

16216578

UNOFFICIAL COPY



1915108023

Doc# 1915108023 Fee \$88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 05/31/2019 11:04 AM PG: 1 OF 32

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN:** 09-30-400-043-0000

Address:

Street: 2100 South Wolf Road

Street line 2:

City: Des Plaines

State: IL

ZIP Code: 60018

Lender: ATLANTIC CAPITAL BANK, N.A.

Borrower: DEURER-SEERFRIED II, L.P.

Loan / Mortgage Amount: \$5,800,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: 8676C180-2128-4B3C-BEFD-02622B52B40F

Execution date: 5/21/2019

UNOFFICIAL COPY

Prepared by and after Recording, Return To:
 David J. Burgess, Esq.
 Smith, Gambrell & Russell
 Suite 3100, Promenade
 1230 Peachtree Street, N.E.
 Atlanta, Georgia 30309-3532

MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND FIXTURE FILING

THIS INSTRUMENT, made and entered into as of the 21st day of May, 2019, by and between **DEURER-SEEFRIED II, L.P.**, a Georgia limited partnership (“Borrower”), having an address at c/o Seefried Industrial Properties, 3333 Riverwood Parkway, Suite 200, Atlanta, Georgia 30339, and **ATLANTIC CAPITAL BANK, N.A.**, a national bank (“Lender”), having an address at 945 East Paces Ferry Road, NE, 10th Floor, Resurgens Plaza, Atlanta, Georgia 30326;

WITNESSETH:

1.01 THAT FOR AND IN CONSIDERATION of the sum of \$10.00 and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, Borrower does hereby grant, mortgage, bargain, sell, convey, assign, transfer, pledge, and set over unto Lender the following described property (collectively, the “Premises”): (a) all those certain tracts, pieces or parcels of land (and any easements or other rights or interests in land) more particularly described in Exhibit “A” hereto (the “Land”); (b) all buildings, structures and improvements of every nature whatsoever now or hereafter situated on, under or above the Land (the “Improvements”; together with the Land, the “Property”); (c) all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower; (d) all right, title and interest of Borrower in all furnishings, furniture, fixtures, machinery, apparatus, equipment, fittings, appliances, building supplies and materials, vehicles (excluding Borrower’s personal automobiles), chattels, goods,

UNOFFICIAL COPY

consumer goods, farm products, inventory, warranties, chattel paper, documents, accounts, general intangibles, trade names, trademarks, service marks, logos (including any names or symbols by which the Property is known) and goodwill related thereto, and all other articles of personal property of every kind and nature whatsoever, tangible or intangible, now, heretofore or hereafter arising out of or related to the ownership of the Property, or acquired with proceeds of any loan secured by this Instrument, or located in, on or about the Property, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Property (said real and personal property referred to in Subsections 1.01 (c) and (d), together with the Property, being hereinafter referred to as the "Project"); (e) all right, title and interest of Borrower in any and all leases, rental agreements and arrangements of any sort now or hereafter affecting the Project or any portion thereof and providing for or resulting in the payment of money to Borrower for the use of the Project or any portion thereof, whether the user enjoys the Project or any portion thereof as tenant for years, invitee, licensee, tenant at sufferance or otherwise, and irrespective of whether such leases, rental agreements and arrangements be oral or written, including those certain leases, if any, more particularly described in Exhibit "B" hereto, and including any and all extensions, renewals and modifications thereof (the "Leases") and guaranties of the performance or obligations of any tenants or lessees thereunder (the "Tenants"), together with all income, rents, issues, profits and revenues from the Leases (including all tenant security deposits and all other tenant deposits, whether held by Borrower or in a trust account, and all other deposits and escrow funds relating to any Leases), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same; provided, however, that although this Instrument contains (and it is hereby agreed that this Instrument contains) a present, current, unconditional and absolute assignment of all of said income, rents, issues, profits and revenues, Borrower and Lender have agreed that so long as there shall exist no "Default" (as hereinafter defined) Borrower shall have a revocable license to collect routine rental payments and revenues which do not relate to periods more than one month after collection, it being agreed that Lender shall be entitled at all times to possession of all other income, rents, issues, profits and revenues (including deposits), and it being further agreed that upon the occurrence of a "Default" (as hereinafter defined) hereunder such license shall be automatically revoked without the necessity of further action by Lender; provided, further that upon Borrower's cure of any such "Default", the revocable license to collect rental payments and revenues shall be reinstated subject to the terms and conditions hereof; (f) all right, title and interest of Borrower in, to and under all franchise agreements, management contracts, service contracts, utility contracts, leases of equipment, documents and agreements relating to the construction of any improvements (including any and all construction contracts, architectural contracts, engineering contracts, designs, plans, specifications, drawings, surveys, tests, reports, bonds and governmental approvals) and all other contracts, licenses and permits now or hereafter affecting the Project or any part thereof and all guaranties and warranties with respect to any of the foregoing (the "Contracts"); (g) all right, title and interest of Borrower in any insurance policies or binders now or hereafter relating to the Project, including any unearned premiums thereon; (h) all right, title and interest of Borrower in any and all awards, payments, proceeds and the right to receive the same, either before or after any foreclosure hereunder, as a result of any temporary or permanent injury or damage to, taking of or decrease in the value of the Project by reason of casualty, condemnation or otherwise; (i) all right, title and interest of Borrower in all utility, escrow and all other deposits (and all letters of credit, certificates of deposit, negotiable instruments and

UNOFFICIAL COPY

other rights and evidence of rights to cash) now or hereafter relating to the Project or the purchase, construction or operation thereof; (j) all right, title and interest of Borrower in all cash funds, deposit accounts, certificates of deposit, negotiable instruments and other rights and evidence of rights to cash, now or hereafter created under or held by Lender pursuant to any "Loan Agreement" (as hereinafter defined) or pursuant to any other of the "Loan Documents" (as hereinafter defined), including any account into which any portion of the "Indebtedness" (as hereinafter defined) may be disbursed by Lender; (k) all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action, and all cash (or evidences of cash or of rights to cash) or other property or rights thereto relating to such claims or causes of action; and (l) all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds of any of the foregoing; and all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, farm products, consumer goods, general intangibles and other property of any nature constituting proceeds acquired with proceeds of any of the property described hereinabove; all of which foregoing items are hereby declared and shall be deemed to be a portion of the security for the indebtedness and obligations herein described, a portion of the above described collateral being located upon the Land. For purposes of this Instrument, the term "Loan Agreement" shall mean that certain Construction Loan Agreement dated as of the date hereof to which Borrower and Lender are parties which pertains to the "Indebtedness" (as hereinafter defined) or any portion thereof; and the term "Loan Documents" shall mean this Instrument, the Note, any Guaranty (as hereinafter defined), the Loan Agreement, any agreement regarding environmental activity ("Environmental Agreement") pertaining to the Premises or any portion thereof, and any other documents to or of which Lender is a party or beneficiary now or hereafter evidencing, securing or otherwise relating to said Indebtedness or the Premises; and the term "Guaranty" shall mean (collectively, if more than one) any and all co-signings, endorsements or guaranties of the Note or of any obligations of Borrower under the Loan Documents; and the term "Guarantor" shall mean (collectively, if more than one) any and all persons or entities obligated upon a Guaranty.

1.02 TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Lender, IN FEE SIMPLE forever; and Borrower covenants that Borrower is lawfully seized and possessed of the Premises as aforesaid and has good right to convey the same, that the same are unencumbered except for those matters expressly set forth in Exhibit "C" hereto, and Borrower does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the matters set forth on Exhibit "C".

1.03 THIS INSTRUMENT is given to secure the payment of the following described indebtedness (collectively, the "Indebtedness"): (i) the debt evidenced by that certain promissory note dated of even date herewith, made by Borrower to the order of Lender in the principal amount of FIVE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,800,000.00), with the final payment being due on or before May 21, 2022, together with any and all renewals, modifications, consolidations, replacements and extensions thereof (the "Note"); (ii) any and all additional advances made or costs or expenses incurred by Lender to protect or preserve the Premises or the security interest created hereby, or for taxes, assessments or insurance premiums as hereinafter provided, or for performance of any of Borrower's obligations hereunder or under the Loan Agreement, or for any purpose referred to in

UNOFFICIAL COPY

Section 2.08 hereof, or for any other purpose provided herein (whether or not the original Borrower remains the owner of the Premises at the time such advances are made or costs or expenses incurred); and (iii) any indebtedness, liabilities, or obligations, now existing or hereafter arising, due or to become due, absolute or contingent, of Borrower to Lender and/or its affiliates under any Financial Contract, but excluding any Excluded Swap Obligation. "Financial Contract" shall mean (1) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option equity or equity index swap, bond option, interest rate option, foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing); (2) any combination of the foregoing; or (3) a master agreement, schedule or confirmation (oral or written) for any of the foregoing together with all supplements. "Excluded Swap Obligation" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal. "Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act. "Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

1.04 SHOULD THE INDEBTEDNESS BE PAID according to the tenor and effect thereof when the same shall become due and payable, and should Borrower perform all covenants herein contained in a timely manner, then this Instrument shall be canceled and surrendered as provided by law.

COVENANTS AND AGREEMENTS

2.01 Payment of Indebtedness. Borrower shall pay the Note according to the tenor thereof and the remainder of the Indebtedness promptly as the same shall become due.

2.02 Taxes, Liens and Other Charges. Borrower shall pay, on or before the delinquency date thereof, all (a) taxes, assessments, and other charges of every character whatsoever now or hereafter levied on, assessed, placed or made against the Indebtedness, the Premises, this Instrument, or any other Loan Document, or any interest of Lender in the Indebtedness, the Premises or the Loan Documents; (b) premiums on policies of insurance now or hereafter covering the Premises, and any and all other insurance policies now or hereafter collaterally pledged to Lender; (c) ground rentals or other lease rentals, if any, payable by Borrower; (d) utility charges, whether public or private, which Borrower is obligated to pay; and (e) penalties

UNOFFICIAL COPY

and interest on any of the foregoing. Borrower will promptly pay any tax arising out of the passage of any law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of deeds to secure debt or security agreements, or debts secured thereby, or the manner of collection thereof. Borrower shall promptly deliver to Lender upon demand receipts showing timely payment in full of all of the above items.

2.03 Insurance and Condemnation.

(a) Borrower shall procure for, deliver to and maintain for the benefit of Lender during the term of this Instrument, original, fully paid insurance policies issued by such insurance companies, in such amounts, form and substance, insuring such parties (including Borrower and any contractor performing work upon the Premises) and with such expiration dates as are reasonably acceptable to Lender, providing "all risk" permanent real and personal property and "all risk" builders risk (for improvements completed or under construction, respectively), public liability (insuring Borrower and any contractor performing work on the Premises), worker's compensation, rent loss, and such other coverage as Lender may from time to time require, naming Lender as mortgagee and loss payee with respect to all property insurance and as an additional insured with respect to all liability insurance except workers' compensation. Lender acknowledges and agrees that such insurance coverage may be in the form of a "blanket" insurance policy reasonably acceptable to Lender and otherwise satisfying the requirements of this Paragraph 2.03. Borrower shall cause any builder's risk insurance covering any improvements to the Premises to be replaced by permanent insurance promptly upon completion of such improvements and without any lapse in coverage. At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this section, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender, together with receipts evidencing the payment of all Insurance Premiums required to keep such insurance in effect for the full term of such policy. At the request of Lender, Borrower shall provide evidence satisfactory to Lender that all such insurance is in effect. If the Premises or any part thereof is damaged by fire or any other cause, Borrower will give immediate written notice thereof to Lender.

(b) Borrower shall notify Lender promptly upon obtaining knowledge of the institution, or the proposed, contemplated or threatened institution, of any action for the taking through condemnation (which term when used in this Instrument shall include any damage or taking by any governmental or quasi-governmental authority and any transfer by private sale in lieu thereof) of the Premises or any part thereof.

(c) Subject to Section 2.03(d) hereof, Lender shall be entitled to all compensation, awards and other payments arising from any casualty, condemnation or damage to the Premises or any portion thereof and to give receipts and acquittances therefor, and is hereby authorized, at its option, to adjust or compromise any casualty, condemnation or damage claim or cause of action, to commence, appear in and prosecute, in its own or in Borrower's name, any action or proceeding relating to any casualty, condemnation or damage claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith. Each insurance company, condemning authority or other party is hereby authorized and directed to make payment for all such claims and causes of action directly to Lender, instead of to Borrower and Lender jointly. In the event any insurance company, condemning authority or other party fails to

UNOFFICIAL COPY

disburse directly and solely to Lender but disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees promptly to endorse and transfer such payments to Lender. Lender shall not be responsible for any failure to collect any insurance proceeds, any condemnation award or any other payment relating to the Premises, regardless of the cause of such failure. After deducting from any condemnation, insurance or other proceeds received by Lender all reasonable expenses of Lender incurred in the collection and administration of such sums, including reasonable attorney's fees actually incurred, Lender may apply the net proceeds or any part thereof, at its option, to any one or more of the following: (i) the payment of the Indebtedness, whether or not due and in whatever order Lender elects, (ii) the repair, replacement or restoration of the Premises or any part thereof, and (iii) any other purposes for which Lender is entitled to advance funds under this Instrument, all without affecting the security interest created by this Instrument; and any balance of such moneys not applied by Lender as aforesaid shall be paid to Borrower or the person or entity lawfully entitled thereto. In the event of the foreclosure of this Instrument or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Indebtedness, all right, title and interest of Borrower in and to all insurance policies then in force (including any premiums paid in advance), all insurance proceeds, all condemnation proceeds and awards and all claims and judgments for damage to the Premises or any portion thereof shall pass to the purchaser or Lender, and said purchaser or Lender shall have the right to receive all awards, proceeds or payments relating thereto to the extent of any unpaid Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on this Instrument or the Note shall have been sought or recovered, and to the extent of reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award, proceeds or payments.

(d) Notwithstanding the provisions of subparagraphs (b) and (c) above, in the event that all or any part of the Premises is damaged by fire or other casualty, and Borrower promptly notifies Lender of its desire to repair and restore the same, then provided that the following terms and conditions are and remain fully satisfied by Borrower, Lender shall disburse insurance proceeds for repair and restoration of the Premises against completed work in accordance with Lender's standard construction loan disbursement conditions and requirements (which may be contained in an agreement which Lender may require Borrower to sign); otherwise, and to the extent of any excess proceeds, Lender shall have the right to apply the proceeds toward reduction of the Indebtedness:

(i) no Default or event which, with the giving of notice or the passage of time, or both, would constitute an Default under any of the Loan Documents shall then exist and be continuing after the giving of any required notice and the expiration of any applicable cure or grace period;

(ii) Borrower shall have delivered evidence satisfactory to Lender that the Premises can be fully repaired and restored at least six (6) months prior to the maturity of the Note;

(iii) the work is performed under a stipulated sum or guaranteed maximum price contract satisfactory to Lender in accordance with plans and specifications and a budget reasonably satisfactory to Lender and in compliance with all legal requirements;

UNOFFICIAL COPY

(iv) Borrower shall have deposited with Lender for disbursement in connection with the restoration the greater of: (1) the applicable deductible under the insurance policies covering the loss; or (2) the amount by which the cost of restoration of the Premises to substantially the same value, condition and character as existed prior to such damage is estimated by Lender to exceed the net insurance proceeds available for restoration, together with any changes, alterations or modifications to the Premises required to comply with then applicable zoning and building code requirements; and

(v) Borrower has paid as and when due all of Lender's reasonable costs and expenses incurred in connection with the collection and disbursement of insurance proceeds, including without limitation, inspection, monitoring, engineering and reasonable legal fees actually incurred. If not paid on demand, and at Lender's option, such costs may be deducted from the disbursements made by Lender or added to the sums secured by this Instrument in accordance with the provisions of Section 1 hereof.

2.04 Leases and Contracts. Borrower shall (a) fulfill, perform and observe each and every material condition and covenant of landlord or lessor contained in each of the Leases and each and every material condition and covenant of Borrower or owner of the Premises contained in the Contracts; (b) give prompt notice to Lender of any claim of default under any of the Leases or the Contracts given to Borrower, together with a complete copy of any notice expressing such claim; (c) at no cost or expense to Lender, enforce, short of termination, the performance and observance of each and every material condition and covenant of each of the parties under the Contracts and the Leases; (d) appear in and defend any action against any one or more of Borrower, Lender, and the Premises arising out of, or in any manner connected with, any of the Leases or the Contracts, or the obligations or liabilities of any party thereto or any guarantor thereof; and (e) furnish to Lender upon written demand copies of all Leases and Contracts. Borrower shall not, without the prior written consent of Lender, (i) enter into new Leases or Contracts; (ii) modify any Leases or Contracts; (iii) terminate or accept the surrender of any Leases or Contracts; (iv) waive or release any other party from the performance or observance of any material obligation or condition under any Leases or Contracts; (v) give any consent (if required by the terms of the applicable lease) to any assignment or sublease by any Tenant under any of the Leases; (vi) permit the prepayment of any rents under any of the Leases for more than one month prior to the accrual thereof; or (vii) assign its interest in, to or under any Contracts or Leases or the rents, issues and profits from the Leases or from the Premises to any person or entity other than Lender, except as otherwise expressly permitted by Lender in writing. Notwithstanding the foregoing, Borrower shall not be required to obtain Lender's consent for the creation, modification or termination of (i) any Approved Lease (as hereinafter defined), or (ii) Contracts entered into in the ordinary course of business with termination rights on thirty (30) days' notice. Borrower shall take no action which will cause or permit the estate of any Tenant under any of the Leases to merge with the interest of Borrower in the Premises or any portion thereof. Borrower shall and does hereby authorize and direct each and every present and future Tenant of all or any part of the Premises to pay all rent (and any other sums due the landlord under the Lease) to Lender and to perform all other obligations of that Tenant for the direct benefit of Lender, as if Lender were the landlord under the Lease with that Tenant, immediately upon receipt of a demand by Lender to make such payment or perform such obligations, it being acknowledged that no such demand by Lender shall constitute or be deemed to constitute any assumption by Lender of any obligations of the landlord under such Lease. No Tenant shall have

UNOFFICIAL COPY

any responsibility to ascertain whether such demand is permitted hereunder or whether a default shall have occurred. Borrower hereby waives any right, claim or demand it may now or hereafter have against any such Tenant by reason of such payment of rent or other sums or performance of obligations to or for Lender; and any such payment or performance to or for Lender shall discharge the obligations of the Tenant to make such payment or performance to or for Borrower. Borrower shall and does hereby authorize and direct each and every present and future party to any Contract (a "Contract Party") to make all payments to Lender and to perform all obligations of that Contract Party for the direct benefit of Lender, as if Lender were the Borrower or owner of the Premises under the Contract with that Contract Party, immediately upon receipt of a written demand by Lender to make such payments or perform such obligations, it being acknowledged that no such demand by Lender shall constitute or be deemed to constitute any assumption by Lender of any obligations of the Borrower or owner of the Premises under such Contract. No Contract Party shall have any responsibility to ascertain whether such demand is permitted hereunder or whether a default shall have occurred. Borrower hereby waives any right, claim or demand it may now or hereafter have against any such Contract Party by reason of such payment or performance of obligations to or for Lender; and any such payment or performance to or for Lender shall discharge the obligations of the Contract Party to make such payment or performance to or for Borrower.

Provided that the terms comply with the requirements set forth below, and further provided no Default exists and is continuing hereunder, Borrower is authorized to enter into Approved Leases for space within the Premises without Lender's prior consent. An "Approved Lease" is any new lease on the standard form lease approved by Lender, without material deviation, and (i) be for a term of five (5) years or more, (ii) provides a minimum net rental rate of \$8.25 per rentable square foot, (iii) provides a tenant improvement allowance of not more than \$8.00 per rentable square foot, and (iv) provides a demised premises of not more than 25,000 rentable square feet. Borrower shall give Lender prior written notice of Borrower's intent to enter into any such Approved Leases, and Borrower shall provide Lender with a complete copy of all such executed Approved Leases. So long as no Default exists and is continuing, Borrower shall also be authorized to modify or amend existing Approved Leases in the ordinary course of business, provided that any such Approved Lease, as so amended, would not have required Lender's consent if it contained the same provision when initially executed.

2.05 Operation, Care and Inspection of Premises. Borrower shall operate the Premises at all times for such purposes as may be reasonably approved by Lender in writing. Borrower shall maintain the Premises in good condition and repair, shall not commit or suffer any waste to the Premises or do or suffer to be done anything which would increase the risk of casualty to the Premises or any part thereof or which would result in the cancellation of any insurance policy carried with respect to the Premises. Borrower shall comply promptly with all applicable laws, rules, ordinances, regulations, judgments, governmental determinations, restrictive covenants and easements affecting the Premises or any part thereof (the "Requirements") and shall cause the Premises to comply at all times and in all respects with all Requirements, and shall at all times operate the Premises, and perform any construction of any portion thereof, in all respects in accordance with all Requirements. Borrower shall promptly repair, restore or replace, to the extent and in a manner reasonably satisfactory to Lender, any part of the Premises which may be damaged by fire or other casualty or which may be affected by any condemnation proceeding, provided that Lender thereafter makes available to Borrower (pursuant to a procedure reasonably

UNOFFICIAL COPY

satisfactory to Lender) any net insurance or condemnation proceeds actually received by Lender in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration, repair or replacement. Lender and any persons authorized by Lender shall have the right at all reasonable times during normal business hours upon reasonable advance notice to inspect the Premises, any improvements existing or being constructed thereon and all materials used or to be used in such improvements; provided, however, that nothing contained herein shall be deemed to impose upon Lender any obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect which was or might have been disclosed by such inspections. Notwithstanding anything to the contrary herein, but subject to casualty and condemnation and the initial construction of the Improvements, no part of the Premises now or hereafter conveyed as security under this Instrument shall be removed, demolished or materially altered without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

2.06 Security Agreement; Fixture Filing. This Instrument is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Premises, in compliance with the provisions of the Illinois Uniform Commercial Code (the "Code"). The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Instrument shall be as prescribed herein, or as prescribed by general law, or as prescribed by the Code, all at Lender's election in the discretion of Lender. Upon request or demand by Lender, Borrower shall at its expense assemble all personal property which is a part of the Premises, and with respect to which such request or demand is made, and make the same available to Lender at a convenient place upon the Land (or within Improvements upon the Land, as may be appropriate for the protection of such personal property) acceptable to Lender. Any notice of sale, disposition or other action by Lender with respect to personal property which is a part of the Premises sent to Borrower in accordance with the provisions hereof relating to communications at least ten (10) days prior to such action shall constitute adequate and reasonable notice to Borrower of such action. Borrower agrees that all property used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Instrument, is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be, regarded as part of the real estate conveyed hereby and that the filing of any financing statement or statements in the records normally having to do with personal property shall not in any way affect such agreement; provided, however, that Lender may determine in its discretion that certain items of such property constitute personal property and are subject to remedies available with respect to personal property. The mention in any financing statement or statements of rights in and to (a) the proceeds of any insurance policy, or (b) any award in eminent domain proceedings for a taking or for loss of value, or (c) any payment for damage to or losses associated with the Premises, or (d) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to a Lease or otherwise, shall not in any way limit any of the rights of Lender as determined by this Instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Lender in the event any court shall at any time hold with respect thereto, that notice of Lender's priority of interest, to be effective against all persons or against a particular class of persons, must be filed in the Code records. Except

UNOFFICIAL COPY

with respect to rental payments to the extent specifically provided herein to the contrary, Lender shall have the right of possession of all cash, securities, instruments, negotiable instruments, documents, certificates and any other evidences of cash or other property or evidences of rights to cash or other property which are now or hereafter a part of the Premises, and Borrower shall promptly deliver the same to Lender without further notice from Lender. Borrower hereby irrevocably agrees that Lender may, at the option of Lender, give notice from time to time to any one or more persons or entities who may have or owe or be expected thereafter to have or owe any payment or other property of any nature which is or may become a part of the Premises, of the security interest of Lender therein or of the right, if any, of Lender to possession thereof; and, where Lender has such a right of possession, Lender may demand of such persons or entities delivery of any such payment or other property directly to Lender. If Lender shall at its option so request, Borrower will join in any such notices with Lender. The names of the "Debtor" and the "Secured Party" (which are Borrower and Lender, respectively), the address of the "Secured Party" from which information concerning the security interest may be obtained, and the address of "Debtor", are as set forth in Section 4.06, hereof; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove. Borrower agrees to furnish Lender with notice of any change in the name, identity, corporate structure, residence, principal place of business or mailing address of Borrower within ten (10) days of the effective date of any such change. Borrower agrees to execute any financing and continuation statements as the Lender may request, and authorizes Lender to file financing and continuation statements covering such collateral without the signature of the Borrower, all at the Borrower's cost and expense.

This Instrument shall constitute a financing statement filed for record in the real property records of the county in which the Premises are located as a fixture filing in accordance with §9-502 of the Code (or any amendment thereto). For purposes of complying with the requirements of §9-502 of the Code, the name of Borrower, as Debtor, and Lender, as Secured Party, and the respective addresses of Borrower, as Debtor, and Lender, as Secured Party, are set forth on the first page of this Instrument; the types or items of Collateral are described in this Section and in the definition of the "Premises" appearing in the granting clauses of this Instrument; and the description of the Land is set forth on Exhibit "A" attached hereto. The Collateral includes goods that are or are to become fixtures.

2.07 Further Assurances; After-Acquired Property. Borrower shall execute and/or deliver (and pay the costs of preparation and recording thereof) to Lender, upon written demand, any further instrument or instruments reasonably required so as to evidence, reaffirm, correct, perfect, continue or preserve the obligations of Borrower under the Note or the other Loan Documents, the collateral at any time securing or intended to secure the Note, and the first and prior legal security title and interest of Lender to all or any part of the Premises, whether now owned or hereafter acquired by Borrower. Upon any failure of Borrower so to do, Lender may make, execute, record, file, re-record and/or re-file any and all such instruments for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower to do so. The security title of this Instrument and the security title created hereby will automatically attach, without further act, to all after-acquired property attached to or used in the operation of the Premises or any part thereof.

2.08 Expenses. Borrower will pay or reimburse Lender, upon demand therefor, for all reasonable costs and expenses of any kind (including reasonable attorneys' fees actually

UNOFFICIAL COPY

incurred, but subject to and as limited by the Loan Agreement and Exhibit "D" hereto, and fees of auditors, appraisers and inspectors) paid or incurred by Lender relating to the Indebtedness or the Loan Documents, including those paid or incurred in connection with the commitment, negotiation, documentation, preparation, closing, disbursement or administration of the Indebtedness or any one or more of the Loan Documents, or in connection with the collection of any insurance or other proceeds or enforcement of any rights of Lender under or relating to this Instrument or the other Loan Documents (other than collection of the Indebtedness after maturity), including the costs of any suits or proceedings or disputes of any kind in which Lender is made or appears as a party plaintiff or defendant or which are, in the judgment of Lender, expedient to preserve or protect its interest in the Premises (including condemnation, insolvency, bankruptcy or probate proceedings, administrative proceedings, proceedings relating to enforcement of laws or regulations, forfeiture proceedings, and appeals at all levels of appeal, whether before or after entry of judgment or other determination). Borrower will pay any and all interest and penalties owing on account of the Indebtedness or any one or more of the Loan Documents, including any interest or penalties arising on account of failure or delay in payment of any of the items referred to in this provision. In addition, Borrower shall pay to Lender, upon demand, all costs and expenses (including reasonable attorneys' fees actually incurred and fees of auditors, appraisers and inspectors) in connection with the collection of the Indebtedness, or any portion thereof, after maturity (whether in due course or by acceleration), subject to and as limited by the Loan Agreement and Exhibit "D" hereto. All such costs, expenses, penalties and interest paid or incurred by Lender shall be added to the Indebtedness and shall be secured by this Instrument.

2.09 Reports. Borrower shall keep and maintain or shall cause to be kept and maintained, at Borrower's cost and expense and in accordance with sound accounting practices and principles consistently applied, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Premises and all items of cost in connection with the construction of any improvements which are now or hereafter a portion of the Premises, and Lender and any persons authorized by Lender shall have the right at all reasonable times to inspect such books, records and accounts and to make copies thereof. Borrower shall provide Lender the following financial reports:

(a) As soon as practicable, but in any event within forty-five (45) days after the end of each of the first three quarters of each calendar year, Borrower shall furnish to Lender unaudited general financial statements of Borrower for such quarter, and prepared in such detail as Lender may request. All such statements shall be prepared in accordance with generally accepted accounting principles consistently applied and shall be certified by Borrower's chief financial officer;

(b) As soon as practicable, but in any event within forty-five (45) days after the end of each quarter of each calendar year, Borrower shall furnish to Lender a current rent roll and operating statement for the Premises;

(c) As soon as practicable, but in any event within ninety (90) days after the end of each calendar year, Borrower shall furnish to Lender unaudited general financial statements of Borrower, prepared in such detail as Lender may request and certified by Borrower's chief financial officer; and

UNOFFICIAL COPY

(d) As soon as practicable, but in any event within ninety (90) days after the end of each calendar year, Borrower shall furnish to Lender unaudited general financial statements of Guarantor, prepared in such detail as Lender may request and certified by Guarantor's chief financial officer.

2.10 Conveyance or Encumbrance. Borrower shall not encumber, pledge, convey, transfer or assign any or all of its interest in the Premises, or execute or consent to any instrument or matter which might affect the title to the Premises or which might effect a change in any one or more of the Requirements or acquire any portion of the personal property covered by this Instrument subject to any charge or lien, without the prior written consent of Lender, which consent shall be given or withheld by Lender at its discretion; and, if Borrower is a corporation, partnership or other artificial entity, there shall be no encumbrance, pledge, conveyance, transfer or assignment of any legal or beneficial interest whatsoever in Borrower without such prior written consent of Lender.

2.11 Single Purpose Entity. Borrower is a single purpose entity whose sole assets are the Premises and whose sole business and purpose is to develop, own and operate the Premises. Borrower shall not engage in any business other than the development, ownership and operation of the Premises, nor shall Borrower create, incur, assume, guarantee or become or remain liable for any obligation or indebtedness whatsoever, other than (i) the Indebtedness, (ii) taxes and assessments payable on the Premises, (iii) amounts, if any payable under the terms of any Leases and Contracts, (iv) operating expenses reasonably incurred by Borrower to unrelated third parties in connection with the operation of the Premises, and (v) that certain Management and Leasing Agreement between Borrower and Seefried Industrial Properties, Inc.

2.12 USA PATRIOT ACT. Borrower represents and warrants to Lender that none of Borrower, any member, shareholder, or partner of Borrower, any party directly or indirectly owning an interest in Borrower, or any Guarantor is (or will be) a person whom Lender is restricted from doing business with under regulations of the office of Foreign Asset Control ("OFAC") of the Department of the Treasury of the United States of America (including, those persons names on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, Borrower hereby agrees to provide Lender with any additional information that Lender deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

DEFAULT AND REMEDIES

3.01 Defaults. The term "Default", wherever used in this Instrument, shall mean any one or more of the following events: (a) failure by Borrower to pay any portion of the Indebtedness when due; or (b) the breach or failure by Borrower or any Guarantor to perform, observe and satisfy all other terms, covenants, conditions and agreements contained in this Instrument or in any of the other Loan Documents or in any Financial Contract; or (c) any warranty or representation of Borrower or any endorser or any Guarantor contained in this

UNOFFICIAL COPY

Instrument or in any other of the Loan Documents, or any material information relating to the Indebtedness or the Loan Documents given to Lender by Borrower or any partner or officer of Borrower, or by any other party on behalf of or at the request of Borrower, being untrue or misleading in any material respect; or (d) a levy shall be made under any process on the Premises or any part thereof or any other property of Borrower or any Guarantor; or (e) the admission in writing by Borrower or any Guarantor of the inability to pay debts generally as they become due; or (f) Borrower or any Guarantor, pursuant to or within the meaning of the Bankruptcy Code, Title 11 U.S.C., or any other present or future federal, state or other common law, case law, statute or regulation relating to bankruptcy, insolvency, appointment of receivers or custodians, dissolution, or other relief for debtors (i) commences a voluntary case, or (ii) consents to or is subject to the entry of any order for relief against it in an involuntary case, or (iii) remains a debtor in an involuntary case for sixty (60) days after the commencement of such case, or (iv) consents to or is subject to the appointment of a receiver, trustee, liquidator, custodian or other party serving a similar function for the Premises or any other property of Borrower or any Guarantor, or (v) makes a general assignment for the benefit of creditors, or (vi) becomes insolvent, or (vii) is subject to the entry of an order for the liquidation of Borrower or any Guarantor; or (g) the assertion of any claim of priority to this Instrument, by title, lien or otherwise in any legal or equitable proceeding; or (h) Borrower or any Guarantor (if a corporation) commences the process of liquidation or dissolution or its charter expires or is revoked, or Borrower or any Guarantor (if a partnership or business association) commences the process of dissolution or partition, or Borrower or any Guarantor (if a trust) commences the process of termination or expires or Borrower or any Guarantor (if an individual) dies (unless within forty five (45) days of the death of such Guarantor, a replacement guarantor acceptable to Lender in its sole discretion is designated and assumes all obligations and liabilities of such Guarantor under his respective Guaranty in a manner acceptable Lender); or (i) the subjection of the Premises to actual or threatened waste, or the removal, demolition, or material alteration of any part thereof without the prior written consent of Lender; or (j) any mechanic's, materialmen's, laborer's, statutory or other lien is filed against the Premises or any portion thereof and not totally released or removed as a lien against the Premises and every part thereof (by bonding, payment or otherwise) within twenty (20) business days after Borrower's knowledge of the filing thereof; or (k) any suit shall be filed against Borrower or any Guarantor which, if adversely determined, could reasonably be expected substantially to impair the ability of Borrower or such Guarantor to perform each and every one of their respective obligations under the Loan Documents; or (l) any default (for which no cure period is provided, or with respect to which the applicable cure period has expired without cure having been accepted) shall exist under any document evidencing, securing or otherwise relating to any other indebtedness owing, in whole or in part, to Lender, for which Borrower is liable, whether as maker, co-signer, endorser, surety, guarantor, partner of one of the foregoing, or otherwise; or (m) all or any substantial portion of the Premises shall be taken through forfeiture proceedings, or any portion of the Premises shall be damaged by or taken through forfeiture proceedings and the value of the Premises shall, in the discretion of Lender, be materially diminished, either temporarily or permanently; or (n) the institution of any proceeding seeking the forfeiture of the Premises or any portion thereof or any interest therein as a result of any criminal or quasi-criminal activity by Borrower (or any person so related to Borrower or the Premises that the Premises or any portion thereof or any interest therein might be forfeited on account of the activity of such person); or (o) the failure of the Premises and every portion thereof to be in compliance in all respects and at all

UNOFFICIAL COPY

times with all applicable "Environmental Requirements" (as said term is defined in the Environmental Agreement), subject to any presently existing conditions expressly described in the Environmental Report (as said term is defined in the Environmental Agreement); or (p) the failure or inability (whether imposed by law or otherwise) of Borrower to make any payment required under Section 2.02 of this Instrument; or (q) the failure of this Instrument to grant to Lender a valid, binding and enforceable first lien on and/or security title in and to the Premises, including the personal property of Borrower referred to herein, or the failure of any one or more of the Loan Documents to be legal, valid, binding upon and enforceable against all parties thereto (other than Lender), or the claim by any party (other than Lender) to any one or more of the Loan Documents that any one or more of the Loan Documents is not legal, valid, binding upon and enforceable against all parties thereto (other than Lender)..

3.02 Rights of Lender Upon Default. If a Default shall have occurred, then the entire Indebtedness shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence, and Lender, at its option, may do any one or more of the following (and, if more than one, either concurrently or independently, and in such order as Lender may determine in its discretion), all without regard to the adequacy or value of the security for the Indebtedness:

(a) Enter upon and take possession of the Premises without the appointment of a receiver, or an application therefor; at its option, operate the Premises; at its option, exclude Borrower and its agents and employees wholly therefrom; at its option, employ a managing agent of the Premises; and at its option, exercise any one or more of the rights and powers of Borrower to the same extent as Borrower could, either in its own name, or in the name of Borrower; and receive the rents, incomes, issues and profits of the Premises. Lender shall have no obligation to discharge any duties of a landlord to any Tenant or to incur any liability as a result of any exercise by Lender of any rights hereunder; and Lender shall not be liable for any failure to collect rents, issues, profits or revenues, nor liable to account for any rents, issues, profits or revenues unless actually received by Lender.

(b) Apply, without regard to the solvency of any party bound for its payment, for the appointment of a receiver (pursuant to 735 ILCS 5/15-1703) to take possession of and to operate the Premises and to collect and apply the incomes, rents, issues, profits and revenues thereof.

(c) Pay, perform or observe any term, covenant or condition of this Instrument and any of the other Loan Documents and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender with interest thereon at the default rate provided in the Note. The necessity for any such actions and the amounts to be paid shall be determined by Lender in its discretion. Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Borrower hereby acknowledges and agrees that the remedies set forth in this Paragraph 3.02(c) shall be exercisable by Lender, and any and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower with interest thereon at

UNOFFICIAL COPY

the default rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Lender after the filing by Borrower of a voluntary case or the filing against Borrower of an involuntary case pursuant to or within the meaning of the Bankruptcy Code, Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Borrower, Lender, Guarantor, the Indebtedness or any of the Loan Documents.

(d) Foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by Illinois law or provided in this Instrument or in any other Loan Document. The Indebtedness shall include, Lender shall be entitled to collect, and any decree which adjudicates the amount secured by this Instrument shall include, all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports, any of which may be estimated to reflect the costs and expenses to be incurred after the entry of such a decree. If the Borrower's interest in the Premises is sold in any judicial proceeding or pursuant to any power of sale, the interest may be sold in one parcel as an entirety or in two or more separate parcels, and in such manner or order, as the Lender may elect in its sole and nonreviewable discretion. The failure to make tenants, licensees, concessionaires or other occupants under any Leases defendants to any foreclosure or sale proceedings shall not be asserted against the Lender as a defense.

(e) Proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term, covenant, condition or agreement of this Instrument or any of the other Loan Documents or any other right or (ii) to pursue any other remedy available to Lender.

(f) Lender may apply any moneys and proceeds received by Lender as a result of the exercise by Lender of any right conferred under this Section 3.02 in such order as Lender in its discretion may elect against (i) all costs and expenses, including reasonable attorneys' fees, incurred in connection with the operation of the Premises, the performance of Borrower's obligations under the Leases and the collection of the rents thereunder; (ii) all costs and expenses, including reasonable attorneys' fees, incurred in the collection of any or all of the Indebtedness, including those incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the Indebtedness; (iii) any or all unpaid principal on the Indebtedness; (iv) any other amounts owing under the Loan Documents; and (v) accrued interest and charges on any or all of the foregoing. The remainder, if any, shall be paid to Borrower or any person or entity lawfully entitled thereto.

(g) Notwithstanding anything to the contrary, the foregoing right of Lender to accelerate the Indebtedness shall be at Lender's sole and absolute discretion, and Lender shall have the right to accelerate the Note as provided herein without having any obligation to accelerate any Financial Contract.

GENERAL CONDITIONS

4.01 No Waiver; Remedies Cumulative. No delay or omission by Lender to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right,

UNOFFICIAL COPY

power or remedy or shall be construed to be a waiver of any such Default, or acquiescence therein, and every right, power and remedy given by this instrument to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, expressed or implied, by Lender to or of any Default shall be deemed or construed to be a consent or waiver to or of any other Default. No delay, indulgence, departure, act or omission by Lender or any holder of the Note shall release, discharge, modify, change or otherwise affect the original liability under the Note or any other obligation of Borrower or any subsequent purchaser of the Premises or any part thereof, or any maker, surety or Guarantor, or preclude Lender from exercising any right, privilege or power granted herein or alter the security title, security interest or lien hereof. Lender may at any time, without notice to or further consent from Borrower, surrender or substitute any property or other security of any kind or nature whatsoever securing the Indebtedness or release any Guarantor, and no such action will release Borrower's obligations hereunder or alter the effect hereof. No right, power or remedy conferred upon or reserved to Lender hereunder is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the other Loan Documents or now or hereafter existing at law, in equity or by statute.

4.02 Replacement of Note. In the event of loss, theft, destruction, total or partial obliteration, mutilation or inappropriate cancellation of the Note, Borrower will execute and deliver, in lieu thereof, a replacement note identical in form and substance to the Note and dated as of the date of the Note.

4.03 Survival of Certain Agreements. Notwithstanding the repayment of the Indebtedness and the cancellation or transfer of the Loan Documents, or any foreclosure of, or sale under power contained in, this Instrument, or the acquisition by Lender of title to the Premises in lieu of foreclosure, or any other realization upon collateral securing the Indebtedness, all agreements of Borrower contained herein or in any of the other Loan Documents to pay the costs and expenses of Lender in connection with the loan contemplated by the Loan Documents and all agreements of Borrower contained herein or in any of the other Loan Documents to indemnify and/or hold harmless Lender shall continue in full force and effect so long as there exists any possibility of expense or liability on the part of Lender.

4.04 No Obligation to Third Parties. The Loan Documents are made solely for the benefit of Lender. No tenant nor any party involved with the construction of any improvements on any part of the Premises nor any other party whatsoever shall have standing to bring any action against Lender as the result of the Loan Documents, or to assume that Lender will exercise any remedies provided herein, and no party other than Lender shall be deemed to be a beneficiary of any provision of the Loan Documents, any and all of which may be freely waived in whole or in part by Lender in its discretion at any time. Nothing contained in the Loan Documents shall be deemed to impose upon Lender any liability for the performance of any obligation of Borrower under any of the Leases or Contracts. Nothing contained in this Section 4.04 is intended to deprive Borrower of the benefit of any covenant by Lender in favor of Borrower contained in the Loan Documents.

4.05 Miscellaneous. The Loan Documents shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives,

UNOFFICIAL COPY

successors, successors-in-title and assigns, subject to all restrictions on transfer herein or in the other Loan Documents. The Indebtedness and the Loan Documents (and any interest therein) are assignable by Lender, and any assignment of the Loan Documents by Lender shall operate to vest in the assignee all rights and powers conferred upon and granted to Lender by the Loan Documents; and, in the event of any such assignment of the entire interest of Lender in the Loan Documents, Lender shall be relieved of all obligations and liabilities under the Loan Documents; neither the Loan Documents nor the proceeds of the loan contemplated by the Loan Documents may be assigned by Borrower without the prior consent of Lender, which may be given or withheld at the discretion of Lender. The Loan Documents may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against whom enforcement of such change, waiver, discharge or termination is sought. The Loan Documents contain the entire agreement between Borrower and Lender relating to the loan transaction contemplated thereby and supersede entirely any and all prior written or oral agreements with respect thereto; and Borrower and Lender hereto acknowledge and agree that there are no contemporaneous oral agreements with respect to the subject matter hereof. Nothing contained in the Loan Documents shall be construed to create an agency, partnership or joint venture between Borrower and Lender. All personal pronouns used in the Loan Documents whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of articles and sections in the Loan Documents are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions thereof. If more than one person or entity constitutes, collectively, Borrower or Guarantor, all of the provisions of the Loan Documents referring to Borrower or Guarantor shall be construed to refer to each such person or entity individually as well as collectively; and, if Borrower or Guarantor is a partnership, all of the provisions of the Loan Documents referring to Borrower or Guarantor shall be construed to apply to each of the general partners of Borrower or Guarantor and of any and all further tiers of general partners in the structures of Borrower or Guarantor. When anything is described or referred to in the Loan Documents in general terms and one or more examples or components of what has been described or referred to generally is associated with that description (whether or not following the word "including"), the examples or components shall be deemed illustrative only and shall not be construed as limiting the generality of the description or reference in any way. Wherever in the Loan Documents the approval or consent of Lender is required or permitted, or wherever a requirement of Lender or the standard of acceptability or satisfaction of Lender must be determined, such approval, consent or determination of Lender shall not be unreasonably exercised; provided, however, that wherever it is indicated that such approval, consent or determination is to be given or made at the option or in the discretion or judgment of Lender, then Lender may grant or withhold such approval or consent or make such determination without restriction in its sole and absolute discretion. If any provisions of the Loan Documents or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of each of the Loan Documents and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under the Loan Documents. All exhibits referred to in the Loan Documents are by such reference incorporated into the Loan Documents as if fully set forth therein.

4.06 Communications. Unless and except as otherwise specifically provided herein, any and all notices, elections, approvals, consents, demands, requests and responses thereto

UNOFFICIAL COPY

("Communications") permitted or required to be given under the Loan Documents shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon the earlier of receipt thereof or deposit thereof in the United States mail, postage prepaid, certified with return receipt requested, to the other party at the address of such other party set forth hereinbelow or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any Communication must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective with respect to Communications sent prior to the time of receipt thereof. Receipt of Communications under the Loan Documents shall occur upon actual delivery (whether by mail, telecopy transmission, messenger, courier service, or otherwise) to Borrower or Lender at the address of such party set forth hereinbelow, subject to change as provided hereinabove. An attempted delivery in accordance with the foregoing, acceptance of which is refused or rejected, shall be deemed to be and shall constitute receipt; and an attempted delivery in accordance with the foregoing by mail, messenger, or courier service (whichever is chosen by the sender) which is not completed because of changed address of which no notice was received by the sender in accordance with this provision prior to the sending of the Communication shall also be deemed to be and constitute receipt. Any Communication, if given to Lender, must be addressed as follows, subject to change as provided hereinabove:

Atlantic Capital Bank, N.A.
 945 East Paces Ferry Road, NE
 16th Floor, Resurgens Plaza
 Atlanta, Georgia 30326
 Attn: Robert A. Cancelliere, SVP

With a copy to:

Smith, Gambrell & Russell, LLP
 Suite 3100, Promenade
 1230 Peachtree Street, N.E.
 Atlanta, Georgia 30309-3592
 Attn: David J. Burge, Esq.

and, if given to Borrower, must be addressed as follows, subject to change as provided hereinabove:

Deurer-Seefried II, L.P.
 c/o Seefried Industrial Properties, Inc.
 3333 Riverwood Parkway
 Suite 200
 Atlanta, Georgia 30339
 Attn: Dave Riefe

with a copy to:

UNOFFICIAL COPY

Summey Orr, Esq.
Hartman, Simons & Wood, LLP
6400 Powers Ferry Road, N.W.
Suite 400
Atlanta, Georgia 30309-3400

4.07 Indemnity. Borrower shall protect, defend, indemnify and save harmless Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including attorneys' fees and expenses) imposed upon or incurred by Lender by reason of (a) any claim for brokerage fees or other such commissions relating to the Premises or the Indebtedness, or (b) the condition of the Premises including, without limitation, the failure of the Premises to be in compliance with any and all applicable laws, codes and regulations (including, without limitation, all zoning laws and regulations), or (c) failure to pay recording, mortgage, intangibles or similar taxes, fees or charges relating to the Indebtedness or any one or more of the Loan Documents, or (d) the Loan Documents or any claim or demand whatsoever which may be asserted against Lender by reason of any alleged action, obligation or undertaking of Lender relating in any way to the Indebtedness or to any matter contemplated by the Loan Documents. Nothing contained in this Section 4.07 shall be construed to indemnify or hold harmless Lender against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the negligence, gross negligence or willful misconduct of Lender, its agents or employees ("Lender Caused Bodily Injury or Property Damages"), which shall be deemed an exception to the indemnity and hold harmless provision contained in the immediately preceding sentence; provided, however, that such exception shall be strictly limited to liability for Lender Caused Bodily Injury or Property Damages; and provided, further, that Borrower assumes the burden of proof that any liability for which Lender claims the benefit of the foregoing indemnity and hold harmless provision is, in fact, liability for Lender Caused Bodily Injury or Property Damages. In the event Lender incurs any liability, loss or damage arising out of or in any way relating to the loan transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such liability, loss or damage shall be added to the Indebtedness, shall bear interest at the interest rate specified in the Note from the date incurred until paid and shall be payable on demand.

4.08 Greater Estate. In the event that Borrower is the owner of a leasehold estate with respect to any portion of the Premises and Borrower obtains a fee estate in such portion of the Premises, then, such fee estate shall automatically, and without further action of any kind on the part of Borrower, be and become subject to the security title and lien hereof.

4.09 Applicable Law. This Instrument shall be interpreted, construed and enforced according to the laws of the State of Illinois.

4.10 Waiver of Homestead and Redemption. Borrower releases and waives all rights under the homestead and exemption laws of the State of Illinois. Borrower acknowledges that the Premises does not include "agricultural real estate" or "residential real estate" as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b), Borrower waives any and all rights of redemption from sale under any order of foreclosure of this Instrument, or other rights of redemption, which may run to Borrower or any other Owner of

UNOFFICIAL COPY

Redemption, as that term is defined in 735 ILCS 5/15-1212. Borrower waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.

4.11 Forbidden Entity. Borrower hereby certifies that it is not a “forbidden entity” as that term is defined in Section 1.110.6 of the Illinois Pension Code, 40 ILCS 5/1-101 *et seq.*

4.12 Further Stipulations. The additional covenants, agreements and provisions set forth in Exhibit “D” and Exhibit “E” attached hereto and incorporated herein by this reference shall, in the event of any conflict between such further stipulations and any of the other provisions of this Instrument, be deemed to control.

[The remainder of this page is intentionally left blank.]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has executed this Instrument under seal, as of the day and year first above written.

BORROWER:

DEURER-SEEFRIED II, L.P., a Georgia limited partnership

By: SIP 25, LLC, a Georgia limited liability company, its general partner

By: Seefried Industrial Properties, Inc., a Georgia corporation, its manager

By: *Ferdinand Seefried*
Name: Ferdinand Seefried
Title: EXEC. CHAIRMAN

Property of Cook County Clerk's Office

STATE / COMMONWEALTH OF Georgia

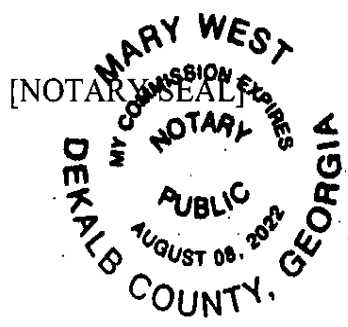
COUNTY OF DeKalb

I, Mary West do hereby certify that Ferdinand Seefried personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he or she signed and delivered the said instrument as his or her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My commission expires: 8/8/22

Mary West, Notary Public



UNOFFICIAL COPY

EXHIBIT "A"

DESCRIPTION OF THE LAND

Situated in the County of Cook, State of Illinois, to wit:

LOT 1 IN OXFORD CORPORATE CENTER SUBDIVISION IN THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS:

2100 South Wolf Road, Des Plaines, IL 60018

PERMANENT INDEX NUMBER:

09-30-400-043-0000

UNOFFICIAL COPY

EXHIBIT "C"

PERMITTED ENCUMBRANCES

1. Taxes for 2019 and subsequent years.
2. Exceptions 2-25 in Schedule B, Part II of Commitment for Title Insurance Issued By WFG National Title Insurance Company Commitment No. 16216578.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "D"

FURTHER STIPULATIONS

D-1. Cure of Defaults. Anything herein or in the Note contained to the contrary notwithstanding, the provisions of this Section D-1 shall not pertain to Defaults arising as a result of the events set forth in Subsections 3.01(d) (as the same applies to the Premises or any part thereof), 3.01(e), 3.01(f), 3.01(h), 3.01(l) or 3.01(m) hereof, to any Default consisting of a failure to provide insurance as required by Subsection 2.03(a) hereof, to any Default consisting of a failure to comply with Section 2.10 hereof, to any Default consisting of a failure to give a required notice to Lender, to any Default consisting of a failure to repay the Indebtedness at maturity, or to any Default excluded from any provision for cure of defaults contained in any other of the Loan Documents. In the event of the occurrence of a Default which consists solely of the first failure, during the period of 365 days ending on the date of such occurrence of Default, to make a payment to Lender required by any one or more of the Loan Documents, Lender will not, on account of said Default, institute any court action under any of the Loan Documents or actually seize or sell any property with respect to which a security interest has been granted to Lender as security for the Indebtedness (including, without limitation, any rents payable under the Leases), if, within ten (10) days of the date of mailing by Lender of notice of said Default to Borrower at Borrower's address provided in Section 4.06 hereof, Borrower makes such payment to Lender, and, if Borrower makes such payment within said period, to the extent the Indebtedness has been accelerated by said Default, the Indebtedness shall, absent any other default, be reinstated by Lender so as to be payable upon the same terms and conditions in effect prior to said Default. In the event of the occurrence of a Default, other than a Default consisting of a failure to make a payment to Lender required by any one or more of the Loan Documents, Lender will not, on account of said Default, institute any court action under any of the Loan Documents or actually seize or sell any property with respect to which a security interest has been granted to Lender as security for the Indebtedness (including, without limitation, any rents payable under the Leases), if, within thirty (30) days of the date of mailing by Lender of notice of said Default to Borrower at Borrower's address provided in Section 4.06 hereof, Borrower fully cures said Default to the satisfaction of Lender, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days; and, if Borrower so cures said Default within said period, to the extent the Indebtedness has been accelerated by said Default, the Indebtedness shall, absent any other default, be reinstated by Lender so as to be payable upon the same terms and conditions in effect prior to said Default. The provisions of this Section D-1 to the effect that the cure periods described herein shall commence on the date of mailing by Lender of notice of said Default shall apply notwithstanding any provision of Section 4.06 hereof to the contrary concerning the measurement of time periods for response to notices; provided, however, that all other terms of Section 4.06 hereof shall apply to the notice to be provided by Lender pursuant to this Section D-1.

UNOFFICIAL COPY

D-2. Attorney's Fees. Notwithstanding anything contained in the Note, this Instrument or any of the other Loan Documents to the contrary, whenever Borrower is required to pay Lender's attorney's fees under any of the Loan Documents, such requirement shall be limited to reasonable fees of Lender's counsel which are actually incurred at the standard hourly rates of such counsel and expenses related thereto and not with regard to any statutory right Lender may have to recover legal fees, including without limitation the provisions of O.C.G.A. §13-1-11(a)(2).

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "E"

ILLINOIS PROVISIONS

1. **PRINCIPLES OF CONSTRUCTION.** In the event of any inconsistencies between the terms and conditions of this Exhibit E and the other terms, conditions, and provisions of this Instrument, the terms and conditions of this Exhibit E shall control and be binding.

2. **ILLINOIS MORTGAGE FORECLOSURE.** It is the express intention of Borrower and Lender that the rights, remedies, powers and authorities conferred upon the Lender pursuant to this Instrument shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5/15-1101 *et seq.*) (hereinafter referred to as the "IMFL") and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Instrument shall be inconsistent with any provision in the IMFL, the provisions of the IMFL shall take precedent over the provisions of this Instrument, but shall not invalidate or render unenforceable any other provision of this Instrument that can be construed in a manner consistent with the IMFL.
 - (a) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether provided for in this Instrument, shall be added to the Indebtedness secured by this Instrument or by the judgment of foreclosure.
 - (b) The powers, authorities and duties conferred upon the Lender, in the event that the Lender takes possession of the Premises, and upon a receiver hereunder, shall also include all such powers, authority and duties as may be conferred upon a "mortgage-in-possession" or receiver under and pursuant to the IMFL. To the extent the IMFL may limit the powers, authorities and duties purportedly conferred hereby, such power, authorities and duties shall include those allowed, and be limited as proscribed by the IMFL at the time of their exercise or discharge.
 - (c) Borrower knowingly and voluntarily waives, on behalf of itself and all persons or entities now or hereafter interested in the Premises, to the fullest extent permitted by applicable law including the IMFL, (i) all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, redemption, single action, election of remedies and marshaling statutes, laws or equities now or hereafter existing, (ii) any and all requirements that at any time any action may be taken against any other person or entity and Borrower agrees that no defense based on any thereof will be asserted in any action enforcing this Instrument, and (iii) any and all rights to reinstatement and redemption as allowed under Section 15-1601(b) of the IMFL or to cure any defaults, except such rights of reinstatement and cure as may be expressly provided by the terms of this Instrument.

UNOFFICIAL COPY

- (d) BORROWER HEREBY KNOWINGLY AND VOLUNTARILY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS OF REDEMPTION FROM SALE OR OTHERWISE UNDER ANY ORDER OR DECREE OF FORECLOSURE, DISCLAIMS ANY STATUS WHICH IT MAY HAVE AS AN "OWNER OF REDEMPTION" AS THAT TERM MAY BE DEFINED IN SECTION 15-1212 OF THE IMFL, PURSUANT TO RIGHTS HEREIN GRANTED, ON BEHALF OF BORROWER AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE PREMISES DESCRIBED HEREIN SUBSEQUENT TO THE DATE OF THIS SECURITY INSTRUMENT, AND ON BEHALF OF ALL OTHER PERSONS TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS STATUTES.
3. **PROTECTIVE ADVANCES.** All advances, disbursements and expenditures made by 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, for the following purposes, in addition to those otherwise authorized by this Instrument or by the IMFL (hereinafter collectively referred to as "Protective Advances"), shall have the benefit of all applicable provisions of the IMFL, including those provisions of the IMFL hereinbelow referred to:
- (a) all advances by Lender in accordance with the terms of this Instrument to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Premises; (ii) preserve the lien of this Instrument or the priority hereof; or (iii) enforce this Instrument, each as referred to in Subsection (b)(5) of Section 5/15-1302 of the IMFL;
 - (b) payments by Lender of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Instrument; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the IMFL;
 - (c) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
 - (d) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Instrument as referred to in Sections 1504(d)(2) and 5/15-1510 of the IMFL; (ii) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Instrument or arising from the interest of the

UNOFFICIAL COPY

Lender hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action related to this Instrument or the Premises;

- (e) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the IMFL;
- (f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the IMFL;
- (g) expenses incurred and expenditures made by Lender for any one or more of the following: (i) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (ii) if Borrower's interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the Premises imposed by Subsection (c)(1) of Section 5/15-1704 of the IMFL; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Lender to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) if the Indebtedness is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement, and (viii) pursuant to any lease or other agreement for occupancy of the Premises for amounts required to be paid by Borrower.
- (h) All Protective Advances shall be additional indebtedness secured by this Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Loan Documents.
- (i) This Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Instrument is recorded pursuant to Subsection (b) of Section 5/15-1302 of the IMFL.
- (j) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMFL, apply to and

UNOFFICIAL COPY

be included in: (i) the determination of the amount of indebtedness secured by this Instrument at any time; (ii) the indebtedness found due and owing to the 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) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the IMFL; (iv) application of income in the hands of any receiver or "mortgagee-in-possession"; and (v) computation of any deficiency judgment pursuant to Section 5/15-1508(e) of the IMFL.

4. **OTHER AMOUNTS SECURED; MAXIMUM PRINCIPAL AMOUNT.** Borrower acknowledges and agrees that this Instrument secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or in part and future advances made at a later date, as well as any amounts owed to Lender pursuant to Section 1.3 of this Exhibit E, any and all litigation and other expenses incurred by Lender pursuant to the terms hereof and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Lender in connection with the Indebtedness, and in accordance with the Loan Documents; provided nothing in this Section shall be deemed an obligation on the part of Lender to make any future advances of any sort. Under no circumstances, however, shall the total amount of the Indebtedness secured hereby plus such additional amounts exceed Seventeen Million, Four Hundred Thousand and 00/100 Dollars (\$17,400,000.00).
6. **BUSINESS LOAN RECITAL/STATUTORY EXEMPTION.** Borrower acknowledges and agrees that (a) the proceeds of the Note will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(1)); (b) the Indebtedness secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4; and (c) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4.
7. **COLLATERAL PROTECTION ACT.** Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

Unless the Borrower provides Lender with evidence of the insurance coverage required by this Instrument or any of the other Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Premises or any other collateral for the Indebtedness. This insurance may, but need not protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Premises or any other collateral for the

UNOFFICIAL COPY

Indebtedness. Borrower may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Borrower has obtained insurance as required by this Instrument or any of the other Loan Documents. If Lender purchases insurance for the Premises or any other collateral for the Indebtedness, Borrower will be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

8. **FIXTURE FILINGS.** This Instrument covers goods which are or are to become fixtures, is effective as a financing statement filed as a fixture filing and is to be filed in the real estate records. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. THIS SECURITY INSTRUMENT CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE INDIVIDUAL PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE ILLINOIS UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH INDIVIDUAL PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, LENDER IS THE "SECURED PARTY" AND BORROWER IS THE "DEBTOR." THE NAME OF THE BORROWER IS DEURER-SEEFRIED II, L.P., A GEORGIA LIMITED PARTNERSHIP AND THE ADDRESS OF THE BORROWER IS 3333 RIVERWOOD PARKWAY, SUITE 200, ATLANTA, GEORGIA 30339. THE NAME OF THE LENDER IS ATLANTIC CAPITAL BANK, N.A., AND THE ADDRESS OF THE LENDER IS 945 EAST PACES FERRY ROAD, NE, 16TH FLOOR, RESURGENS PLAZA, ATLANTA, GEORGIA 30326.
9. **THE CREDIT AGREEMENTS ACT.** Borrower expressly agrees that for purposes of this Instrument: (i) this Instrument shall be a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1, *et seq.* (hereinafter referred to as the "Credit Act"); (ii) the Credit Act applies to this transaction; and (iii) any action on or in any way related to this Instrument shall be governed by the Credit Act.