrument.

8.9 **INTEREST RATE LIMITATION**. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any loan under the Loan Agreement, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan, but were not payable as a result of the operation of this Section 8.9 shall be cumulated and the interest and Charges payable to such Lender in respect of other loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount shall have been received by such Lender.

(Remainder of this page intentionally left blank.)

UNOFFICIAL COPY

SECURITY INSTRUMENT

LOAN NUMBER 1018743

IN WITNESS WHEREOF, Mortgagor has executed this Security Instrument under seal as of the date set forth above.

MORTGAGOR:

845 WEST MADISON STREET OWNER, LLC,
a Delaware limited liability company

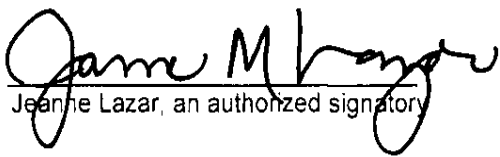
By: 845 West Madison Street Venture, LLC,
a Delaware limited liability company
its Sole Member and Manager

By: 845 West Madison Partners LLC,
a Delaware limited liability company
its Manager

By: 845 W. Madison GP LLC,
a Delaware limited liability company
its Sole Member

By: Elbert Madison Partners LLC,
a Delaware limited liability company
its Manager

By: JBC Investors V LLC,
a Delaware limited liability company
its Manager

By: 
Name: Jeanne Lazar, an authorized signatory

[ACKNOWLEDGEMENT APPEARS ON FOLLOWING PAGE]

[Signature page to Construction Mortgage, With Absolute
Assignment of Leases and Rents,
Security Agreement and Fixture Filing]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SECURITY INSTRUMENT

LOAN NUMBER 1018743

STATE OF ILLINOIS

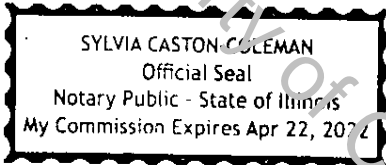
County of Cook, ss.

On this 26 day of April, 2019, before me, the undersigned notary public, personally appeared Ranne M. Cazar, proved to me through satisfactory evidence of identification, which was

State of ILLINOIS DRIV. License to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Authorized Signatory of JBC Investors V LLC, in its capacity as Manager of Elbert Madison Partners LLC, in its capacity as Manager of 845 W. Madison GP LLC, in its capacity as Sole Member of 845 West Madison Partners LLC, in its capacity as Manager of 845 West Madison Street Venture, LLC, the Sole Member and Manager of 845 West Madison Street Owner, LLC.

Sylvia Caston-Coleman
(official signature and seal of notary)

My Commission expires: 4-22-2022



Property of Cook County Clerk's Office

EXHIBIT A - DESCRIPTION OF PROPERTY

Exhibit A to CONSTRUCTION MORTGAGE, WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING between 845 WEST MADISON STREET OWNER, LLC, a limited liability company organized under the laws of the State of Delaware, as Mortgagor and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgagee, in its capacity as Administrative Agent for itself and certain other Lenders, dated as of April 29, 2019.

LOTS 1 TO 16 IN BLOCK 2 IN DUNCAN'S ADDITION TO CHICAGO, A SUBDIVISION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 845 West Madison, Chicago, Illinois 60607

PINs:

17-17-208-001-0000
17-17-208-002-0000
17-17-208-005-0000
17-17-208-006-0000
17-17-208-007-0000
17-17-208-008-0000
17-17-208-009-0000
17-17-208-010-0000
17-17-208-016-0000
17-17-208-017-0000
17-17-208-018-0000